



EUROPEAN COMMISSION
Competition DG

CASE AT.40642 – Pierre Cardin

(Only the English text is authentic)

ANTITRUST PROCEDURE Council Regulation (EC) No 1/2003

Article 7 and 23(2) Regulation (EC) 1/2003

Date: 28/11/2024

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EUROPEAN
COMMISSION

Luxembourg, 28.11.2024
C(2024) 8150 final

COMMISSION DECISION

of 28.11.2024

**relating to a proceeding under Article 101 of the Treaty on the Functioning of the
European Union (the Treaty) and Article 53 of the EEA Agreement**

(AT.40642 – Pierre Cardin)

(Text with EEA relevance)

(Only the English text is authentic)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (“TFEU”),

Having regard to the Agreement on the European Economic Area (the “EEA Agreement”)¹,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 TFEU², and in particular Article 7 and Article 23(2) thereof,

Having regard to the complaint lodged by Malu NV on 25 March 2019, alleging infringements of Article 101 TFEU by Société de Gestion Pierre Cardin, Mr Pierre Cardin and Westfälisches Textilwerk Adolf Ahlers Stiftung & Co. KG and requesting the Commission to put an end to those infringements,

Having regard to the Commission’s Decision of 31 January 2022 to initiate proceedings in this case³,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 27(1) of Regulation (EC) No 1/2003 and Article 12 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 TFEU⁴,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

¹ OJ L 1, 3.1.1994, p.13.

² OJ L 1, 4.1.2003, p.1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union (“TFEU”). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty when where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of “Community” by “Union” and “common market” by “internal market”. Where the meaning remains unchanged, the terminology of the TFEU will be used throughout this Decision.

³ Commission decision of 31 January 2022 to initiate proceedings pursuant to Article 2(1) of Regulation (EC) No 773/2004, C(2022)624 final.

⁴ OJ L 123, 27.4.2004, p. 18

Having regard to the final report of the hearing officer in this case,

Whereas:

1. INTRODUCTION

- (1) This Decision is based on an investigation initiated following a complaint filed on 25 March 2019 by the company Malu NV.
- (2) This Decision is addressed to the following companies: Pierre Cardin Evolution (“Cardin Evolution”)⁵ and Société de Gestion Pierre Cardin (“Cardin SAS”)⁶ together “Cardin”; and Westfälisches Textilwerk Adolf Ahlers Stiftung & Co. KG (“WTW Ahlers”)⁷. In this Decision, (i) Cardin and WTW Ahlers are together referred to as “the Parties” and (ii) WTW Ahlers, its subsidiaries [...] and [...], and [...] are jointly referred to as “Ahlers”.
- (3) This Decision establishes that, during the period from 1 January 2008 to 31 March 2021 (the “Relevant Period”), the Parties implemented and enforced within the European Economic Area (“EEA”)⁸ a series of agreements and/or concerted practices to restrict (i) out-of-territory passive sales⁹ of certain Pierre Cardin-licensed products by Cardin licensees; (ii) out-of-territory passive sales of such products by customers of Cardin licensees; and (iii) the customers to which Cardin licensees and their customers could sell such products.
- (4) The products concerned by the agreements and/or concerted practices are certain Pierre Cardin-licensed clothing and accessories for men, women and children¹⁰.
- (5) The Commission finds that the agreements and/or concerted practices referred to in recital (3) had the object of restricting competition within the meaning of Article 101 TFEU and Article 53 of the EEA Agreement by restricting passive sales, including online sales, of certain Pierre-Cardin licensed products¹¹ and by restricting sales of such products to certain types of customers¹², thereby partitioning the internal market. This conduct focused on protecting Ahlers from competition in the territories for which Cardin had granted it an exclusive licence¹³.

⁵ In this Decision, “Cardin Evolution” should be understood as referring to: (i) “Pierre Cardin Evolution ” for the period 30 October 2018 to 31 March 2021; and (ii) its predecessor “Pierre Cardin Evolution SA” for the period between 1 January 2008 and 29 October 2018.

⁶ In this Decision, “Cardin SAS” should be understood as referring to: (i) “Société de Gestion Pierre Cardin” for the period 24 February 2016 to 31 March 2021; and (ii) its predecessor “SARL de Gestion Pierre Cardin” for the period 1 January 2008 to 23 February 2016.

⁷ In this Decision, “WTW Ahlers” should be understood as referring to: (i) “Westfälisches Textilwerk Adolf Ahlers Stiftung & Co. KG” for the period 2014 to 31 March 2021; and (ii) its predecessor “Westfälisches Textilwerk Adolf Ahlers KG” for the period 2008 to 2013.

⁸ For the purposes of this Decision, the term “EEA” does not include the United Kingdom. In this Decision, the Commission does not take issue with any effects the conduct described herein may have had in territories outside the EEA.

⁹ “Passive sales” refers to responding to unsolicited requests from customers. For further details about this concept, see footnote 479.

¹⁰ See Section 3 for further details on the products concerned.

¹¹ See Section 3 and Sections 6.1.1 and 6.1.2.

¹² See Section 6.1.3.

¹³ In 2021, Ahlers had exclusive licensing rights for a number of Pierre Cardin-licensed products for the following EEA territories: Austria, Belgium, Bulgaria, Croatia, Czechia, Denmark, Estonia, Finland,

- (6) The agreements and/or concerted practices referred to in recital (3) form a single and continuous infringement of Article 101 TFEU and Article 53 of the EEA Agreement. This single and continuous infringement lasted for the entire Relevant Period.

2. THE UNDERTAKINGS CONCERNED

2.1. The undertakings liable for the infringement

2.1.1. Cardin

- (7) Cardin's ultimate parent is **Cardin Evolution**, a simplified joint-stock company under French law (*«société par actions simplifiée»*)¹⁴, headquartered in Paris, France. Its business focuses on the design and sale of clothing and furniture, as well as the management of other companies¹⁵.
- (8) Cardin Evolution is the majority owner of **Cardin SAS**¹⁶, which also is a simplified joint-stock company under French law¹⁷, headquartered in Paris, France. The main business of Cardin SAS is licensing the Pierre Cardin trademark for the manufacture and sale of clothing and accessories worldwide. In 2021, which is the last year of the infringement, around [...] % of Cardin SAS' turnover resulted from its licensing business.
- (9) Cardin SAS is the majority owner of several subsidiaries. One of these subsidiaries, Pierre Cardin UK Ltd¹⁸, was also active in licensing the Pierre Cardin trademark in the EEA during the Relevant Period. Cardin SAS owned between 99% and 100% of Pierre Cardin UK Ltd throughout the Relevant Period¹⁹.
- (10) Cardin SAS also operates in the *haute couture* segment and runs a number of boutiques in which it sells selected products, such as *haute couture* clothes and furniture. These products are different from those concerned by this Decision. To a limited extent, Cardin SAS is also active in the HORECA sector²⁰.
- (11) In 2023, Cardin Evolution had a consolidated turnover of EUR [...] ²¹.
- (12) The main individuals involved in Cardin's licensing business during the Relevant Period were²²:

France, Germany, Hungary, Iceland, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Ireland, Slovakia, Slovenia, Spain and Sweden. See ID 353-20.

¹⁴ On 30 October 2018, Cardin Evolution replaced its predecessor, the limited company (*«société anonyme»*) "Pierre Cardin Evolution SA". See ID 218.

¹⁵ See ID 38.

¹⁶ During the Relevant Period, Cardin Evolution owned between 94% and 94.5% of Cardin SAS. See ID 187, 190, 191, 192, 196, 211, 215, 216, 249, 250, 256, 257, 1085 and 1086.

¹⁷ On 24 February 2016, Cardin SAS replaced its predecessor, the limited liability entity (*«société à responsabilité limitée»*) "SARL de Gestion Pierre Cardin". See ID 218.

¹⁸ Pierre Cardin UK Ltd was the signatory to all of the licence agreements with [Cardin licensee 2] and [Cardin licensee 8] covering Ireland and the United Kingdom, which are mentioned in this Decision.

¹⁹ See ID 187, 190, 191, 192, 196, 211, 215, 216, 249, 250, 256, 257, 1085 and 1086.

²⁰ HORECA refers to hotels, restaurants and cafés. See ID 1258.

²¹ See Cardin's email of 10 July 2024 – ID 3263. Cardin Evolution's business year runs from 1 January to 31 December. See ID 1082 and ID 1197.

²² See ID 218 and ID 2128.

	Individual	Period	Company dealing with the licensing of the Pierre Cardin trademark	Position(s) (original in French)	Main tasks related to the licensing of the Pierre Cardin trademark (original in French)
MANAGEMENT ²³	Mr Pierre Cardin	Until 23.02.2016	Cardin SAS	Manager ²⁴ («Gérant»)	Management
		Until 28.10.2020	Cardin Evolution	President and Administrator («Président et Administrateur»)	
		From 29.10.2020 until 29.12.2020		Administrator («Administrateur»)	
	Mr Rodrigo Basilicati	From 2009 until 2016	Cardin Evolution	Designer («Designer»)	Product and furniture design («Design produits et mobiliers PIERRE CARDIN»)
		From 2020		President («Président»)	General management («Direction générale»)
		From 2016 until 2020	Cardin SAS	Licensing Agreement Consultant («Consultant contrat de licence »)	Technical and artistic collaboration («Collaboration technique et artistique»)
		From 2018 until 2020		General manager with limited powers ²⁵ («Directeur Général »)	General management («Direction

²³ A large majority of licence agreements referred to in Section 6.1 were signed by Mr Pierre Cardin, with a minority being signed by Mr Rodrigo Basilicati.

²⁴ Between 2016 and 2018, the president of Cardin SAS was Cardin Evolution, of which the president was Mr Pierre Cardin. ID 218.

ASSISTANTS ²⁷					générale»)
		From 2020		General manager ²⁶ («Directeur Général »)	
	[Secretary to the management 1]	Until 2021	Cardin Evolution	Secretary to the Management ²⁸ («Secrétaire de direction»)	Licensing and trademark accounting («Comptabilité des licences et des marques»)
		Since 2021		Executive Assistant to the Management («Attaché de direction»)	
	[Secretary to the management 2]	Until 2011	Cardin Evolution	Secretary to the Management («Secrétaire de direction»)	Personal assistant to Mr Cardin; Intellectual Property management / management of licence agreements («Assistante personnelle du PDG, M. Pierre CARDIN Gestion de la propriété intellectuelle / Gestion des contrats de licence»)
		Since 2012		Executive Assistant to the Management («Attaché de direction»)	
	[Assistant to the management]	For the entire Relevant	Cardin Evolution	Assistant to the Management (« Assistante	Management of licence agreements ²⁹

²⁵ Between 2018 and 2020, Mr Basilicati acted as Cardin SAS' general manager *with limited powers* (e.g. he was not entitled to grant a licence or sub-licence for any of the trademarks owned by Cardin SAS). See ID 2389.

²⁶ From 2020 onwards, Mr Basilicati acted as Cardin SAS' general manager without any limitations. See ID 2389.

²⁷ For brevity, in subsequent footnotes, these individuals will be referred to as "assistants".

²⁸ "Management" refers to Mr Pierre Cardin and Mr Rodrigo Basilicati.

²⁹ [Assistant to Cardin management]'s role included acting as a contact point between Cardin's licensees (including Ahlers) and other employees of Cardin. For example, Ahlers emailed [assistant to Cardin management] with information or requests for [Cardin licensing director 1] regarding parallel imports into Ahlers' territories and sales of Pierre Cardin-licensed products by discounters. By way of illustration, see Email of 12 June 2014 from [Ahlers management], via [assistant to Ahlers management 1], to [Cardin licensing director 1], via Cardin's assistant ([assistant to Cardin management]) – ID 155-500; Email of 7 June 2013 from [Ahlers management], via [assistant to Ahlers management 2], to [Cardin licensing director 1], via Cardin's assistant ([assistant to Cardin management]) to Cardin – ID 155-8518; Email of 8 April 2011 from [Ahlers group entity manager] to [Cardin licensing director 1], via Cardin's assistant ([assistant to Cardin management]) – ID 155-8113; Email of 20 April 2010 from

	ment]	Period		de direction »)	(«Gestion des contrats de licence»)
BUSINESS	[Licensing director 1]	Until 2016	Cardin Evolution	Licensing Director (« Directeur des licences »)	Management of licence agreements ³⁰ («Gestion des contrats de licence»)
	[Licensing director 2]	Until 2016	Cardin Evolution	Licensing Director (« Directeur des licences »)	Management of licence agreements ³¹ («Gestion des contrats de licence»)
	[Independent commercial agent 1]	For the entire Relevant Period	Cardin SAS	Independent Commercial Agent («Agent commercial indépendant»)	Soliciting for the development of licences in Spain («Démarchage commercial pour le développement des licences (Espagne)»)
	[Independent commercial agent 2]	For the entire Relevant Period	Cardin SAS	Independent Commercial Agent («Agent commercial indépendant»)	Soliciting for the development of licences in Italy («Démarchage commercial pour le développement des

[Ahlers management], via [assistant to Ahlers management 1] to [Cardin licensing director 1], via Cardin's assistant ([assistant to Cardin management]) – ID 155-8443.

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[Cardin licensing director 1]'s role included being one of the contact persons for Cardin licensees (including Ahlers). For example, Ahlers addressed many of its complaints regarding parallel imports and sales by discounters in Ahlers' exclusive territories, especially Germany, to him. Also, [Cardin licensing director 1] frequently acted as an intermediary *vis-à-vis* Cardin's management when Ahlers demanded a change in the contractually agreed terms (e.g. agreed minimum turnover). By way of illustration, see Email of 26 March 2014 from [Ahlers management], via [assistant to Ahlers management 1] to [Cardin licensing director 1] – ID 155-56; Email of 30 September 2015 from [Ahlers management] to [Cardin licensing director 1] – ID 155-91; Email of 8 April 2011 from [Ahlers group entity manager] to [Cardin licensing director 1], via Cardin's assistant ([assistant to Cardin management]) – ID 155-8113.

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[Cardin licensing director 2]'s role included the negotiation and handling of the licence agreement with [Cardin licensee 8]. For example, [Cardin licensing director 2] was contacted by Ahlers with complaints about this licensee and its customer [Cardin licensees' customer 1]. By way of illustration, see Ahlers' internal email of 28 August 2014 from [Ahlers management] to Ahlers' assistant [assistant to Ahlers management 2] – ID 155-470; Letter of 11 March 2015 from [Ahlers management] to [Cardin licensing director 2] – ID 155-394; Letter of 22 May 2015 from [Ahlers management] to [Cardin licensing director 1] – ID 155-462.

				<i>licences (Italie)»)</i>
[Licensing director 3]	Until 2016	Cardin Evolution	Market Manager (« <i>Responsable de marché</i> »)	Management of licence agreements ³²
	From 2017		Licensing Director (« <i>Directeur des licences</i> »)	(« <i>Gestion des contrats de licence</i> »)
[External supplier]	From 2010 until 2011	Cardin SAS	External Supplier (« <i>Prestataire extérieur</i> »)	Cardin has provided no information on his role. ³³

- (13) During the Relevant Period, the following lawyers worked for Cardin on licensing matters:
- [Cardin lawyer 1] and [Cardin lawyer 2], both from the law firm [...], based in Barcelona, Spain. [Cardin lawyer 1] and [Cardin lawyer 2] represented Cardin mainly in relation to licensees and retailers active in the Spanish market.
 - [Ahlers and Cardin common lawyer] from the law firm [...]. [Ahlers and Cardin common lawyer] represented Cardin mainly with regard to the German market.

2.1.2. Ahlers

- (14) During the Relevant Period, the Ahlers group consisted of several companies, the holding company of which was **WTW Ahlers**³⁴. WTW Ahlers is a limited partnership under German law (*“Kommanditgesellschaft”*)³⁵ and is headquartered in Herford, Germany. Until 2013, the managing partner [...] was Mr Jan A. Ahlers, who owned [...] % thereof³⁶. As of 2014, his daughter, Ms Stella Ahlers, took over

³² [Cardin licensing director 3]’s role included being one of the contact points for Cardin licensees (Ahlers). In particular, Ahlers complained to him about parallel imports and discussed about due royalties and sales figures of Pierre Cardin-licensed products. See for example: email of 12 December 2017 from [Ahlers management] to [Cardin licensing director 3] – ID 155-142; email of 5 November 2019 from [Ahlers management] to [Cardin licensing director 3] – ID 155-312; email of 11 March 2021 from Ahlers assistant [assistant to Ahlers management 2] to [Cardin licensing director 3] – ID 155-173.

³³ According to Cardin’s lawyers, there are no clear records on Cardin’s files regarding the specific function of [Cardin external supplier], see ID 2128. Based on correspondence on the Commission’s files addressed to him, [Cardin external supplier] was involved in Cardin’s licensing business. See letter from [Ahlers sales manager 3] to [Cardin external supplier] of 12 July 2010 – ID 155-8547 and internal email of 21 July 2010 from [Ahlers sales manager 3] to [Ahlers management], via [assistant to Ahlers management 4] – ID 155-8546. These emails/letters show Ahlers approaching [Cardin external supplier] to complain about sales of Pierre Cardin-licensed products by discounters.

³⁴ During the Relevant Period, the Ahlers group was formed by WTW Ahlers and all the companies directly or indirectly owned by it. See ID 390, 388 and 1092. With regard to [...], while it was not [...] and therefore did not form part of [...], it was [...] in that it was [...] during the Relevant Period, who (as of 2014) was also [...].

³⁵ WTW Ahlers’ predecessor was [...]. See ID 386.

³⁶ Between 2008 and 2013, Ms Stella Ahlers owned [...] % of WTW Ahlers’ shares. See ID 1092.

the role of managing partner and became the [...] of WTW Ahlers, owning [...] % of the shares in the company³⁷. During the Relevant Period, WTW Ahlers held [...] % of **WTW**³⁸ and, through WTW, a majority share of the voting capital of its traded subsidiary **Ahlers AG**³⁹.

- (15) In 2022/2023⁴⁰, WTW Ahlers had a consolidated turnover of EUR [...] ⁴¹.
- (16) During the Relevant Period, WTW Ahlers [...] ⁴², and by entering into licence agreements with Cardin and [...] ⁴³.
- (17) [...] related to a set of licence agreements that were in place between 2008 and 2018⁴⁴ and were formally⁴⁵ signed by [...] ⁴⁶. Although [...] was [...], it was [...] during the Relevant Period⁴⁷. [...] ⁴⁸. In addition, the licence agreements between [...] and Cardin and the licence agreements between WTW Ahlers and Cardin were signed by the same individuals, namely: Mr Jan A. Ahlers until 2013 and Ms Stella Ahlers thereafter.
- (18) **WTW** [...], [...] by WTW Ahlers. Like WTW Ahlers, WTW is headquartered in Herford, Germany. During the Relevant Period, WTW was the majority shareholder in Ahlers AG⁴⁹.
- (19) During the Relevant Period, **Ahlers AG** was a German publicly-listed company, active in the manufacture and distribution of clothing (such as jeans, shorts, polo shirts, sportswear and underwear). Ahlers AG was the majority shareholder of several subsidiaries⁵⁰, which included: (i) [...], such as Ahlers P.C. GmbH (fully owned by Ahlers AG⁵¹), [...]; (ii) [...], such as Ahlers Premium France S.A.S. (fully

³⁷ The remaining shares of WTW Ahlers were owned by [...], [...] and [...]. [...] and [...] are [...] by Ms Stella Ahlers. See ID 388; and ID 1092.

³⁸ For further details on WTW see recital (18).

³⁹ See Ahlers AG's Annual Reports 2020-2021 – ID 2097. On 15 July 2023, insolvency proceedings were opened in respect of the assets of Ahlers AG and the main subsidiaries of the latter. On the same date, the business operations of Ahlers AG and its subsidiaries were effectively (economically) transferred to a third-party investor. For further details on Ahlers AG see recital (19).

⁴⁰ WTW Ahlers' 2023 business year ran from 1 December 2022 to 30 November 2023. See Ahlers' email to the case team of 19 July 2024.

⁴¹ This is the 2023 consolidated turnover of WTW Ahlers from 1 December 2022 to 30 November 2023, [...]. See Ahlers' email to the case team of 19 July 2024. See also section 10.3.5.2.

⁴² This included: [...]. See ID 408.

⁴³ According to Ahlers, [...]. See ID 408, ID 388, and ID 1092.

⁴⁴ Agreement with [...] of 12 September 2016 – ID 155-284; Agreement with [...] of 12 September 2016 – ID 155-285; Agreement with [...] of 12 September 2016 – ID 155-286; Agreement with [...] of 12 September 2016 – ID 155-287; Agreement with [...] of 27 November 2013 – ID 155-26 (p. 45); Agreement with [...] of 27 November 2013 – ID 155-26 (p. 65); Agreement with [...] of 27 November 2013 – ID 155-26 (p. 81); Agreement with [...] of 27 November 2013 – ID 155-26 (p. 20); Agreement with [...] of 15 January 2008 – ID 155-26 (p. 37); Agreement with [...] of 15 January 2008 – ID 155-29 (p. 115).

⁴⁵ [...]. See ID 2072, paragraphs 5 and 6 and ID 2078.

⁴⁶ [...] main activity is the [...]. See ID 386 and ID 408.

⁴⁷ See ID 1091 and footnote 34.

⁴⁸ During the Relevant Period, [...] handled the negotiation of [...] licence agreements with Cardin and the payment of the related royalties to the latter. The operational tasks related to these agreements were managed by [...] (see ID 408). [...] (see ID 1139 and ID 2080).

⁴⁹ [...] . See ID 388. [...] and the effective transfer of the business operations of [...] and its subsidiaries to a third party investor on 15 July 2023. See Ahlers' reply to the Letter on Fines of 22 May 2024.

⁵⁰ [...].

⁵¹ As outlined in footnote 43, according to Ahlers, [...].

owned by Ahlers AG); and (iii) [...], such as Ahlers Zentralverwaltung GmbH (fully owned by Ahlers AG)⁵².

- (20) In the business years 2020/2021 and 2021/2022, Ahlers AG had a turnover of EUR [...] and EUR [...] million respectively⁵³.
- (21) In late April 2023, Ahlers AG and its main subsidiaries, including Ahlers P.C. GmbH⁵⁴, filed for insolvency. On 15 July 2023, formal insolvency proceedings were opened and, on the same day, the business operations of Ahlers AG and its subsidiaries were effectively (economically) transferred to a third-party investor⁵⁵.
- (22) From the start of Ahlers AG's business year of 2022/2023 on 1 December 2022 until 15 July 2023, Ahlers AG's turnover was EUR [...] ⁵⁶. Within Ahlers, the main individuals responsible for handling the Pierre Cardin licensing business during the Relevant Period were⁵⁷:

	Individual	Period	Company dealing with Pierre Cardin-related business	Position(s) (provided by Ahlers in English and, for some positions, additionally in German)	Main tasks related to Pierre Cardin-related business
MANAGEMENT ⁵⁸	Mr Jan A. Ahlers	[...]	Ahlers AG	Supervisory Board Member („Aufsichtsratsmitglied“)	Supervisory functions
		[...]	WTW Ahlers	Managing Director („Geschäftsführer“) and General Partner („Komplementär“)	Management [...]
	Ms Stella Ahlers	[...]	Ahlers AG	CEO („Vorstand“)	Overall management functions
		[...]	WTW Ahlers	Authorized Officer („Prokurist“) / Limited Partner („Kommanditist“)	Management [...]
		[...]	WTW Ahlers	Managing Director („Geschäftsführer“) / Limited Partner	

⁵² See ID 386 and ID 2097.

⁵³ Ahlers AG's financial year runs from 1 December to 30 November. See ID 2097, ID 2208 and ID 2209.
⁵⁴ See ID 2437.

⁵⁵ [...]. For the procedural implications of these events see Section 4.

⁵⁶ [...]. See footnote 41.

⁵⁷ See Ahlers' Reply to RFI of 25 January 2023 and to RFI of 1 February 2023.

⁵⁸ The agreements on file between Cardin and Ahlers were signed by Mr Jan A. Ahlers [...] and by Ms Stella Ahlers [...].

				(„Kommanditist“)	
		[...]	Subsidiary of Ahlers AG ⁵⁹	Managing Director („Geschäftsführer“)	Overall management functions
ASSISTANTS ⁶⁰	[Assistant to the management 1]	[...]	Ahlers AG	Secretary to Mr Jan A. Ahlers	Secretary support / assistance to Ahlers' management
		[...]	Subsidiary of Ahlers AG ⁶¹		
		[...]	WTW Ahlers		
	[Assistant to the management 2]	[...]	Subsidiary of Ahlers AG ⁶²	Secretary to Ms Stella Ahlers	Secretary support / assistance to Ahlers' management
		[...]	WTW Ahlers		
	[Assistant to the management 3]	[...]	Subsidiary of Ahlers AG ⁶³	Secretary to Ms Stella Ahlers	Secretary support / assistance to Ahlers' management
	[Assistant to the management 4]	[...]	Subsidiary of Ahlers AG ⁶⁴	Secretary to Ms Stella Ahlers	Secretary support / assistance to Ahlers' management
BUSINESS	[Ahlers sales manager 1]	[...]	Ahlers AG	Divisional Board Director / Head of International Sales	Relationship management / international sales
		[...]	Subsidiary of Ahlers AG ⁶⁵	Managing Director („Geschäftsführer“) / Head of International Sales	
	[Ahlers sales manager 2]	[...]	Subsidiary of Ahlers AG ⁶⁶	Product Management / Key Account Manager	Product development / sales

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[...]

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For brevity, in subsequent footnotes, these individuals will be referred to as “assistants”.

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[...]

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[...]

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[...]

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[...]

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[...]

				Pierre Cardin Knitwear and Shirts	
		[...]		Head of International Sales	International sales
	[Ahlers sales manager 3]	[...]	Subsidiary of Ahlers AG ⁶⁷	Managing Director („Geschäftsführer“)	Relationship management / Sales ([...])
	[Ahlers sales manager 4]	[...]	Subsidiary of Ahlers AG ⁶⁸	Export clerk	Admin functions international sales
	[Ahlers group entity manager]	[...]	Subsidiary of Ahlers AG ⁶⁹	Managing Director („Geschäftsführer“)	Operative management functions
	[Ahlers sales manager 5]	[...]	Subsidiary of Ahlers AG ⁷⁰	International Sales Manager	International sales
	[Ahlers management]	[...]	Ahlers AG	CFO („Vorstand“)	Overall financial management functions
		[...]	Subsidiary of Ahlers AG ⁷¹	Authorized Officer („Prokurist“)	Overall management functions
	[Ahlers sourcing manager]	[...]	Subsidiary of Ahlers AG ⁷²	Technical Manager Knitwear / Head of Purchasing Tops	Sourcing management Knitwear and tops
		[...]		Authorized Officer („Prokurist“)	

- (23) During the Relevant Period, in matters related to its business with Pierre Cardin, Ahlers was mainly represented by **[Ahlers and Cardin common lawyer]** of the law firm [...] ⁷³. In particular, [Ahlers and Cardin common lawyer] was acting on behalf of Ahlers when he sent letters to retailers that were selling Pierre Cardin-licensed products in Ahlers' licensed territories.

⁶⁶ [...]

⁶⁷ [...]

⁶⁸ [...]

⁶⁹ [...]

⁷⁰ [...]

⁷¹ [...]

⁷² [...]

⁷³ As indicated in recital (13), [...].

2.2. The complainant

- (24) The complainant, Malu NV, is a wholesaler of clothing, headquartered in Duffel, Belgium, and operating across Europe. It is part of [...], which is ultimately controlled by the group's managing director, [...].
- (25) Malu NV has never held a licence to manufacture or distribute Pierre Cardin-branded products. However, at various times during the Relevant Period, Malu NV bought such products either from another company [...] ⁷⁴, headquartered in Barcelona, which held a licence from Cardin for the Spanish territory, or from other wholesalers and licensees, and resold such products in the EEA.
- (26) [Cardin licensee 9] designs and manufactures various types of clothing under multiple brands and distributes these to wholesale and retail stores throughout Europe. Hereinafter, Malu NV [...].

3. PRODUCTS CONCERNED

- (27) Cardin licenses intellectual property rights ("IPRs"), namely its trademark, in relation to the manufacture and distribution of a wide range of products, including not only clothing and accessories for men, women and children, but also perfumes, cosmetics, luggage and household appliances.
- (28) Pursuant to a licence for Cardin's IPRs, Cardin's licensees may incorporate the licensed image or text into products they manufacture to make them more attractive to consumers.
- (29) During the Relevant Period, Cardin granted licences to 117 licensees in the EEA, including Ahlers ⁷⁵. The practices described in Section 6.1 concerned:
- (a) 13 of these licensees ⁷⁶ and the products covered by their licence agreements with Cardin, namely [Cardin licensee 1] ⁷⁷, Ahlers, [Cardin licensee 2] ⁷⁸, [Cardin licensee 3] ⁷⁹, [Cardin licensee 4] ⁸⁰, [Cardin licensee 5] ⁸¹, [Cardin

⁷⁴ During the Relevant Period, [Cardin's licensee 8] entered into four licence agreements with Cardin: (i) one for men's underwear in Bulgaria, Croatia and Romania (which started in 2011 and was terminated as of April 2015); (ii) another one for men's underwear in Estonia, Finland, Latvia and Lithuania (which started in 2012 and expired in December 2014); (iii) another one for men's underwear in the Netherlands (which started in 2010 and expired in December 2014); and (iv) another one for men's and women's pyjamas in Spain (which started in 2012 and was terminated as of April 2015). See ID 353-20.

⁷⁵ During the Relevant Period, Ahlers held licences for the manufacture and distribution of Pierre Cardin-licensed products in 21 Member States, Iceland and Norway, as well as third countries. See ID 353-20.

⁷⁶ These are the licensees for which the Commission has on file (i) agreements with Cardin which contained restrictive contractual clauses and/or (ii) evidence that the Parties targeted them with their coordinated actions.

⁷⁷ Between 2008 and 2014, [Cardin licensee 1] was Cardin's licensee for socks for men, women and children in Spain. See ID 353-20.

⁷⁸ [Cardin licensee 2] was Cardin's licensee for Ireland and the UK between 2008 and 2017. The licence covered the following product groups: (i) woven formal and casual shirts for men for the period 2008 to 2017; (ii) knitwear for men (casual wear, knitted shirts, t-shirts, sweatshirts, pullovers, denim pants) for the period 2008 to 2016; (iii) denim pants for men for the period 2008 to 2013 and (iv) tailored garments for men (suits, coats, overcoats, jackets, trousers, leather jackets and leather coats) for the period 2009 to 2017. See ID 353-20.

⁷⁹ [Cardin's licensee 3] has been a Cardin's licensee for [...], covering the product group. [...]. See ID 353-20.

licensee 6]⁸², [Cardin licensee 7]⁸³, [Cardin licensee 9], [Cardin licensee 10]⁸⁴, [Cardin licensee 11]⁸⁵, [Cardin licensee 12]⁸⁶ and [Cardin licensee 13]⁸⁷; and

(b) three customers of Cardin licensees and the Pierre Cardin-licensed products that they were reselling in the EEA, namely [Cardin licensees' customer 1]⁸⁸, [Cardin licensees' customer 2]⁸⁹ and [Cardin licensees' customer 3]⁹⁰.

- (30) It follows from the above that the Pierre Cardin-licensed products concerned by this Decision are those distributed by the Cardin licensees and the customers of those licensees set out in recital (29). The products in question include clothing and accessories for men, women and children, and are of varied nature.
- (31) Any further reference to “Pierre Cardin-licensed products” in this Decision refers to the products described in recital (30), unless stated otherwise. Also, for the purposes of this Decision, Cardin licensees, unless otherwise specified, are to be understood as the licensees mentioned in recital (29).
- (32) As to the geographic scope, the Pierre Cardin-licensed products concerned by this Decision were distributed in the EEA during the Relevant Period⁹¹.

⁸⁰ [Cardin licensee 4] has been a Cardin licensee since [...] covered [...]. The product groups concerned by [Cardin licensee 4] licence are as follows [...]. See Agreement with [Cardin licensee 4] of 9 April 2013 – ID 5-6 and ID 353-20.

⁸¹ [Cardin licensee 5] was Cardin's licensee for [...] for the period [...]. This licence covered the following product groups: [...]. See ID 353-20.

⁸² [Cardin licensee 6] was Cardin's licensee for Italy for the period 2012 to 2014, covering the product group knitwear for men. See ID 353-20.

⁸³ [Cardin licensee 7] was Cardin's licensee for Austria, Czechia, Denmark, Germany, Hungary, Sweden, Slovakia, the Netherlands, Norway and Switzerland for the period 2010 to 2014, covering the product groups (i) stockings and nylons for women (Germany, Austria, Switzerland); (ii) classic underwear for men (Austria, Czechia, Denmark, Germany, Hungary, Sweden, Slovakia, Norway); and (iii) socks for men and women (Germany, Austria, the Netherlands). See ID 353-20 and Agreements with [Cardin licensee 7] of 8 September 2009 – ID 1134-14, ID 1134-15 and ID 1134-16.

⁸⁴ [Cardin licensee 10] was Cardin's licensee for Portugal and other non-EEA countries between 2014 and 2015, concerning the product group underwear for men. See ID 353-20.

⁸⁵ [Cardin licensee 11] was Cardin's licensee Italy for the period 2010 to 2017. This licence covered the following product groups: knitted clothing and t-shirts for women (between 2010 and 2017) and sportswear for men (between 2013 and 2014). See ID 361.

⁸⁶ [Cardin licensee 12] was Cardin's licensee for Belgium, France, Luxembourg and other non-EEA countries from 2008 to 2015, covering the product groups (i) knitwear for men (France, Belgium, Luxembourg and other non-EEA countries for the period 2010 to 2015); (ii) shirts for men (France, Belgium, Luxembourg and Andorra for the period 2008 to 2015); (iii) ready to wear for men (France, Belgium, Luxembourg and Andorra for the period 2011 to 2015); and (iv) underwear, pyjamas for men (France, Belgium and Luxembourg for the period 2010 to 2012). See ID 353-20.

⁸⁷ [Cardin's licensee 13] was Cardin's licensee for Greece and Cyprus until 2011 covering shirts for men, sportswear for men, ready-to-wear for men and knitwear for men. See ID 353-20.

⁸⁸ [...]. See ID 491. As explained in Section 6.1.2.2.2, during the Relevant Period, [Cardin licensees' customer 1] sourced Pierre Cardin-licensed products mainly from [Cardin licensee 2] (for the specific products under [Cardin licensee 2] licence, see footnote 78) and [Cardin licensee 8] (for the specific products under [Cardin licensee 8] licence, see footnote 213).

⁸⁹ [Cardin's licensee Customer 2] was a retailer offering Pierre Cardin-licensed products. The Parties' coordinated actions against this retailer described in recitals (147) and (148) concerned Pierre Cardin-licensed t-shirts, shirts and polo shirts.

⁹⁰ Correspondence on file shows that [Cardin licensees' customer 3] acquired various Pierre Cardin-licensed products from Cardin licensees and resold them to end users. See ID 155-621.

4. PROCEDURE

- (33) On 25 March 2019, Malu NV lodged a complaint with the Commission against Cardin SAS, Mr Pierre Cardin and WTW Ahlers under Article 7 of Regulation 1/2003⁹².
- (34) Between September 2019 and June 2020, the Commission addressed Requests for Information (“RFIs”) to Malu NV (13 September 2019, 20 September 2019, 5 November 2019, 13 February 2020, 13 March 2020 and 4 June 2020)⁹³.
- (35) From 22 to 25 June 2021, the Commission conducted unannounced inspections at Ahlers’ premises in Herford, Germany.
- (36) Between August and December 2021, the Commission sent RFIs to Cardin (3 August 2021, 20 October 2021 and 28 October 2021)⁹⁴ and Ahlers (30 November 2021 and 15 December 2021)⁹⁵.
- (37) On 31 January 2022, the Commission initiated proceedings in the present case within the meaning of Article 2(1) of Regulation 773/2004.
- (38) State of play meetings took place with representatives of Cardin on 17 February 2022⁹⁶ and with representatives of Ahlers on 18 February 2022⁹⁷.
- (39) On 3 May 2022, the Commission sent RFIs to Cardin’s former licensees (i) [Cardin licensee 11], (ii) [Cardin licensee 5], (iii) [Cardin licensee 6] and to the reseller of Pierre Cardin-licensed products [Cardin licensees’ customer 1]. On 4 May 2022, the Commission sent an additional RFI to former Cardin licensee [Cardin licensee 8]⁹⁸ and, on 17 May 2022, another RFI was sent to current Cardin licensee [Cardin licensee 3].
- (40) On 6 May 2022, in a meeting with the Commission, Ahlers’ representatives presented the financial situation of the group⁹⁹. On 30 November 2022, the Commission met Ahlers’ representatives to discuss the upcoming steps in the proceedings¹⁰⁰.
- (41) Between May 2022 and June 2023, the Commission sent additional RFIs to Malu NV (31 May 2022)¹⁰¹, Cardin (8 August 2022, 16 August 2022, 30 September 2022, 12 October 2022, 10 November 2022, 5 December 2022, 9 December 2022, 24 January 2023, 31 January 2023 and 12 June 2023)¹⁰² and Ahlers (16 August 2022, 19

⁹¹ The Pierre Cardin-licensed products concerned by this Decision are distributed in all EEA states (except for Malta and Liechtenstein). For the full list of Cardin licensees for the period 2010-2021, see ID 353-20.

⁹² ID 4.

⁹³ ID 19 (call of 13 September 2019), ID 21 (RFI of 20 September 2019), ID 30 (email of 5 November 2019), ID 2040 (call of 13 February 2020), ID 46 (call of 13 March 2020) and ID 57 (RFI of 4 June 2020).

⁹⁴ ID 160, ID 327 and ID 356.

⁹⁵ ID 375 and ID 399.

⁹⁶ ID 471.

⁹⁷ ID 470.

⁹⁸ [Cardin licensee 8] was Cardin’s licensee for Ireland and UK for the period 2015 to 2019, covering the product group casual, sport and leisure wear for men. See ID 353-20.

⁹⁹ ID 559.

¹⁰⁰ The minutes headline shows 30 October 2022 as the date of the meeting, but it was held on 30 November 2022. See ID 2023.

¹⁰¹ ID 561.

¹⁰² ID 1051, ID 1062, ID 1257, ID 1267, ID 1595, ID 1920, ID 1946, ID 2059 and ID 2101.

August 2022, 12 September 2022, 12 October 2022, 12 January 2023, 18 January 2023, 25 January 2023 and 1 February 2023)¹⁰³.

(42) [...] ¹⁰⁴.

(43) [...] ¹⁰⁵.

(44) On 26 July 2023, a State of Play meeting was held with Cardin. Ahlers did not wish to have another State of Play meeting preceding the Statement of Objections (“SO”).

(45) On 31 July 2023, the Commission adopted a SO addressed to Cardin and Ahlers. On 8 and 11 August 2023 respectively, Cardin and Ahlers were granted access to the Commission’s file.

(46) On 30 October 2023, Cardin submitted its reply to the SO (“Cardin’s reply to the SO”). On 1 November 2023, Ahlers replied to the SO on behalf of WTW Ahlers, [...] and [...] (“Ahlers’ reply to the SO”) ¹⁰⁶. [...] ¹⁰⁷.

(47) On 2 November 2023, Malu NV submitted its observations on the SO.

(48) On 2 February 2024, an Oral Hearing took place under the auspices of the Hearing Officer in the presence of the Cardin; WTW Ahlers, [...] ¹⁰⁸; and Malu NV.

(49) On 18 March 2024, [...] filed an application for inability to pay (“ITP”).

(50) On 22 April 2024, the Commission sent an additional RFI to Cardin ¹⁰⁹.

(51) On 8 May 2024, the Commission sent a Letter on Fines to Cardin, WTW Ahlers, [...] providing them with further details on the proposed methodology for the determination of any fines to be imposed in the present case. While Cardin did not make any comments on the Letter on Fines, on 22 May 2024, WTW Ahlers, [...] replied to the Letter on Fines (“Ahlers’ reply to the Letter on Fines”). On 23 July 2024, WTW Ahlers, [...] provided the Commission with a supplementary submission to their reply to the Letter on Fines.

5. OVERVIEW OF THE PARTIES’ BUSINESS ACTIVITIES

5.1. Cardin

(52) Cardin holds IPRs with respect to the Pierre Cardin brand. Its core business is to grant licences for the use of these IPRs, and to manage and receive royalties from such licences.

(53) In the EEA, generally Cardin grants exclusive licences over IPRs relating to the Pierre Cardin brand, allowing licensees to produce and distribute defined Pierre Cardin-branded products in a particular territory. Such territory may include one or more EEA Contracting Parties ¹¹⁰.

¹⁰³ ID 1057, ID 1068, ID 1115, ID 1265, ID 2028, ID 2045, ID 2054 and ID 2116.

¹⁰⁴ See ID 2437.

¹⁰⁵ See Ahlers’ email to the case team of 5 March 2024.

¹⁰⁶ Together, Cardin’s and Ahlers’ replies to the SO are referred to as the “Parties’ replies to the SO”; the companies who signed Cardin’s reply to the SO and Ahlers’ reply to the SO are referred to as the “Respondents”.

¹⁰⁷ See email of 1 November 2023 [...].

¹⁰⁸ As stated in recital (46), [...].

¹⁰⁹ See RFI of 22 April 2024.

¹¹⁰ See ID 353-20.

- (54) Cardin's licensees in the EEA typically either manufacture products incorporating the licensed IPRs, or sub-contract that manufacture to third parties, and then distribute these products either directly or through wholesalers and distributors¹¹¹.
- (55) Figure 1 illustrates Cardin's typical licensing and distribution chain in the EEA¹¹².

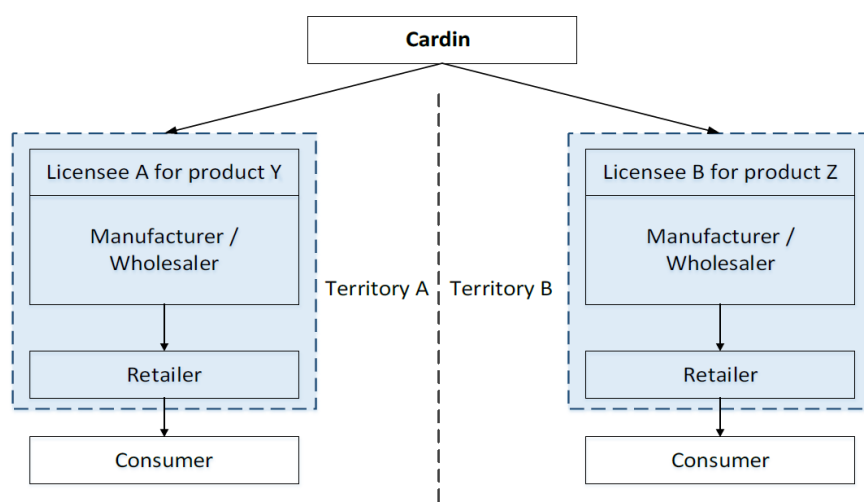


Figure 1: Cardin licensing and distribution chain

- (56) Cardin has not put in place a selective distribution system¹¹³ for its licensed products; it has neither applied any specified criteria for the selection of licensees, nor required its licensees to apply such criteria for the selection of their customers¹¹⁴.

¹¹¹ In some cases, licensees were authorized by Cardin to sub-license the IPRs covered by their agreements with Cardin. This was the case for Ahlers, which was authorised to grant a sub-licence to [Ahlers' sublicensee] to manufacture and distribute Pierre Cardin-licensed products. See recital (60).

¹¹² See ID 353-20.

¹¹³ See Article 1(g) of Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ L 134, 11.5.2022, p. 4–13; Article 1(e) of Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ L 102, 23.4.2010, p. 1–7; Article 1(d) of Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices, OJ L 336, 29.12.1999, p. 21–25.

¹¹⁴ In July 2018, in Cardin's submissions in French proceedings relating to a dispute between Cardin, Malu NV and another company ([...]), Cardin stated: "*the existence of a selective distribution network has never been invoked*" (original text reads: « *Il n'a jamais été invoqué l'existence d'un réseau de distribution sélective* »). It also mentioned that the plaintiffs (in this case, Cardin SAS and Mr Pierre Cardin) had never claimed to have put in place a selective distribution system (original text reads: « *La société MALU, en invoquant l'illicéité d'un réseau de distribution sélective alors que les concluants n'ont jamais prétendu en avoir mis un en place et en prétendant avoir été évincée du marché des produits Pierre CARDIN détourne donc le débat* »). See ID 27-3. See also Judgment of 23 February 2018 – ID 155-50. The judgment in this dispute includes the following reference to Cardin's submission (translation from French, emphasis added): "*by alleging the illegality of a selective distribution network, when the plaintiffs have never claimed to have set one up, and by claiming to have been excluded from the market for Pierre CARDIN products, MALU NV is deflecting the debate*". Original text reads (emphasis added): « *qu'en invoquant l'illicéité d'un réseau de distribution sélective alors que les concluants n'ont jamais prétendu en avoir mis un en place et en prétendant avoir été évincée du marché des produits Pierre CARDIN, la société MALU NV détourne le débat*. ». This was confirmed by Cardin in its reply to the SO, paragraph 16.

- (57) During the Relevant Period, the following terms were systematically included in Cardin's EEA licensing templates¹¹⁵:
- (a) Scope of the licence: Cardin's licence agreements in the EEA typically granted exclusivity¹¹⁶ for the manufacture and/or distribution of specific products in a particular territory¹¹⁷, which could cover one or more countries. Generally, the clause that defined the territorial scope of the licence specified that the licence could not be extended to other territories except pursuant to a written agreement between the parties¹¹⁸ or, if approved by Cardin, via letter¹¹⁹.
 - (b) Type(s) of product concerned: Cardin's licence agreements also specified the type(s) or categories of products in respect of which the licensee would be permitted to apply and/or use the licensed trademarks for their manufacture and/or sale. These categories usually related to clothing and accessories.
 - (c) Artistic creation: Cardin's licence agreements contained a clause that stipulated that the artistic creation of the products was exclusively reserved to Cardin and that, although the design and the materials to be used were to be determined by mutual agreement between Cardin and the licensee, final approval of the design was reserved to Cardin. To this end, the licence agreements provided for Cardin to send sketches to its licensees every year and that the licensees would send a free copy of each collection to Mr Pierre Cardin¹²⁰.
 - (d) Channels for distribution of the products:
 - With the exception of the contracts with its licensee [...], Cardin's licence agreements did not grant licensees exclusivity over specific customer groups¹²¹. As to [...], it was granted exclusive rights to sell the products covered by its licence agreement with Cardin (i.e. [...]) to duty-free shops worldwide¹²². No other Cardin licensee was granted rights for the manufacture and/or distribution of these particular products¹²³.
 - Cardin's licence agreements generally restricted the customers to whom the licensed products could be sold, by excluding, for example, duty-free shops, supermarkets or discounters (i.e. low-price retailers) from the

¹¹⁵ Cardin provided the Commission with 13 licence agreement templates that were used during the Relevant Period for EEA territories (see IDs 178, 179, 182-185, 219-225). However, Cardin stated that between 2010 and 2017 Cardin's licensing business was handled by three different directors. As these individuals no longer work for Cardin, Cardin was not able to access all the templates that may have been used throughout the Relevant Period. In addition, Cardin explained that it was not able to establish the precise timeframe during which some of the templates submitted to the Commission were used. See ID 218.

¹¹⁶ According to the list provided by Cardin on 27 October 2021 (ID 353-20), only one of its licensees in the EEA is non-exclusive, namely [...], which has held the licence for [...] in the [...] since [...].

¹¹⁷ ID 178, ID 223, ID 179 and ID 182.

¹¹⁸ ID 179, ID 223 and ID 221. In the templates in French dated 2018-2020 and 2021, a similar clause was included but a second provision specified that passive sales within the EEA were not covered by the prohibition to sell outside the territory, see ID 182 and ID 220.

¹¹⁹ ID 224 and ID 178.

¹²⁰ See ID 223. See also Cardin's Reply to the SO, paragraphs 18-19, and recitals (362) to (367), which rebut Cardin's arguments that its conduct did not have as an objective to restrict the customers to whom Cardin's licensees and their customers could sell.

¹²¹ This was confirmed by Cardin, see ID 353-16.

¹²² See ID 251.

¹²³ See ID 353-20.

potential customer base of its licensees, and explicitly prohibited sales to customers that were deemed not to be compatible with the *prestige* of the Pierre Cardin brand¹²⁴.

(e) Financial consideration of the licensee:

- royalty payments: Cardin’s licence agreements typically required the licensee to pay royalties to Cardin as remuneration for the licence of Cardin’s IPRs. [...] ¹²⁵ [...] ¹²⁶.
- [...] ¹²⁷. [...] ¹²⁸.

(f) Termination: Cardin’s licence agreements generally included termination clauses that provided for early termination rights and for termination in case of breach of contract. Furthermore, some licence agreements specifically stipulated that the agreements could be terminated if the clause on the territorial scope of the licence was breached¹²⁹ and/or if sales were made to customers deemed not to be compatible with the prestige of the Pierre Cardin brand¹³⁰.

5.2. Ahlers

- (58) During the Relevant Period, the core business of Ahlers was the manufacture and distribution of clothing, mainly menswear, in Europe. Ahlers sold products from the following clothing brands: Pierre Cardin, Baldessarini, Otto Kern, Pioneer Authentic Jeans, Pionier Jeans & Casuals, Pionier Workwear and Jupiter¹³¹.
- (59) Ahlers’ business relationship with Cardin dated back to 1992¹³². During the Relevant Period, Ahlers was a far larger entity than Cardin, with a turnover that was about [...] times higher¹³³. Ahlers held more Pierre Cardin licences than any other licensee of Pierre Cardin-licensed products in the EEA: in 2021, it held licensing rights for the manufacture and distribution of Pierre Cardin-licensed products¹³⁴ in 23 EEA Contracting Parties¹³⁵ and multiple territories outside the EEA¹³⁶. These licences

¹²⁴ For examples of these clauses, see Section 6.1.3.1.

¹²⁵ ID 220, ID 182 and ID 179.

¹²⁶ ID 223, ID 178 and ID 224.

¹²⁷ Cardin’s templates on file typically refer to this amount as [...]. See templates in French until 2014, 2014, 2017, 2018-2020, 2021 – ID 224, ID 178, ID 182 and ID 220.

¹²⁸ ID 178, ID 223, ID 179, ID 182, ID 222, ID 221, ID 183, ID 220, ID 219, ID 184 and ID 185.

¹²⁹ See recital (77).

¹³⁰ See recital (165).

¹³¹ See ID 2097.

¹³² See ID 2097 (p. 158). See also: Ahlers’ internal email of 26 August 2015 – ID 155-8149; Ahlers’ internal email of 15 September 2014 – ID 155-260; Email of 12 September 2014 from Ahlers to Cardin – ID 155-106.

¹³³ ID 1140 and ID 1083.

¹³⁴ The product groups covered by Ahlers’ licences were the following: (i) ties, scarves and pouches for men; (ii) casual pants for women; (iii) denim and jeans pants for men; (iv) ready to wear for men; (v) knitted shirts, t-shirts and sweaters for men; (vi) sportswear for men; (vii) classic shirts for men; and (viii) socks for men and women.

¹³⁵ On 20 October 2021, Ahlers had licensing rights for a number of Pierre Cardin-licensed products for the following EEA contracting parties: Austria, Belgium, Bulgaria, Croatia, Czechia, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Ireland, Slovakia, Slovenia, Spain and Sweden. See ID 353-20.

¹³⁶ On 20 October 2021, Ahlers had licensing rights for a number of Pierre Cardin-licensed products for the following non-EEA territories: Andorra, Belarus, Bosnia Herzegovina, Channel Islands, Isle of Man,

granted exclusivity to Ahlers in the territories covered by the agreements. In terms of royalty payments, Ahlers was Cardin's largest licensee in the EEA; in 2021, it accounted for almost [...] % of all the royalties collected by Cardin in the EEA¹³⁷.

- (60) During the Relevant Period, Ahlers (i) concluded a sub-licence agreement with [Ahlers sublicensee], whereby it granted the latter rights to manufacture and sell Pierre Cardin-licensed socks for men and women [...] ¹³⁸; (ii) concluded a sub-distribution agreement with [...] for the distribution of Pierre Cardin-licensed products [...] ¹³⁹; and (iii) appointed [...] agents to support its Pierre Cardin-related business in the EEA ¹⁴⁰.

6. CONDUCT

- (61) During the Relevant Period, Cardin and Ahlers implemented a series of practices that restricted (i) out-of-territory passive sales of Pierre Cardin-licensed products by Cardin licensees; (ii) out-of-territory passive sales of such products by customers of Cardin licensees; and (iii) the customers to whom Cardin licensees and their customers could sell such products, all within the EEA. These practices consisted of restrictive clauses included in licence agreements between Cardin and its licensees, including Ahlers (hereinafter “**contractual clauses**”), and coordinated actions by Cardin and Ahlers aimed at ensuring compliance with the contractual clauses (hereinafter “**coordinated actions**”). These practices will be further developed in Section 6.1.

- (62) Ahlers ensured the effectiveness of these practices by taking the following measures: First, it put in place a monitoring system to identify any parallel trade in its licensed territories, *i.e.* sales into its licensed territories by other Cardin licensees or their customers, including sales to certain (low-price) customers. This allowed Ahlers to gather evidence of such sales and to share certain information collected with Cardin, so that the latter could take further action. Second, to put pressure on Cardin to act against such parallel trade, Ahlers withheld royalties due under its licence agreements with Cardin, claiming that its rights under those agreements, and in particular the right to absolute territorial exclusivity, had not been respected. This will be further developed in Section 6.2.

6.1. Practices restricting sales of Pierre Cardin-licensed products

6.1.1. Restrictions of out-of-territory passive sales by Cardin licensees

- (63) From at least January 2008 until at least July 2019, Cardin included contractual clauses in its agreements with its licensees (including Ahlers) that were aimed at restricting all out-of-territory sales, including passive sales, of Pierre Cardin-licensed products within the EEA (see Section 6.1.1.1). Ahlers also included similar clauses in its sub-licence agreement with [Ahlers sublicensee] (see recitals (80) to (82)). In addition, from at least October 2009 until at least May 2016, Cardin and Ahlers took coordinated actions to ensure Ahlers' absolute exclusivity in the territories covered by its licence agreements with Cardin (see Section 6.1.1.2).

North Macedonia, Montenegro, Russia, Serbia, Switzerland, Ukraine and the United Kingdom. See ID 353-20.

¹³⁷ See ID 1197.

¹³⁸ [...] – ID 1141.

¹³⁹ Agreement [...] – ID 1138.

¹⁴⁰ See ID 1090.

6.1.1.1. Contractual clauses

6.1.1.1.1. Cardin and its licensees (other than Ahlers)

- (64) In its licence agreements with 8 licensees ([...]), Cardin included various types of clauses¹⁴¹ aimed at restricting each licensee from making out-of-territory sales in the EEA, including passive sales, of Pierre Cardin-licensed products.
- (65) First, both Cardin's licence agreements with [three Cardin licensees], and the licensing templates that it used until 2017 contained **clauses that restricted the licensee's rights** (including the right to sell Pierre Cardin-licensed products) **to the territory indicated in the agreement**¹⁴². A deviation from this rule was only possible after a prior derogation letter by Cardin. These clauses made no distinction between active and passive sales¹⁴³ and typically provided as follows (emphasis added):
- "The rights hereby granted shall apply only to the following countries: [...] This agreement may not be extended to other countries except pursuant to a written agreement between the parties embodied in a letter of derogation sent by LICENSOR to LICENSEE."*¹⁴⁴
- (66) As of 2018¹⁴⁵, Cardin amended the clause in the templates described in recital (65), introducing an additional provision to explicitly allow out-of-territory passive sales within the EEA.

¹⁴¹ Some licensees were subject to different variations of the clauses reported in this Section 6.1.1.1.1 over time. A licensee may have been subject to a specific clause in one of its agreements with Cardin and to a different variation of such clause in another agreement with Cardin of a later date.

¹⁴² During the Relevant Period, none of the 8 licensees mentioned in recital (64) had licensing rights for the entire EEA.

¹⁴³ Active sales refers to actively approaching customers in a specific territory or customer group in a targeted manner. As mentioned in footnote 9, passive sales refers to responding to unsolicited requests from customers. For further details of these concepts, see footnote 479.

¹⁴⁴ For the clause in agreements with [Cardin licensee 2], see Agreement with [Cardin licensee 2] of 21 May 2013 – ID 168; Agreement with [Cardin licensee 2] of 18 December 2013 – ID 232; Agreement with [Cardin licensee 2] of 21 October 2011 – ID 170; Agreement with [Cardin licensee 2] of 29 February 2008 ID 209; Agreement with [Cardin licensee 2] of 1 July 2008 – ID 207; Agreement with [Cardin licensee 2] of 18 December 2013 – ID 173; Agreement with [Cardin licensee 2] of 21 October 2011 – ID 230. Templates used until 2017 also contained similar clauses, see ID 225, ID 223, ID 178 and ID 179. The typical wording of the agreements with [Cardin licensee 11] and [Cardin licensee 5], with a similar wording, namely: « *La présente licence de marques ne vise que les pays suivants: [...] L'extension de la présente licence à d'autres pays ne pourra résulter que d'un accord entre les deux parties, concrétisé par une lettre de dérogation envoyée par le Titulaire au Licencié* ». For similar clauses in agreements with [Cardin licensee 11], see Agreement with [Cardin licensee 11] of 20 February 2013 – ID 357 (together with recitals (85), (86), (354) and Cardin's reply to the SO, paragraph 118); Agreement with [Cardin licensee 11] of 5 September 2017 – ID 364. For the clause in agreements with [Cardin licensee 5], see Agreement with [Cardin licensee 5] of [...] – ID 1945; Agreement with [Cardin licensee 5] of [...] – ID 353-28; Agreement with [Cardin licensee 5] of [...] – ID 353-31; Agreement with [Cardin licensee 5] of [...] – ID 353-1; Agreement with [Cardin licensee 5] of [...] – ID 353-21.

¹⁴⁵ An example of the amended clause reads as follows (emphasis added): "*Article 5 – Territory: This Trademark license is limited to the following countries: [...] This license may only be extended to other countries by agreement between both parties, as evidenced by an extension letter sent to the Licensee by the Licensor. [...] The Licensee may not sell any of the licensed Products outside the Territory in territories that the Licensor has reserved for itself or in which it has granted exclusivity to another party, except in the case of passive sales within the EEA*" – See ID 222. Identical clauses are included in the templates in French (ID 182) and Italian (ID 185).

- (67) Second, in addition to the clause described in recital (65), the licence agreements between Cardin and [Cardin licensee 2] covering the period from 2008 to 2017 included a **total ban on out-of-territory sales, including online sales** (emphasis added):

“Article 6: Territory

The rights hereby granted shall apply only to the following countries [...]

*LICENSEE shall not sell, distribute or offer to sell licensed merchandise outside the Territory or offer to sell licensed merchandise to any party LICENSEE knows or has reason to suspect may intend to distribute, export or resell licensed merchandise outside the Territories, including offers to sell and sales by print or electronic means, such as computer transmissions and the Internet.”*¹⁴⁶

- (68) Third, both Cardin’s licence agreements with [four Cardin licensees], and one of Cardin’s French licensing templates used until 2014¹⁴⁷ included a **total ban on online sales**. The clause in question provided as follows (translation from French, emphasis added):

*“The licensee undertakes not to offer for sale models bearing the name PIERRE CARDIN by any means of electronic commerce, by any means of interactive digital networks or by any network using the same or similar techniques (such as the Internet), as the sale by interactive digital networks or similar networks does not allow compliance with the territorial concession granted by the Licensor”*¹⁴⁸

- (69) Fourth, Cardin’s agreements with [Cardin licensee 7¹⁴⁹], [Cardin licensee 11¹⁵⁰], [Cardin licensee 9¹⁵¹], and [Cardin licensee 4¹⁵²] and Cardin’s French licensing template dated 2014¹⁵³ included provisions which made **online sales subject to Cardin’s prior authorisation**. These clauses typically provided as follows (emphasis added):

¹⁴⁶ Agreement with [Cardin licensee 2] of 29 February 2008 – ID 209; Agreement with [Cardin licensee 2] of 29 February 2008 – ID 169; Agreement with [Cardin licensee 2] of 01 July 2008 – ID 207; Agreement with [Cardin licensee 2] of 01 July 2008 – ID 171; Agreement with [Cardin licensee 2] of 21 October 2011 – ID 170; Agreement with [Cardin licensee 2] of 21 October 2011 – ID 230; Agreement with [Cardin licensee 2] of 21 May 2013 – ID 168; Agreement with [Cardin licensee 2] of 18 December 2013 – ID 232; Agreement with [Cardin licensee 2] of 18 December 2013 – ID 173.

¹⁴⁷ See ID 225.

¹⁴⁸ Original text reads : «Le licencié s’engage à ne pas proposer à la vente les modèles portant la griffe PIERRE CARDIN par tout moyen de commerce électronique, par toute voie de réseaux numériques interactifs ou tout réseau ayant recours à des techniques identiques ou similaires (tels qu’Internet), la vente par réseaux numériques interactifs ou similaires ne permettant pas en effet le respect de la concession territoriale accordée par le Concédant.», see Agreement with [Cardin licensee 9] of 15 October 2013 – ID 5-1. See also Agreements with [Cardin licensee 12] of 2 January 2008, 8 March 2009, 7 September 2009 and 15 February 2011 – ID 229, ID 252, ID 255 and ID 175; and Agreement with [Cardin licensee 10] of 8 October 2013 – ID 5-5.

¹⁴⁹ See Agreements with [Cardin Licensee 7] of 8 September 2009 – ID 1134-14, ID 1134-15 and ID 1134-16. An amendment to these agreements of 31 May 2009 fully prohibits to sell online, see ID 1134-17.

¹⁵⁰ See Agreement with [Cardin Licensee 11] of 20 February 2013 – ID 357; and Agreement with [Cardin Licensee 11] of 21 June 2010 – ID 367.

¹⁵¹ See Agreement with [Cardin Licensee 9] of 2 January 2010 – ID 5-24.

¹⁵² See Agreement with [Cardin Licensee 4] of [...] – ID 5-6.

¹⁵³ See ID 178.

“Licensee agrees that except as expressly authorized by Licensor in writing, Licensee shall not sell the products through direct mail or multimedia networks (such as Internet). ”

- (70) Finally, in addition to the clause described in recital (65), Cardin’s agreements with [two Cardin licensees] and its French licensing template for 2017¹⁵⁴, included a clause that allowed the licensee **to sell Pierre Cardin-licensed products online, but only within the licensed territory**. Cardin’s agreements with [Cardin licensee 12] also contained a similar provision. This clause typically provided as follows (translation from French, emphasis added):

“The Licensee may offer products bearing the ‘PIERRE CARDIN’ name for sale by any interactive digital network or any network using the same or similar techniques (such as the Internet), provided that such distribution concerns only the Territory. ”¹⁵⁵

- (71) By July 2019 at the latest, all the licence agreements mentioned in this Section 6.1.1.1.1 had expired or been replaced¹⁵⁶.

6.1.1.1.2. Cardin and Ahlers

- (72) During the Relevant Period, Cardin and Ahlers entered into licence agreements containing one or more of the restrictive clauses mentioned in recitals (65) to (70).

- (73) First, licence agreements between Cardin and Ahlers limited the scope of the licence (including the licence to sell the licensed products) to the territories specified in the agreement, without distinguishing between active and passive sales. This limitation typically provided as follows (translation from French, emphasis added):

“This licence only covers the following country: [...] The extension of this licence to other countries can only result from an agreement between the parties, set out in a letter of derogation sent by Licensor to Licensee. ”¹⁵⁷

- (74) As mentioned in recital (66), as of 2018, Cardin amended its licensing templates by adding a proviso to the clause quoted in recital (73). This proviso permitted out-of-

¹⁵⁴ See ID 179.

¹⁵⁵ Original text reads: « *Le Licencié pourra proposer à la vente les Produits portant la griffe « PIERRE CARDIN » par toute voie de réseau numérique interactif ou tout réseau ayant recours à des techniques identiques ou similaires (tels qu’Internet), à la condition que cette diffusion ne concerne que le Territoire.* » See Agreement with [Cardin licensee 5] of [...] – ID 353-1, Agreement with [Cardin licensee 5] of [...] – ID 353-21, Agreement with [Cardin licensee 5] of [...] – ID 353-31, and Agreement with [Cardin licensee 5] of [...] – ID 353-28. [...]. For [Cardin licensee 12], see Agreement with [Cardin licensee 12] of 20 June 2013 – ID 155-21 (p. 28-39); and Amendment of 1 January 2013 to Agreement with [Cardin licensee 12] of 15 February 2011 – ID 228. For [Cardin licensee 11], see Agreement with [Cardin licensee 11] of 5 September 2017 – ID 364.

¹⁵⁶ See Cardin’s reply to the SO, paragraphs 173 and 174.

¹⁵⁷ Original text reads : « *La présente concession ne vise que le pays suivant : [...] L’extension de la présente concession a d’autres pays ne pourra résulter que d’un accord entre les deux parties, concrétisé par une lettre de dérogation envoyé par le Concedant au Concessionnaire.* » See: Agreement with Ahlers of 9 July 2010 – ID 155-37 (p. 45); Agreement with Ahlers of 16 December 2010 – ID 155-34 (p. 248) ; Three agreements with Ahlers of 6 December 2012 – ID 155-34 (p. 37, p. 129, p. 223); Agreement with Ahlers of 20 December 2012 – ID 155-34 (p. 83) ; Two Agreements with Ahlers of 23 April 2013 – ID 155-35 (p. 87, p. 159) ; Agreement with Ahlers of 9 July 2013 – ID 155-35 (p. 228) ; Agreement with Ahlers of 5 December 2013 – ID 155-34 (p. 179); Three Agreements with Ahlers of 30 March 2015 – ID 155-35 (p. 80), ID 155-37 (p. 54, p. 77); Two Agreements with Ahlers of 30 August 2016 – ID 155-37 (p. 138, p. 168); Six Agreements with Ahlers of 14 November 2016 – ID 155-34 (p. 23, p. 68, p. 116, p. 167, p. 209) and ID 155-37 (p. 115).

territory passive sales within the EEA. Cardin used this template as the basis for the agreements that it signed thereafter, including its agreements with Ahlers¹⁵⁸.

- (75) Second, licence agreements between Ahlers and Cardin provided that **online sales would not be permitted unless expressly authorised by Cardin**. An example of such a provision read as follows (translation from French, emphasis added):

*“The licensee agrees that except as expressly authorised by Licensor in writing. Licensee shall not sell the products through direct mail or multimedia networks (such as Internet).”*¹⁵⁹

- (76) Third, licence agreements between Cardin and Ahlers also contained **clauses that permitted online sales, but only within the allocated territory**. These clauses provided as follows (translation from French, emphasis added):

*“By common agreement, the Licensor authorises the Licensee to sell the products subject to the present licence, by interactive digital network or identical technique. This authorisation only concerns the territory mentioned in the contract, i.e. [...]”*¹⁶⁰

*“The Licensee may offer the Products bearing the “PIERRE CARDIN” trademark for sale via any communication networks or any network using the same or similar techniques (such as the Internet), provided that such distribution is limited to the Territory.”*¹⁶¹

¹⁵⁸ See Cardin’s reply to the SO, paragraph 35.

¹⁵⁹ Original text reads: « *Le Licencié s’engage également sauf autorisation expresse et écrite du Concédant à ne pas commercialiser les articles faisant l’objet de la présente concession au moyen de réseaux de vente par correspondance et/ou télématiques (tels qu’Internet)*. » See Agreement with [...] of 15 January 2008 – ID 155-29 (p. 115); Agreement with [...] of 15 January 2008 (Clause 6) – ID 155-26 (p. 21); Agreement with Ahlers of 3 February 2012 – ID 155-21 (p. 201); Agreement with Ahlers of 3 February 2012 – ID 155-21 (p. 159); Agreement with Ahlers of 3 February 2012 – ID 155-21 (p. 104); Agreement with [...] of 27 November 2013 – ID 155-26 (p. 65); Agreement with Ahlers of 30 March 2015 – ID 155-21 (p. 95); Agreement with Ahlers of 30 March 2015 – ID 155-37 (p. 73); Agreement with Ahlers of 30 March 2015 – ID 155-37 (p. 51); Agreement with Ahlers of 30 August 2016 – ID 155-37 (p. 135); Agreement with Ahlers of 30 August 2016 – ID 155-37 (p. 165); Agreement with [...] of 12 September 2016 – ID 155-284; Agreement with [...] of 12 September 2016 – ID 155-285; Agreement with [...] of 12 September 2016 – ID 155-286; Agreement with [...] of 12 September 2016 – ID 155-287; Agreement with Ahlers of 12 September 2016 – ID 155-21 (p. 134); Agreement with Ahlers of 12 September 2016 – ID 155-21 (p. 209); Agreement with Ahlers of 12 September 2016 – ID 155-21 (p. 167). Based on Cardin’s statement in its reply to the SO (see paragraph 50 thereof and Annex 15 thereto), all the agreements dated pre-March 2015 listed on this footnote were amended by an addendum of 30 March 2015 to expressly authorise Ahlers to conduct online sales.

¹⁶⁰ Original text reads: « *D’un commun accord, le Concédant autorise le Licencié à commercialiser les articles, objets du contrat de licence, par voie de réseau numérique interactif ou technique identique. Cette autorisation ne concerne que le territoire mentionné au contrat soit : [...]*. » See: Three agreements with Ahlers of 6 December 2012 – ID 155-34 (p. 37, p. 129, p. 223); Agreement with Ahlers of 20 December 2012 – ID 155-34 (p. 83); Two Agreements with Ahlers of 23 April 2013 – ID 155-35 (p.87, p. 159); Agreement with Ahlers of 9 July 2013 – ID 155-35 (p. 228); Five Agreements with Ahlers of 14 November 2016 – ID 155-34 (p. 23, p. 68, p. 116, p. 209) and ID 155-37 (p. 115). Based on Cardin’s statement in its reply to the SO (see paragraph 50 thereof and Annex 15 thereto), all the agreements dated pre-March 2015 listed on this footnote were amended by an addendum of 30 March 2015 to expressly authorise Ahlers to conduct online sales.

¹⁶¹ Original text reads : « *Le Licencié pourra proposer à la vente les Produits portant la griffe « PIERRE CARDIN » par toute voie de réseau numérique interactif ou tout réseau ayant recours à des techniques identiques ou similaires (tels qu’Internet), à la condition que cette diffusion ne concerne que le Territoire*. » See Agreement with Ahlers of 19 September 2017 – ID 155-29 (p. 61); Agreement with Ahlers of 30 January 2018 - ID 1134-2; and Agreement with Ahlers of 30 January 2018 - ID 1134-4. These agreements were supposed to run from 2018 to 2022 but, on 8 July 2019, were cancelled and

- (77) On 30 March 2015, Cardin and Ahlers concluded an addendum to all the licence agreements that were in force at that time to expressly authorise Ahlers to conduct online sales (without territorial limitation) until the expiry of each of those agreements¹⁶². Despite this, several agreements concluded between Cardin and Ahlers after March 2015 included online sales restrictions¹⁶³.
- (78) Fourth, two of the licence agreements referred to in recital (76) contained not only restrictions on online sales outside the licensed territory (referred to as “Article 11” in the quote below), but also a clause which allowed Cardin to **penalise Ahlers’ non-compliance with this restriction** by terminating the contract. This clause read as follows (translation from French, emphasis added):
- “By express and formal agreement between the parties, this contract shall be automatically terminated, at the option of the Licensor and to the prejudice of the Licensee, one month after a registered letter noting [...] the failure to comply with Article 11 “Marketing”.”*¹⁶⁴
- (79) By July 2019 at the latest, all the licence agreements mentioned in this Section 6.1.1.1.2 had expired or been replaced¹⁶⁵.
- (80) Finally, besides concluding agreements with Cardin that contained the above-mentioned restrictions, Ahlers also included some of these restrictions in the agreement for the manufacture and distribution of Pierre Cardin-licensed products that it entered into on [...] with its sub-licensee in the EEA, [Ahlers sublicensee]. Ahlers granted [Ahlers sublicensee] rights to manufacture and distribute such products in the territory of [...] ¹⁶⁶ and [...] ¹⁶⁷.
- (81) In particular, this agreement provided that online sales without Ahlers’ consent were prohibited (translation from German):
- “Unless expressly authorized in writing by Licensor, Licensee may not sell contractual products by mail order and/or trade via the Internet or similar sources.”*¹⁶⁸
- (82) The term of the written agreement between Ahlers and [Ahlers sublicensee] ran until [...] ¹⁶⁹. [...] ¹⁷⁰, [...] ¹⁷¹.

replaced by new versions. These new versions no longer contained such online sales restrictions. See ID 1134-1; ID 1134-3; Agreement with Ahlers of 8 July 2019 – ID 155-36 (p. 7); Agreement with Ahlers of 8 July 2019 – ID 155-29 (p. 77).

¹⁶² See Cardin’s reply to the SO, paragraph 50 and Annex 15.

¹⁶³ See agreements with Ahlers dated post-March 2015 mentioned in footnotes 159, 160 and 161.

¹⁶⁴ Original text reads: « *De convention expresse et formelle entre les parties, le présent contrat sera résilié de plein droit, si bon semble au Titulaire et aux torts et griefs du Licencié, un mois après une lettre recommandée constatant [...] le non-respect de l'article 11 «la commercialisation»* ». See Agreement with Ahlers of 30 January 2018 - ID 1134-2; and Agreement with Ahlers of 30 January 2018 - ID 1134-4. These agreements were supposed to run from 2018 to 2022, but, on 8 July 2019, were cancelled and replaced by new versions. These versions no longer include such restrictions. See Agreement with Ahlers of 8 July 2019 – ID 1134-1; and Agreement with Ahlers of 8 July 2019 – ID 1134-3. This clause was also included in Cardin’s 2017 licence agreement template, see ID 179.

¹⁶⁵ See Cardin’s reply to the SO, paragraph 174.

¹⁶⁶ [...].

¹⁶⁷ [...].

¹⁶⁸ Original text reads: “*Soweit keine ausdrückliche schriftliche Genehmigung des Lizenzgebers vorhanden ist, darf der Lizenznehmer die Vertragsprodukte nicht durch Versandhandel und/oder Handel über Internet oder ähnliche Quellen vornehmen.*” Agreement [Ahlers sublicensee] [...] – ID 1141.

6.1.1.2. Coordinated actions

- (83) During the Relevant Period, Cardin and Ahlers engaged in coordinated actions to ensure that other Cardin licensees ([three Cardin licensees]) confined their sales of Pierre Cardin-licensed products, including passive sales, to the territories contractually allocated to them. The Parties' coordinated actions aimed to ensure that Ahlers enjoyed absolute territorial exclusivity in its licensed territories.

6.1.1.2.1. [Cardin licensee 11]

- (84) During the period in which [Cardin licensee 11] held licensing rights in Italy for the manufacture and distribution of Pierre Cardin-licensed knitted clothing and t-shirts for women (between 2010 and 2017) as well as sportswear for men (between 2013 and 2014)¹⁷², Ahlers had the licence for sportswear for men in many other EEA territories, including Germany¹⁷³.

- (85) Based on information provided by Ahlers to Cardin about out-of-territory sales by [Cardin licensee 11] into Ahlers' exclusive territories, Cardin wrote to [Cardin licensee 11] on 27 February 2014 to terminate the latter's licence agreement for sportswear¹⁷⁴. Cardin explained in the termination letter that it had based its decision on documentation provided by Ahlers, which proved that [Cardin licensee 11] had sold products outside its licensed territory (and/or sold to customers that exported¹⁷⁵) and into Ahlers' exclusively-licensed territory, i.e. Germany (translation from Italian, emphasis added):

*"I am writing to notify you of our intention to immediately and rightfully terminate the licence agreement referred to in this letter. Such agreement foresees the Licensing of the Trademark "Pierre Cardin" to be affixed on the products "Sportswear for men" for sales to be done only in the Italian territory. (Art.6). We understand from the documentation in our possession provided by our licensee, Westfälisches Textilwerk Adolf Ahlers KG., in the territory of Germany, that you have exported and/or sold for export men's 'Sportswear' items to a territory not covered by your licence contract signed on 20/02/2013, which provided for production and marketing only in the Italian territory. Your conduct is contrary to the provisions of the contract. Therefore, for serious breach of the provisions of Article 6 of the contract, we intend to terminate the contract for serious breach by you."*¹⁷⁶

¹⁶⁹ See clause 14.1 of the Agreement [Ahlers sublicensee] [...] – ID 1141.

¹⁷⁰ Email of 14 September 2022 from Ahlers' lawyer to the Commission – ID 1142.

¹⁷¹ See ID 1320.

¹⁷² See footnote 85.

¹⁷³ Austria, Belgium, Bulgaria, Croatia, Czechia, Denmark, Finland, France, Germany, Hungary, Luxembourg, Netherlands, Poland, Slovakia, Slovenia, Sweden and other non-EEA territories (Bosnia and Herzegovina, North Macedonia, Montenegro, Serbia and Switzerland). See ID 353-20.

¹⁷⁴ A sell-off period to clear the existing stock was granted until 31 December 2014. See Letter from Mr Cardin to [...] of 25 March 2014 – ID 370.

¹⁷⁵ For further details on this, see Section 6.1.2.2.1.2. See also Cardin's reply to the SO, paragraph 118, and recital (354), which rebuts Cardin's argument that its actions against [Cardin licensee 11] did not have the objective to restrict out-of-territory passive sales.

¹⁷⁶ Original text reads: *"La presente per notificar Vi la nostra volontà di risolvere immediatamente con pieno diritto, il contratto di licenza citato in oggetto della presente. Tale accordo prevedeva la Concessione del Marchio "Pierre Cardin" da apporre sui manufatti "Sportswear per uomo" per vendite da effettuarsi solamente sul territorio Italiano. (Art.6) Ci risulta da documentazione in nostro possesso fornitaci dal nostro licenziatario, la società Westfälisches Textilwerk Adolf Ahlers KG., sul*

- (86) Article 6 of the terminated agreement with [Cardin licensee 11]¹⁷⁷ referred to in the above letter provided for restrictions on out-of-territory passive sales, *inter alia*, that (i) the licence was only granted for Italy and that an extension to other territories would only be possible if Cardin had first sent a derogation letter to the licensee (see recital (65)); (ii) the licensee could not engage in online sales (see recital (69)) and (iii) the licensee committed to sell the licensed products only to customers that would not engage in exports (see recital (103)). Nothing in the wording of the letter quoted in recital (85) suggested that Cardin had taken action to establish whether the products found in Ahlers' territories had been sold actively, or rather, passively.
- (87) An internal email of Ahlers from 26 February 2014 shows that, one day prior to the termination, Ahlers was already aware that [Cardin licensee 11]'s agreement would be terminated (translation from German, emphasis added):
- "[M]ost important news of today: [Cardin independent commercial agent 2] sends you his best regards. The terminations of the contracts with [...] and [Cardin licensee 11] will be signed tomorrow by Mr Cardin. He would like to talk to you about the Sportswear Licence for Italy [...]"*¹⁷⁸
- (88) Following the termination of [Cardin licensee 11]'s licence agreement for sportswear, Ahlers continued to put pressure on Cardin to take measures against [Cardin licensee 11]'s out-of-territory sales. These sales were conducted by [Cardin licensee 11] during the sell-off period granted under its sportswear contract (i.e. until 31 December 2014)¹⁷⁹ or under other active licence agreements¹⁸⁰.
- (89) In March 2014, in relation to Pierre Cardin-licensed products being available in a German discounter, Ahlers wrote to Cardin (translation from German, emphasis added): *"We will procure the offered products. But even without having them at hand we assume that these are goods from Italy, that is to say, [...] and shirts, probably from [Cardin licensee 11]. Something urgently needs to be done about this."*¹⁸¹

territorio Tedesco, che avete esportato e/o ceduto all'esportazione articoli di "Sportswear" per uomo su un territorio non previsto nel vostro contratto di licenza firmato il 20/02/2013 che prevedeva la produzione e commercializzazione solamente sul territorio Italiano. Il vostro comportamento contravviene a quanto previsto nel contratto. Quindi per grave violazione di quanto disposto dall'Art. 6 del contratto, intendiamo risolto lo stesso per grave inadempimento da parte Vostra." Letter of 27 February 2014 from Mr Cardin to [...], representative of [Cardin licensee 11] (in the following footnotes referred to as [...]) terminating its licence agreement – ID 365.

¹⁷⁷ See Agreement with [Cardin licensee 11] of 20 February 2013 – ID 357. See also Cardin's reply to the SO, paragraph 118, and recital (354), which rebuts Cardin's argument that its actions against [Cardin licensee 11] did not have the objective to restrict out-of-territory passive sales.

¹⁷⁸ Original text reads: *"Hallo [Ahlers management], wichtigste Nachricht des heutigen Tages: [Cardin independent commercial agent 2] lässt Sie herzlich grüßen. Die Kündigungen der Verträge mit [...] und [Cardin licensee 11] werden morgen von Herrn Cardin unterschrieben. Er hätte gerne mit Ihnen ein Termin um über der Sportswear Lizenz für Italien zu sprechen. MfG [Ahlers sales manager 1]"*. Email of 26 February 2014 from [Ahlers sales manager 1] to [Ahlers management], via [two assistants to Ahlers management] – ID 155-452.

¹⁷⁹ See footnote 174.

¹⁸⁰ [Cardin licensee 11] continued to be the licensee for women's t-shirts in Italy until 30 June 2018. See footnote 85.

¹⁸¹ Original text reads: *"Die angebotenen Teile lassen wir besorgen. Aber auch ohne dass wir diese im Haus haben gehen wir davon aus, dass es sich dabei um Ware aus Italien handelt, d.h. [...] und Hemden wahrscheinlich von der Firma [Cardin licensee 11]. Hier muss dringend etwas geschehen"*. Email of 26 March 2014 from [Ahlers management] to [Cardin licensing director 1] – ID 155-56.

- (90) By letter of August 2014, Ahlers also complained to Cardin about the presence of Pierre Cardin-licensed sportswear in Germany (translation from French, emphasis added):

“Despite the meeting in January with [Ahlers sales manager 1], [Cardin licensing director 1] and some Italian licensees, goods originating from Italy continue to arrive in Germany. After several deliveries in spring, these continue still today. These concern [...] sportswear shirts and jackets ([Cardin licensee 11]) [...]. As you know, we hold exclusive licences for these products in the German territory. In addition, these are very poor quality products and are sold at low prices, which is very embarrassing. [...] I therefore urge you to stop these illegal exports into Germany.”¹⁸²

- (91) Cardin kept Ahlers informed of the progress of its actions to detect and prevent exports of products by [Cardin licensee 11] into Ahlers’ territories (i.e. Germany), as shown by an email of September 2014. The wording of this email reveals that Cardin was informing Ahlers that [Cardin licensee 11] was probably not selling directly outside of its territory, but that its customers were doing so¹⁸³ (without verifying whether these were active or passive in nature). In the email, Cardin regrets that despite the fact that it was regularly auditing its Italian licensees, including [Cardin licensee 11], there were “always leaks” [of products outside Italy]. The email read as follows (translation from French, emphasis added):

“I have duly received your email and thank you for it. The contracts in question for the articles of Sportswear ([Cardin licensee 11]) [...] have been cancelled by Mr Pierre Cardin [...], while for socks and t-shirts, the companies in question have not directly exported, there is no billing for Germany, but we control whether there is a bridge company to evade direct sales. Believe me I am really sorry that this situation has been going on for so many years, despite all the accounting checks I carry out with the Italian licensees every six months, there are always leaks”.¹⁸⁴

6.1.1.2.2. [Cardin licensee 13]

- (92) [Cardin licensee 13] was Cardin’s licensee for Greece and Cyprus until 2011; its licence covered shirts for men, sportswear for men, ready-to-wear for men and knitwear for men¹⁸⁵. During the period in which the Cardin and Ahlers took

¹⁸² Original text reads: « *Malgré la reunion de janvier avec [Ahlers sales manager 1], [Cardin licensing director 1] et certains titulaires de licences italiens, des marchandises de provenance d'Italie arrivent sans cesse en Allemagne. Après plusieurs livraisons au printemps, elles continuent encore aujourd'hui. Il s'agit essentiellement [...] de chemises et de vestes sportswear [Cardin licensee 11] [...]. Je vous demande donc en toute urgence de faire arrêter ces exportations illégales vers l'Allemagne.* » Letter of 26 August 2014 from [Ahlers management] to [Cardin independent commercial agent 2] – ID 155-494.

¹⁸³ See Section 6.1.2.2.1.2.

¹⁸⁴ Original text reads: « *J'ai bien reçu votre courrier et je vous en remercie. . Les contrats en question pour les articles de Sportswear ([Cardin licensee 11]) [...] pour hommes ont été annulé par M. Pierre Cardin [...], tandis que pour les chaussettes et les tee shirts, les sociétés en question non pas exportés directement, il n'y a aucune facturation pour l' Allemagne, mais nous controlons s'il existe une société pont pour éviter la vente directe. Croyez moi que j'en suis vraiment désolé de cette situation qui dure depuis pas mal d'années, malgré tout les controles de comptabilité que je fais effectuer au-près des licenciés italiens chaque semestre, il y a toujours des fuites.* » Email of 8 September 2014 from [Cardin independent commercial agent 2] to [Ahlers management] via [assistant to Ahlers management 4] – ID 155-623. See also recitals (281) and (354), which rebut (i) Ahlers’ argument that the actions against [Cardin licensee 11] were not part of the Parties’ concerted practices and (ii) Cardin’s argument that its actions against [Cardin licensee 11] did not have the objective to restrict out-of-territory passive sales.

¹⁸⁵ See footnote 87.

coordinated action against [Cardin licensee 13], Ahlers and [Cardin licensee 13] had licensing rights for the same products but for different EEA territories¹⁸⁶.

- (93) A letter from October 2009 from Ahlers to Cardin indicates that, at least from 2008, Ahlers complained to Cardin about [Cardin licensee 13]’s out-of-territory sales into Ahlers’ territories and requested Cardin to terminate [Cardin licensee 13]’s licence agreement. This letter read as follows (translation from German, emphasis added):

“[...] This is proof that [Cardin licensee 13] delivers to Germany in breach of contract, at extremely ruinous prices. We sell our polo shirts at the end consumer price of 49.50 euros. How is our customer supposed to understand that, when, in parallel, polo shirts are offered at a price of 7.95 euros?

*We would be very grateful if you would inform Mr Cardin accordingly, with the urgent request that the licence agreement with [Cardin licensee 13] be terminated immediately. As early as 2008, we informed Mr Cardin that [Cardin licensee 13]’s practices are unacceptable, that we will not be able to reach the agreed minimum licence sales if our exclusivity is undermined by low-cost offers.”*¹⁸⁷

- (94) In an email from [Cardin licensee 13] to Ahlers of March 2010, [Cardin licensee 13] reported that it had been contacted by Cardin because Ahlers had found Pierre Cardin-licensed products in Germany which seemed to originate from [Cardin licensee 13]. In response to this allegation, [Cardin licensee 13] explained to Ahlers that it had neither sold nor intended to sell into Ahlers’ territory at all (emphasis added): “[W]e cannot understand why you keep creating problems to us. We have no will to sell anything besides our contractual markets”¹⁸⁸. Ahlers forwarded this email to Cardin and suggested that they hold a call to discuss the matter¹⁸⁹.

6.1.1.2.3. [Cardin licensee 5]

- (95) [Cardin licensee 5] was Cardin’s licensee for: [...] ¹⁹⁰. Ahlers also held licensing rights for [...], but the territorial scope of its licence was different to [Cardin licensee 5]’s¹⁹¹.

¹⁸⁶ Ahlers had licensing rights for (i) shirts for men in Austria, Czechia, Germany, Hungary, Netherlands, Poland, Slovakia and Slovenia; (ii) sportswear for men in Austria, Belgium, Bulgaria, Denmark, Finland, France, Germany, Hungary, Luxembourg, Netherlands, Poland, Slovenia and Sweden; (iii) ready-to-wear for men in Austria, Czechia, Denmark, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Netherlands, Norway, Poland, Slovakia, Slovenia and Sweden; and (iv) knitwear for men in Austria, Denmark, Germany, Hungary, Iceland, Netherlands, Norway, Poland, Sweden and Slovenia. See ID 353-20.

¹⁸⁷ Original text reads: “[...] *Damit ist der Beweis erbracht, dass [Cardin licensee 13] vertragswidrig nach Deutschland liefert, zu äußerst ruinösen Preisen. Wir verkaufen unsere Polo-Shirts zum Endverbraucher-Preis von 49,50 Euro. Wie soll unser Kunde das verstehen, wenn parallel dazu Polo-Shirts zum Preis von 7,95 Euro angeboten werden? Wir wären Ihnen sehr dankbar, wenn Sie Herrn Cardin entsprechend informieren würden - mit der dringenden Bitte, dass der Lizenzvertrag mit [Cardin licensee 13] sofort gekündigt wird. Bereits im Jahre 2008 hatten wir Herrn Cardin darauf hingewiesen, dass die Machenschaften von [Cardin licensee 13] nicht akzeptabel sind, dass wir die vereinbarten Mindest-Lizenz-Umsätze nicht erreichen können, wenn die uns zugesagte Exklusivität durch Billig-Angebote unterlaufen wird*”. Letter of 21 October 2009 from [Ahlers management] to [Cardin licensing director 1] – ID 155-38.

¹⁸⁸ Email of 15 March 2010 from [Cardin licensee 5]’s representative, [...] to [Ahlers management], via [assistant to Ahlers management 4] – ID 155-498.

¹⁸⁹ Email of 16 March 2010 from [Ahlers management], via [assistant to Ahlers management], to [Cardin licensing director 1] – ID 155-498.

¹⁹⁰ See footnote 81.

- (96) In August 2014, Ahlers complained about Pierre Cardin-licensed products from [Cardin licensee 5] (and other [...] licensees) being sold in Germany, claiming that Ahlers had exclusive licences over such products for the German market and urging Cardin to act to protect its exclusivity (translation from French):
- “Despite the meeting in January with [Ahlers sales manager 1], [Cardin licensing director 1] and some [...] licensees, goods originating from [...] continue to arrive in Germany. After several deliveries in spring, these continue still today. These concern [...] as well as [...] ([Cardin licensee 5], [...]). As you know, we hold exclusive licences for these products in the German territory. In addition, these are very bad quality products and are sold at low prices, which is very embarrassing. [...] I therefore urge you to stop these illegal exports into Germany.”*¹⁹²
- (97) By email of January 2016, Ahlers again alerted Cardin to the need to urgently address out-of-territory sales by [Cardin licensee 5] (and other licensees) into Ahlers’ licensed territories (translation from French, emphasis added): *“However, during the event we also heard strong criticisms of all these continuous imports of products at low prices, which are highly detrimental to the image of the Pierre Cardin brand, and which we have suffered from other licensees ([...]) in the territories that we were granted on an exclusive basis. At the same time, we must warn against the consequences for this great brand Pierre Cardin and we note that there is an urgent need to address these issues now.”*¹⁹³
- (98) By email of 23 May 2016, Ahlers informed Cardin about its direct contact with [Cardin licensee 5]. In this email, Ahlers stated that [Cardin licensee 5] was involved in cheap sales into Ahlers’ territories and conveyed to Cardin that, as a result of Ahlers’ intervention, [Cardin licensee 5] had understood that it needed to stop this practice (emphasis added):
- “[W]e are in contact with [Cardin licensee 5], the [...] licensee of Pierre Cardin [...]. Although they were also involved in the sale of very cheap merchandise, they seem to understand that this needs to be stopped for the future. We come back to you as soon as we have reached an agreement with them about a future collaboration.”*¹⁹⁴
- (99) In 2017, Cardin concluded the licence agreements with [Cardin licensee 5] mentioned in Sections 6.1.1.1.1 and 6.1.2.1.1 which contained contractual clauses restricting out-of-territory passive sales by [Cardin licensee 5] and its customers¹⁹⁵.

¹⁹¹ [...]. See ID 353-20.

¹⁹² Original text reads: «*Malgré la réunion de janvier avec [Ahlers sales manager 1], [Cardin licensing director 1] et certains titulaires de licences [...], des marchandises de provenance [...] arrivent sans cesse en Allemagne. Après plusieurs livraisons au printemps, elles continuent encore aujourd'hui. Il s'agit essentiellement [...] ainsi que des [...] ([Cardin licensee 5], [...]) [...]. Je vous demande donc en toute urgence de faire arrêter ces exportations illégales vers l'Allemagne.*» Letter of 26 August 2014 from [Ahlers management] to [Cardin independent commercial agent 2] – ID 155-494.

¹⁹³ Original text reads: «*Cependant, durant l'évènement nous avons également entendu de vives critiques une fois de plus concernant toutes ces importations continuelles de produits à des prix cassés et fortement préjudiciables à l'image de la marque Pierre Cardin que nous subissons par d'autres licenciés ([...]) dans les territoires qui nous ont pourtant été concédés en exclusivité. Nous devons dans le même temps mettre en garde contre les conséquences pour cette grande marque Pierre Cardin et il est urgent de régler ces problèmes maintenant.*» Email of 22 January 2016 from [assistant to Ahlers management] on behalf of [Ahlers management], to Mr Basilicati – ID 155-499.

¹⁹⁴ Email of 23 May 2016 from Ahlers’ assistant [assistant to Ahlers management] to Cardin’s assistant ([secretary to Cardin management 1]) – ID 155-204.

¹⁹⁵ See recitals (65), (70) and (103).

- (100) In March 2018, following royalty deductions made by Ahlers for *inter alia* sales by [Cardin licensee 5] in Germany¹⁹⁶, Cardin asked Ahlers to provide more evidence of the sales made by [Cardin licensee 5] in Germany and suggested a meeting between Cardin and Ahlers to discuss, among other things, the “[Cardin licensee 5] *issue*”¹⁹⁷.

6.1.2. *Restriction of out-of-territory passive sales by customers of Cardin licensees*

- (101) From at least 2008 until at least July 2019¹⁹⁸ Cardin included contractual clauses in its agreements with its licensees (including Ahlers) that were aimed at preventing all out-of-territory sales, including passive sales, of Pierre Cardin-licensed products by customers of these licensees within the EEA (see Section 6.1.2.1). Ahlers also included similar clauses in its sub-licence agreement with [Ahlers sublicensee] (see recital (108)). In addition, from at least February 2014 until at least March 2021, Cardin and Ahlers took coordinated actions to further ensure Ahlers’ absolute territorial exclusivity (see Section 6.1.2.2).

6.1.2.1. Contractual Clauses

6.1.2.1.1. Cardin and its licensees (other than Ahlers)

- (102) Cardin included several types of clauses in its licence agreements with 9 licensees ([...]) that required the latter not to sell to customers who could not guarantee that Pierre Cardin-licensed products would not be exported outside the licensed territory. These provisions effectively imposed a total export ban on the customers of Cardin licensees, *i.e.* they did not differentiate between active and passive sales.
- (103) In particular, licence agreements concluded by Cardin with [seven Cardin licensees] contained clauses requiring the **licensee not to sell to customers who could not guarantee that Pierre Cardin-licensed products would not be exported out of the licensed territory**. These clauses were also included in Cardin’s licensing templates¹⁹⁹ until 2017 and typically provided as follows (emphasis added):
- “LICENSEE agrees not to sell the subject articles except to customers who shall guarantee that said articles shall not be exported out of the licensed territories.”*²⁰⁰
- (104) Agreements between Cardin and [Cardin licensee 12] and Cardin and [Cardin licensee 10] included clauses requiring the licensee not to sell to customers who could not guarantee that the licensed goods would not be exported out of the “European Union”. This clause therefore prohibited exports into those EEA countries

¹⁹⁶ See footnote 378. See also recital (285), which rebuts Cardin’s argument that the actions against [Cardin licensee 5] were not part of the Parties’ concerted practices

¹⁹⁷ See recital (250). See also recital (285), which rebuts Cardin’s argument that the actions against [Cardin licensee 5] were not part of the Parties’ concerted practices

¹⁹⁸ As of 2018, Cardin’s templates no longer included out-of-territory restrictions on the customers of licensees, see ID 222; ID 223; ID 220; ID 219; ID 185; ID 184; ID 183; ID 182. The licence agreements mentioned in this section all expired or were replaced at the latest by July 2019. See Cardin’s reply to the SO, paragraphs 173 and 174, Agreement of [...] with [Cardin licensee 3] – ID 1940 and ID 1125.

¹⁹⁹ See ID 179; ID 223; ID 178; ID 225.

²⁰⁰ Agreement with [Cardin licensee 2] of 1 July 2008 – ID 207; Agreement with [Cardin licensee 2] of 29 February 2008 – ID 209; Agreements with [Cardin licensee 3] of [...] – ID 1940, 1941 and 1937; Agreements with [Cardin licensee 7] of 8 September 2009 – ID 1134-14, ID 1134-15 and ID 1134-16. Other examples are as follows: Agreement with [Cardin licensee 5] of [...] – ID 353-1; Agreement with [Cardin licensee 5] of [...] – ID 353-21; Agreement with [Cardin licensee 5] of [...] – ID 353-31; Agreement with [Cardin licensee 5] of [...] – ID 353-28; Agreement with [Cardin licensee 4] of [...] – ID 5-6; Agreement with [Cardin licensee 1] of 1 June 2011 – ID 5-7; Agreement with [Cardin licensee 9] of 29 December 2011 – ID 5-23; Agreement with [Cardin licensee 9] of 2 January 2010 – ID 5-24.

that are not part of the Union. An example of such clauses is the following (translation from French, emphasis added):

“Licensee commits to sell the products subject to the present sale, only to customers which guarantee that said products will not be exported outside the European Union.”²⁰¹

6.1.2.1.2. Cardin and Ahlers

(105) Ahlers entered into licence agreements with Cardin that contained clauses prohibiting sales of Pierre Cardin-licensed products to customers **who could not guarantee that such products would not be exported out of the licensed territory**. These clauses effectively imposed a total export ban on Ahlers’ customers, i.e. they did not differentiate between active and passive sales.

(106) These clauses typically provided as follows (emphasis added):

“LICENSEE agrees not to sell the subject articles except to customers who shall guarantee that said articles shall not be exported out of the licensed territory”²⁰²

(107) This clause was present in 13 licence agreements with Ahlers in force during various periods between 2008 and 2019²⁰³.

(108) Finally, besides concluding licence agreements with Cardin that contained this clause, Ahlers also included in its sub-licence agreement with [Ahlers sublicensee] clauses requiring [Ahlers sublicensee] to impose territorial sales restrictions on its customers. In particular, the sub-licence agreement provided that [Ahlers sublicensee] had to ensure that its customers also observed the obligation not to sell online, and a financial penalty was foreseen if [Ahlers sublicensee] could not prove that its customers had complied²⁰⁴.

6.1.2.2. Coordinated actions

(109) In addition to the contractual clauses mentioned in Section 6.1.2.1, Cardin and Ahlers engaged in coordinated actions (against [...]) to ensure that customers of

²⁰¹ Original text reads (emphasis added): «*Le Licencié s'engage à ne vendre les articles, objets de la présente vente, qu'à des clients donnant l'assurance de ne pas exporter ces articles en dehors de l'Union Européenne.*» See Agreement with [Cardin licensee 12] of 2 January 2008 – ID 229; Agreement with [Cardin licensee 12] of 8 March 2009 – ID 252; Agreement with [Cardin licensee 12] of 7 September 2009 – ID 255; Agreement with [Cardin licensee 12] of 3 September 2011 – ID 214; Agreement with [Cardin licensee 12] of 15 February 2011 – ID 175; Agreement with [Cardin licensee 12] of 2 November 2011 – ID 212; Agreement with [Cardin licensee 12] of 20 June 2013 – ID 213; Agreement with [Cardin licensee 12] of 20 June 2013, – ID 253; Agreement with [Cardin licensee 10] of 8 October 2013 – ID 5-5.

²⁰² Original text reads: «*le Concessionnaire s'engage à ne vendre les articles objets des présentes qu'à des clients donnant l'assurance de ne pas exporter ces articles en dehors des territoires concédés* ». Agreement with [...] of 15 January 2008 – ID 155-26 (p. 21); Agreement with [...] of 15 January 2008 – ID 155-29 (p. 115); Agreement with Ahlers of 16 December 2010 – ID 155-34 (p. 245); Three agreements with Ahlers of 3 February 2012 – ID 155-21 (p. 104, 159, 201); Agreement with Ahlers of 3 July 2014 – ID 5-3; Agreement with Ahlers of 30 March 2015, – ID 155-21 (p. 95); Three agreements with Ahlers of 12 September 2016 – ID 155-21 (p. 134, 167, 209); Agreement with Ahlers of 30 January 2018 – ID 155-36; Agreement with Ahlers of 30 January 2018 – ID 155-21 (p.1).

²⁰³ See footnote 202 for the full list of agreements concerned. By July 2019 at the latest, all the licence agreements mentioned in this Section 6.1.2.1.2 had expired or been replaced (see Cardin’s reply to the SO, paragraph 174).

²⁰⁴ See clause 7.5 of Agreement with [Ahlers sublicensee] of [...] – ID 1141. As mentioned in recital (82), this agreement [...].

Cardin's licensees limited all their sales to the territories contractually assigned to the licensees from whom they sourced Pierre Cardin-licensed products, without ascertaining whether these sales were active or passive in nature. These measures constituted a further step in ensuring Ahlers' absolute territorial exclusivity.

6.1.2.2.1. Actions against licensees

6.1.2.2.1.1. [Cardin licensee 6]

- (110) Between 2012 and 2014, [Cardin licensee 6] was Cardin's licensee for men's knitwear in Italy²⁰⁵. During this period, Ahlers held licensing rights for the same products in other EEA territories, including Germany²⁰⁶.
- (111) In February 2014, Cardin sent a letter to [Cardin licensee 6] announcing the termination of its licence agreement. In the letter, Cardin explicitly referred to the fact that [Cardin licensee 6] had sold Pierre Cardin-licensed products to an Italian company engaging in exports outside Italy, namely, into Germany, where Ahlers had licensing rights. In the letter, Cardin also stated that such behaviour was in breach of clause 6 of the licence agreement. Clause 6 of the contract included restrictions on out-of-territory passive sales, *inter alia* that (i) the licence was valid for Italy, an extension to other countries only being possible if the licensee obtained a derogation letter from Cardin; (ii) the licensee should not sell the licensed products to exporters; and (iii) the licensee should not sell such products online²⁰⁷. Nothing in the letter suggests that Cardin had taken action to establish whether the products found in Ahlers' territories had been sold actively, or rather, passively by [Cardin licensee 6]'s customer. The termination letter read as follows (translation from Italian, emphasis added):

*"According to the above-mentioned article of the contract, your company had committed not to sell the products subject to the agreement to exporters. It results from the invoices in our possession that you sold [...] to the company [...] exempt of VAT [...], which proves that the goods were known to be intended for export and therefore outside the territory licensed to you. These goods were found by us in Germany, where there is a legitimate licensee for that territory which is Westfälisches Textilwerk Adolf Ahlers KG. Your behaviour is contrary to what is stipulated in the contract. Therefore, for a serious breach of the provisions of Article 6 of the contract, we intend to terminate for a serious failure to fulfil obligations on your part."*²⁰⁸

²⁰⁵ See footnote 82.

²⁰⁶ Austria, Croatia, Denmark, Germany, Hungary, Iceland, Netherlands, Norway, Poland, Slovenia and Sweden. See ID 353-20.

²⁰⁷ See Agreement with [Cardin licensee 6] of 1 February 2012 - ID 546. See also recital (355), which rebuts Cardin's argument that its actions against [Cardin licensee 6] did not have the objective to restrict out-of-territory passive sales.

²⁰⁸ Original text reads: *"La vostra società si era impegnata ai sensi dell'articolo del contratto succitato a non vendere a ditte esportatrici i prodotti oggetto della concessione. Ci risulta da fatture in nostro possesso che avete venduto [...] alla società [...] in esenzione IVA [...], Ciò a dimostrare di conoscere che la merce era destinata all'esportazione e quindi al difuori del territorio a Voi concesso. Tale merce è stata da noi rintracciata sul territorio della Germania dove esiste un legittimo licenziatario per quel territorio la società " Westfälisches Textilwerk Adolf Ahlers KG. Il vostro comportamento contravviene a quanta previsto nel contratto. Quindi per grave violazione di quando disposto dall'Art. 6 del contratto, intendiamo risolto lo stesso per grave inadempimento da parte Vostra"*. See Letter from Mr Cardin to [...] of 27 February 2014 - ID 353-26.

- (112) Cardin had informed Ahlers about the termination of [Cardin licensee 6]’s agreement a day before Mr Cardin actually signed the termination letter²⁰⁹.
- (113) In March 2014, Cardin warned [Cardin licensee 6] against making *any* sales outside its exclusively allocated territory (i.e. Italy) during the sell-off period granted to clear existing stock after the termination of [Cardin licensee 6]’s licence agreement (i.e. until 31 December 2014), and threatened to take legal action if [Cardin licensee 6] were to make such sales:

*"I inform you that no products must be sold outside of Italy and if this should happen again, I will take legal action against your company."*²¹⁰

- (114) By email of September 2014, Cardin informed Ahlers that it had checked whether [Cardin licensee 6] and customers of the latter were engaging in out-of-territory sales during the sell-off period granted to the company. In this email, Cardin also mentioned that it was regularly auditing its Italian licensees, including [Cardin licensee 6], but that there were “always leaks” [of products outside Italy]. The email read as follows (translation from Italian, emphasis added):

*"I have duly received your email and thank you for it. The contracts in question for [...] and Knitted articles ([Cardin licensee 6]) have been cancelled by Mr Pierre Cardin since 25 March 2014, while for socks and t-shirts, the companies in question have not directly exported, there is no billing for Germany, but we control whether there is a bridge company to evade direct sales. Believe me I am really sorry that this situation has been going on for so many years, despite all the accounting checks I carry out with the Italian licensees every six months, there are always leaks."*²¹¹

6.1.2.2.1.2. [Cardin licensee 11]

- (115) As described in Section 6.1.1.2.1, in its termination letter to [Cardin licensee 11] dated 27 February 2014 (see recital (85)), Cardin based its termination of [Cardin licensee 11]’s licence agreement on information provided by Ahlers showing that [Cardin licensee 11] had “*exported and/or sold for export*”. The latter shows that Cardin and Ahlers were not only concerned by potential out-of-territory sales by [Cardin licensee 11] (the licensee) into Ahlers’ licensed territories but also by similar sales by the customers of the latter²¹². This is further supported by the fact that the termination letter referred to a breach by [Cardin licensee 11] of Article 6 of its

²⁰⁹ Email of 26 February 2014 from [Ahlers sales manager 1] to [Ahlers management], via [assistant to Ahlers management 3] and [assistant to Ahlers management 2] – ID 155-452; the same email also showed that Ahlers was aware of the termination of [Cardin licensee 11]’s agreement on 27 February 2014, see for this instance recital (87).

²¹⁰ Letter of 25 March 2014 from Mr Cardin to [...], representative of [Cardin licensee 6] – ID 353-14.

²¹¹ See Email of 8 September 2014 from [Cardin independent commercial agent 2] to [Ahlers management] - ID 155-623. Original reads: « *J'ai bien reçu votre courrier et je vous en remercie. Les contrats en question pour les articles de Sportswear ([Cardin licensee 11]) et Tricots ([Cardin licensee 6]) pour hommes ont été annulé par M. Pierre Cardin depuis le 25 Mars 2014, tandis que pour les chaussettes et les tee shirts, les sociétés en question non pas exportés directement, il n'y a aucune facturation pour l'Allemagne, mais nous controlons s'il existe une société pont pour eviter la vente directe. Croyez moi que j 'en suis vraiment désolé de cette situation qui dure depuis pas mal d'années, malgré tout les controles de comptabilité que je fais effectuer au-près des licenciés italiens chaque semestre, il y a toujours des fuites.* ». See also recital (355), which rebuts Cardin’s argument that its actions against [Cardin licensee 6] did not have the objective to restrict out-of-territory passive sales.

²¹² See Cardin’s Reply to the SO, paragraph 118, and recital (354), which rebuts Cardin’s argument that its actions against [Cardin licensee 11] did not have the objective to restrict out-of-territory passive sales.

licence agreement. As described in recital (86), this Article included *inter alia* a prohibition on the licensee to sell to customer engaging in exports.

6.1.2.2.2. Actions against customers of licensees

6.1.2.2.2.1. [Cardin licensee's customer 1]

Introduction

- (116) [Cardin licensee's customer 1] is a sports retailer, founded in [...], with brick-and-mortar stores as well as e-commerce activities throughout the EEA. Before 2015, when Cardin concluded a licence agreement with [Cardin licensee 8] covering the UK and Ireland, [Cardin licensee's customer 1] sourced Pierre Cardin-licensed products from [Cardin licensee 2], which was a Cardin licensee for Ireland and the UK between 2008 and 2017.
- (117) After Cardin concluded the agreement with [Cardin licensee 8], [Cardin licensee's customer 1] mainly sourced Pierre Cardin-licensed products from this company, which held the licence for casual, sport and leisure wear for men in Ireland and the UK between 2015 and 2019²¹³. During the period in which [Cardin licensee 8] licence was in place, Ahlers also held licensing rights for men's sportswear but covering other EEA territories²¹⁴.
- (118) As outlined in detail below, correspondence on file shows that, from at least June 2014, Ahlers repeatedly complained to Cardin about [Cardin licensee's customer 1] buying Pierre Cardin-licensed products from other Cardin licensees in other territories and reselling these products in Ahlers' exclusive territories. On many occasions, Ahlers also urged Cardin to stop such sales, and put pressure on Cardin by making deductions from its royalty payments to take account of the sales by [Cardin licensee's customer 1] in its licensed territory.
- (119) From at least 2015, Cardin reacted to Ahlers' complaints, particularly by asking its lawyers to take action against [Cardin licensee's customer 1]²¹⁵.

Events

- (120) In an email from June 2014, Ahlers complained to Cardin about [Cardin licensee's customer 1]'s low-priced sales, including online sales, in various EEA territories for which Ahlers' held a licence, and called on Cardin to put an end to such sales (translation from German, emphasis added):

"[Cardin licensee's customer 1] not only sells over the internet, but also has stationary sales points in the Czech Republic. [...] It's not acceptable at all that [Cardin licensee's customer 1] is selling shirts, pullover, Jeans, Polo shirts etc. within our licensed area. Moreover, and even worse, [Cardin licensee's customer 1] sells low-quality products under the name Pierre Cardin at very low prices. [...] [Cardin licensee's customer 1] is also active in other countries for which we have exclusive licensing rights, such as Germany, Hungary and Poland. [...] I urge you to prohibit [Cardin licensee's customer 1] from selling pullovers, polo shirts,

²¹³ See ID 353-20 and Agreement with [Cardin licensee 8] of 12 December 2014 – ID 155-136.

²¹⁴ Austria, Belgium, Bulgaria, Croatia, Czechia, Denmark, Finland, France, Germany, Hungary, Luxembourg, Netherlands, Poland, Slovakia, Slovenia, Sweden. See ID 353-20

²¹⁵ See recitals (128) *et seq.*

sweatshirts, shirts and jeans in the Czech Republic, but also in the other countries."²¹⁶

- (121) A letter of July 2014 shows Ahlers complaining to Mr Cardin about [Cardin licensee's customer 1]'s sales in Ahlers' licensed territories and asking him to intervene to stop "deliveries" by other licensees to [Cardin licensee's customer 1]. The letter read as follows (translation from French, emphasis added):

*"We observe with great concern the commercial activities of [Cardin licensee's customer 1]. Indeed, the company not only markets PIERRE CARDIN products in England, but also in Germany, Austria, Poland, Hungary and Czechia. In addition, the company also markets its products via the internet in almost all of our licensing territory. [...] Since [Cardin licensee's customer 1] is apparently supplied by [Cardin licensee 2] in England or [Cardin licensee 8], we ask you to intervene to stop these deliveries to [Cardin licensee's customer 1]".*²¹⁷

- (122) An internal note drafted by [Ahlers management] from August 2014 (a few months before [Cardin licensee 8] was granted licensing rights by Cardin²¹⁸) in preparation for a meeting with Cardin reflects Ahlers' intention to again flag to Cardin its discontent about the sales of Pierre Cardin-licensed products by [Cardin licensee's customer 1]. It shows that Ahlers was concerned about the fact that [Cardin licensee's customer 1] would be the main customer of [Cardin licensee 8]²¹⁹. The wording of the note also reveals that Ahlers was aware of the fact that limiting (online) sales by customers of licensees was not in line with competition law and that it planned to respond with royalty deductions *vis-à-vis* Cardin if [Cardin licensee's customer 1]'s sales continued (translation from German, emphasis added):

²¹⁶ Original text reads: "*dass [Cardin licensee's customer 1] nicht nur über das Internet verkauft, sondern auch stationäre Verkaufspunkte in Tschechien hat. [...] Es ist vollkommen inakzeptabel, dass [Cardin licensee's customer 1] Hemden, Pullover, Jeans, Polos, etc. in unserem Lizenzgebiet verkauft. Darüber hinaus und noch viel schlimmer ist es, dass [Cardin licensee's customer 1] qualitativ minderwertige Produkte unter dem Namen Pierre Cardin zu sehr niedrigen Preisen verkauft. [...] [Cardin licensee's customer 1] ist auch in weiteren Ländern tätig, für die wir die exklusiven Lizenzrechte haben wie z.B. Deutschland, Ungarn und Polen. Ich bitte Sie hiermit dringend, [Cardin licensee's customer 1] den Verkauf von Pullovern, Polo-Shirts, Sweatshirts, Hemden und Jeans in Tschechien aber auch in den anderen Ländern zu verbieten*". Email of 12 June 2014 from [Ahlers management], via [assistant to Ahlers management 1], to [Cardin licensing director 1], via Cardin's assistant ([assistant to Cardin management]) – ID 155-500.

²¹⁷ Original text reads: "*Nous observons avec grande inquiétude les activités commerciales de la société [Cardin licensee's customer 1]. En effet, cette société ne se contente pas de commercialiser les produits PIERRE CARDIN en Angleterre, mais également en Allemagne, Autriche, Pologne, Hongrie et Tchéquie. De surcroît, cette société commercialise également ses produits par internet sur la quasi-totalité de notre territoire de licence. [...] Puisque la société [Cardin licensee's customer 1] est visiblement livrée par la société [Cardin licensee 2] en Angleterre ou par la société [Cardin licensee 8], nous vous demandons d'intervenir pour faire cesser ces livraisons à la société [Cardin licensee's customer 1]*". Letter of 18 July 2014 from [Ahlers management] to Mr Cardin – ID155-30 (p. 21).

²¹⁸ The licence agreement between Cardin and [Cardin licensee 8] entered into force on 1 January 2015.
²¹⁹ Ahlers opposed the grant of a licence by Cardin to [Cardin licensee 8] and expressed its discontent about this licence to Cardin on several occasions. Ahlers saw high risks in licensing Pierre Cardin rights to [Cardin licensee 8] and accused [Cardin licensee 8] of an (translation from French) "[...] aggressive discount policy [...] detrimental to the image of the Pierre Cardin brand [...]". See Email of 16 September 2014 from [Ahlers management], via [assistants to Ahlers management], to Mr Cardin, via his assistant ([secretary to Cardin management 2]) – ID 155-169; Letter of 2 October 2014 from [Ahlers management] to Mr Cardin– ID 155-7.

“Objectives of the meeting: [...] 2.who is currently supplying [Cardin licensee’s customer 1]? What is the relationship between [Cardin licensee’s customer 1] and [Cardin licensee 8]? 3.raise awareness that [Cardin licensee 8] is not a licensing partner for Cardin. [...] The main customer is probably [Cardin licensee’s customer 1]. [...] Because of the weak price level, some brands no longer want to supply [Cardin licensee’s customer 1] [...] Even if Cardin were to prohibit [Cardin licensee 8] from trading online, [Cardin licensee’s customer 1] would still be able to sell PC merchandise online, as this can no longer be prohibited today for reasons of antitrust law. [...] If [Cardin’s licensing director] were to grant the licence to [Cardin licensee 8], they would actually have to advise me [Ahlers management] to stop paying the licence fees as long as [Cardin licensee’s customer 1] continues its activities in Europe”²²⁰

- (123) In December 2014, Cardin and [Cardin licensee 8] entered into a licence agreement for the period 2015-2019 for Ireland and the UK²²¹. This agreement explicitly allowed passive sales to customers located within the EEA but outside [Cardin licensee 8]’s licensed territory and even authorized [Cardin licensee 8] to assign rights under the agreement specifically to [Cardin licensee’s customer 1]²²².
- (124) Despite the provisions included in this agreement, Ahlers continued to complain to Cardin about sales by [Cardin licensee’s customer 1] (as a customer of [Cardin licensee 8]) in its licensed territories and called on Cardin to intervene to protect its territorial exclusivity. The correspondence on file shows no sign of Cardin or Ahlers attempting to ascertain whether [Cardin licensee’s customer 1]’s sales were active or passive in nature. On the contrary, the evidence shows that Ahlers continued to complain about all sales by [Cardin licensee’s customer 1] in or into Ahlers’ licensed territories. When replying to these complaints, Cardin showed that it shared Ahlers’ concerns in this respect and ultimately took action to dissuade [Cardin licensee’s customer 1] from selling into Ahlers’ licensed territories.
- (125) In this context, by letter of March 2015, Ahlers wrote to Cardin requesting the latter to urge [Cardin licensee’s customer 1] and its supplier, [Cardin licensee 8], to stop all sales in Ahlers’ territories (emphasis added):

“Last year we were promised that [Cardin licensee 8] will sell Pierre Cardin Products only in their licensed territories, i.e. England, Scotland and Ireland. Unfortunately we have to realize that [Cardin licensee 8]/[Cardin licensee’s customer 1] do not stick to the contractual agreements. We have been informed by

²²⁰ Original text reads: “Ziele des Treffens: [...] 2.wer beliefert aktuell [Cardin licensee’s customer 1]? Wie ist die Beziehung zwischen [Cardin licensee’s customer 1] und [Cardin licensee 8]? 3. sensibilisieren, dass [Cardin licensee 8] kein Lizenzpartner für das Haus cardin ist. [...] Hauptabnehmer dürfte [Cardin licensee’s customer 1] sein [...] Wegen des schlechten Preisniveaus wollen manche marken [Cardin licensee’s customer 1] nicht mehr beliefern [...] Auch wenn das Haus cardin [Cardin licensee 8] den online Handel verbieten würde, könnte [Cardin licensee’s customer 1] trotzdem PC ware online vertreiben, da man das heute aus kartellrechtlichen Gründen nicht mehr verbieten kann. [...] Wenn [Cardin licensing director 2] die Lizenz an [Cardin licensee 8] geben sollte, müssten sie mir eigentlich empfehlen, die lizenzgebühren nicht mehr zu bezahlen solange [Cardin licensee’s customer 1] seine Aktivitäten in Europa fortsetzt.” Ahlers’ internal email of 28 August 2014 from [Ahlers management] to Ahlers’ assistant [assistant to Ahlers management 2] – ID 155-470.

²²¹ Agreement with [Cardin licensee 8] of 12 December 2014 – ID 155-136.

²²² Despite the wording of the agreement, [Cardin licensee’s customer 1] confirmed it had not been the recipient of an assignment of rights under [Cardin licensee 8] licence agreement with Cardin. See ID 641.

our customers that Pierre Cardin products are still available in [Cardin licensee's customer 1]. Our investigations have shown that there is a lot of Pierre Cardin merchandise which is sold in Belgium, the Netherlands and Poland. [...] Besides the fact that [Cardin licensee 8]/[Cardin licensee's customer 1] are selling Pierre Cardin products outside their licensed territories, it is also extremely annoying, that they only sell products of particularly low quality and for very low prices. [...] We kindly request you to ask [Cardin licensee 8]/[Cardin licensee's customer 1] to stop the distribution of Pierre Cardin products in our licensed territories immediately." ²²³

- (126) Ahlers made a similar request to Cardin by letter of May 2015, in which it also highlighted that it had sent Cardin information on such imports on several occasions, with requests to intervene against such sales (translation from German, emphasis added):

"[A]ttention should be drawn to the disruption by [Cardin licensee's customer 1] or the products of the English licensee [Cardin licensee 8]. Apart from the fact that these products are sold in bulk in breach of the contract in our licensed areas, it has been and is particularly disturbing that they are of very poor quality and are sold at very low prices. [...] We have sent you and your colleagues, [Cardin independent commercial agent 2] and [Cardin licensing director 2], the relevant documentation on illegal imports of [four Cardin licensees] and [Cardin licensee 8]/[Cardin licensee's customer 1] on several occasions, with a request to put an end to this infringement. [...] In order to achieve further substantial growth in turnover in the future, the distribution activities of the Italian companies and [Cardin licensee 8]/[Cardin licensee's customer 1] must be stopped as a matter of urgency." ²²⁴

- (127) In an email of 10 September 2015, Ahlers reiterated its request to Cardin to stop [Cardin licensee's customer 1]'s sales in Ahlers' licensed territories (translation from French, emphasis added):

"Such sales of products under the Pierre Cardin brand in [Cardin licensee's customer 1] shops in areas where we have an exclusive licence are unacceptable. [...] Consequently, in your capacity as grantor of Pierre Cardin licences, we kindly request you to immediately stop such acts committed by [Cardin licensee's customer 1] and its supplier [Cardin licensee 8], a licensee of the Pierre Cardin brand" ²²⁵

²²³ Letter of 11 March 2015 from [Ahlers management] to [Cardin licensing director 2] – ID 155-394.

²²⁴ Original text reads: „[...] ist auf die Störungen von [Cardin licensee's customer 1] bzw. die Ware des englischen Lizenznehmers [Cardin licensee 8] hinzuweisen. Abgesehen davon, dass diese Produkte massenhaft vertragswidrig in unseren Lizenzgebieten verkauft werden, war und ist es besonders störend, dass diese von sehr minderwertiger Qualität sind und zu Tiefstpreisen verkauft werden. [...] Entsprechende Dokumentationen über widerrechtliche Importe von [four Cardin licensees] sowie [Cardin licensee 8]/[Cardin licensee's customer 1] haben wir Ihnen sowie Ihren Kollegen [Cardin independent commercial agent 2] und [Cardin licensing director 2] verschiedentlich zukommen lassen mit der Aufforderung, dieses vertragswidrige Verhalten abzustellen. [...] Um in der Zukunft weitere substantielle Umsatzzuwächse zu erreichen, müssen die Vertriebsaktivitäten der italienischen Firmen und von [Cardin licensee 8]/[Cardin licensee's customer 1] dringend konsequent gestoppt werden. ". Letter of 22 May 2015 from [Ahlers management] to [Cardin licensing director 1] – ID 155-462.

²²⁵ Original text reads: « De telles ventes de produits sous la marque Pierre Cardin dans les boutiques [Cardin licensee's customer 1] sur des territoires où nous disposons d'une licence exclusive, sont inacceptables. [...] En conséquence, en votre qualité de concédant des licences Pierre Cardin, nous vous invitons à bien vouloir faire cesser immédiatement de tels agissement perpétrés par la société [Cardin licensee's customer 1] et son fournisseur [Cardin licensee 8], licencié de la marque Pierre Cardin. ». Email of 10 September 2015 from [Ahlers management], via [assistant to Ahlers management 1], to Cardin's assistant ([assistant to Cardin management]) – ID 155-503.

- (128) These actions by Ahlers are also reflected in minutes from an Ahlers' internal meeting of 18 September 2015. These show that (i) Ahlers had sent information on the sales by [Cardin licensee's customer 1] into Ahlers' territories to Cardin and urged the latter to put an end to such sales and that (ii) Ahlers' understanding was that Cardin had engaged a lawyer to this effect²²⁶ (translation from German, emphasis added):
- "Regarding Pierre Cardin Licensing Agreements, [Ahlers management] reported on the massive market disruptions caused by the English licensee [Cardin licensee's customer 1], which illegally sells cheap, low-quality Pierre Cardin products on the German market. These activities of [Cardin licensee's customer 1] have been documented and sent to Paris with the request to immediately stop the cheap imports. In the meantime, Cardin has engaged a lawyer and promised a meeting with Mr Cardin in October in order to discuss this sorrowful topic."*²²⁷
- (129) A few days later, on 23 September 2015, Cardin's lawyers sent a letter to [Cardin licensee's customer 1]. In this letter, they (i) claimed that [Cardin licensee's customer 1] was selling Pierre Cardin-licensed products in Spain (a territory covered by Ahlers' licence at the time) *"without the corresponding license and without having purchased the products from an authorized licensee in Spain"* (emphasis added); (ii) urged [Cardin licensee's customer 1] to stop such sales; and (iii) threatened to take the matter to Court²²⁸. By letter of 25 September 2015, [Cardin licensee's customer 1] replied and confirmed having bought the products at issue from Cardin's licensee for the UK and Ireland²²⁹. Cardin forwarded its lawyers' letter of 23 September 2015 to Ahlers, together with [Cardin licensee's customer 1]'s reply and stated: *"We will see how to continue our pressure [against [Cardin licensee's customer 1]]."*²³⁰
- (130) In October 2015, Cardin's lawyers sent another letter to [Cardin licensee's customer 1], which contained almost identical wording to the letter sent on 23 September

²²⁶ See recitals (287) to (289), which rebut Cardin's argument that Cardin's actions against [Cardin licensee's customer 1] were not a concerted practice.

²²⁷ Original text reads: „Im Zusammenhang mit den Pierre Cardin Lizenzverträgen berichtet [Ahlers management] über die massiven Marktstörungen durch den englischen Lizenznehmer [Cardin licensee's customer 1], der minderwertige Billigware der Marke Pierre Cardin illegal auf dem deutschen Markt vertreibt. Man habe eine Dokumentation über die Aktivitäten von [Cardin licensee's customer 1] erstellt und nach Paris weitergeleitet mit der Aufforderung, diese Billigimporte unverzüglich zu stoppen. Das Haus Cardin habe in der Zwischenzeit einen italienischen Rechtsanwalt eingeschaltet und ein Treffen mit Herrn Cardin im Oktober in Paris in Aussicht gestellt, um dieses unerfreuliche Thema zu besprechen." Minutes of Ahlers' audit committee of 18 September 2015 – ID 155-472.

²²⁸ *"According to our data, you are selling, to Spanish customers, products bearing the trademark "Pierre Cardin" without the corresponding license and without having purchased the products to an authorized licensee in Spain. Correspondingly we shall request you to stop selling those products bearing the trademark "Pierre Cardin", without having the proper license. Given the case that in a 15 days term, we did not receive any response with regard to the abovementioned query, we would have to bring this issue to Court, so we reserve any action and right to initiate any court proceeding that we may be entitled to".* Letter of 23 September 2015 from [Cardin lawyer 2] to [Cardin licensee's customer 1] – ID 882. See recital (360), which rebuts Cardin's argument that Cardin's actions against [Cardin licensee's customer 1] did not have as an objective to restrict out-of-territory passive sales.

²²⁹ Letter of 25 September 2015 from [Cardin licensee's customer 1] to [Cardin lawyer 2] – ID 155-8130. See recital (360), which rebuts Cardin's argument that Cardin's actions against [Cardin licensee's customer 1] did not have as an objective to restrict out-of-territory passive sales.

²³⁰ Email of 16 November 2015 from [Cardin independent commercial agent 1] to [Ahlers management] via [assistants to Ahlers management] – ID 155-8130 (p. 21).

2015²³¹ (see recital (129)). In November 2015, Cardin’s lawyers addressed another letter to [Cardin licensee’s customer 1] in which they asked [Cardin licensee’s customer 1] to identify the licensee the latter had mentioned in its reply of 25 September 2015 and reiterated their request to stop the sales of Pierre Cardin-licensed products²³². These two letters were forwarded by Cardin to Ahlers shortly after they were sent²³³.

- (131) Correspondence from February 2016 shows that Ahlers not only continued to complain about sales by [Cardin licensee’s customer 1] in its licensed territories but also used such sales as a justification for withholding royalties due to Cardin²³⁴ (emphasis added):

*“Unfortunately the imports of very cheap shirts, poloshirts, pullovers and sportswear into our licensed territories which are violating our license agreements also continue unabated. Responsible for these cheap offers [...] of course to a large extent also [Cardin licensee 8], [Cardin licensee 8] sell their products not only online (1026! products are currently available in each European online shop of [Cardin licensee’s customer 1]), but also in the magazines of them all over Europe. [...] Thus the exclusivity ensured by our license agreements is extremely violated. Therefore we have reduced the royalties for some license contracts”*²³⁵.

- (132) [Cardin licensee’s customer 1]’s sales and the complaints from Ahlers about such sales nevertheless continued, as an internal Ahlers’ email from May 2016 shows. This email included a draft email to be sent by Ahlers to [Cardin licensee 8], in which Ahlers intended to highlight the importance of finding “*a solution for the Pierre Cardin products sold outside the permitted territories especially in the Baltic States, Poland and Czech Republic directly or indirectly through [Cardin licensee’s customer 1]*”²³⁶.
- (133) In January 2017, Cardin followed up on Ahlers’ royalty deductions for 2016 (see recital (131)) and asked for further explanations from Ahlers in this regard. By email of February 2017, Ahlers replied by restating its reasons for the deductions, one of these being the sales into its licensed territories originating from [Cardin licensee 8]: “[Cardin licensee 8], *which sells its products through [Cardin licensee’s customer 1] and several importers in [Ahlers’] licenced territories*”. Cardin expressed sympathy with Ahlers’ concerns and ultimately accepted the royalty deductions, as shown by

²³¹ Letter of 29 October 2015 from [Cardin lawyer 2] to [Cardin licensee’s customer 1] – ID 883. The letter was incorrectly dated 23 September 2015, see ID 895.

²³² “We would be very grateful if you could inform us about who is the authorized licensee to whom you refer in your letter and who is selling to [Cardin licensee’s customer 1] all the products with the Pierre Cardin mark. [...] We would also like to reiterate our request to [Cardin licensee’s customer 1] to stop selling those products bearing the trademark “Pierre Cardin” which do not have the proper license, in particular in Spain[...].” Letter of 20 November 2015 from [Cardin lawyer 2] to [Cardin licensee’s customer 1] – ID 155-8130. See recital (360), which rebuts Cardin’s argument that Cardin’s actions against [Cardin licensee’s customer 1] did not have as an objective to restrict out-of-territory passive sales.

²³³ See emails of 2 and 23 November 2015 from [Cardin independent commercial agent 1] to [Ahlers management] – ID 155-8130. See recitals (288) and (289), which rebut Cardin’s argument that Cardin’s actions against [Cardin licensee’s customer 1] were not a concerted practice.

²³⁴ Ahlers’ threats to reduce the contractually-agreed royalties in order to put pressure on Cardin to enforce the out-of-territory sales restrictions are described in Section 6.2.2.1.

²³⁵ Email of 11 February 2016 from [Ahlers management], via [assistant to Ahlers management 1], to Cardin’s assistant ([secretary to Cardin management 1]) – ID 155-196.

²³⁶ Internal email of 30 May 2016 from [Ahlers management] to [Ahlers management] – ID 155-461.

the following email of February 2017 (emphasis added): “*Mr Cardin has been informed of your email. He feels obviously very concerned about all these issues and he wishes to recall that we are trying our best to fight against parallel market and unfair selling methods through legal procedures. Therefore he consents to approve the withheld amounts on the royalties 2016. I have then issued credit notes on all the unsettled 2016 invoices*”²³⁷.

- (134) In an email to Cardin dated November 2018, Ahlers still complained about “*the serious problem of parallel imports*”, mentioned sales by [Cardin licensee’s customer 1] in Austria as one of the examples of such sales and concluded by mentioning: “*This is totally unacceptable*”.²³⁸ These sales concerned Pierre Cardin-licensed jeans, shirts and t-shirts. These products were included in Ahlers’ exclusive licence for Austria in force at the time.²³⁹
- (135) Ahlers continued to complain to Cardin about sales by [Cardin licensee’s customer 1] in 2021. During this period the licences of [Cardin licensee’s customer 1]’s previous suppliers ([two Cardin licensees]) had expired and [Cardin licensee’s customer 1] was selling products that it had sourced from [Cardin licensee 8] in 2019, i.e. they were stock left over from the period when [Cardin licensee 8] was still a licensee²⁴⁰.
- (136) On 8 February 2021, Ahlers’ agent for [...] informed several Ahlers’ employees about sales by [Cardin licensee’s customer 1] of Pierre Cardin-licensed products in Spain. He indicated that he had already informed Cardin’s agent for Spain about the matter and asked the addressees of the email to contact [Ahlers management] to “*coordinate immediate steps with Paris*”.²⁴¹ One of the addressees forwarded the email to [Ahlers management] and stated: “*if you could build up pressure in Paris that would definitely be good*”.²⁴²
- (137) In another email of 18 February 2021, Ahlers complained to Cardin about the “great disaster that [Cardin licensee’s customer 1] has just now opened a new store in the [...]”²⁴³.

²³⁷ Email exchange between Cardin’s assistant ([secretary to Cardin management 1]) and [Ahlers management], via [assistant to Ahlers management 1] between 2 February 2017 and 15 February 2017 – ID 155-516.

²³⁸ Email of 29 November 2018 from [Ahlers management], via [assistant to Ahlers management 1], to [Cardin licensing director 3] – ID 155-463.

²³⁹ See ID 353-20.

²⁴⁰ In an email dated April 2021, Cardin informed Ahlers that [Cardin licensee’s customer 1] had informed Cardin that the products sold during the period in question had been purchased from [Cardin Licensee 8] inventory before the end of 2019. See Email of 1 April 2021 from [Cardin licensing director 3] to [Ahlers management], via ([assistant to Ahlers management 2], and Email of 31 March 2021 from [Ahlers management], via [assistant to Ahlers management 2], to [Cardin licensing director 3] – ID 155-173.

²⁴¹ Original text reads: “*Ich bitte Sie [Ahlers management] zu informieren um sofortige schritte mit paris zu koordinieren. Ich habe meinerseits [Cardin independent commercial agent 1] heute informiert.*”. Ahlers’ internal email exchange of 8 and 9 February 2021 between [...] and Ahlers’ employees – ID 155-252.

²⁴² Original text reads: “[W]enn Sie Druck in Paris aufbauen könnten, wäre das bestimmt gut.” Ahlers’ internal email exchange of 8 and 9 February 2021 between an Ahlers’ employee and [Ahlers management] – ID 155-252.

²⁴³ Email of 18 February 2021 from [Ahlers management], via [assistant to Ahlers management 2], to [Cardin licensing director 3] – ID 155-335.

- (138) In reply to this email, on 19 February 2021, Cardin’s agent for Spain showed his willingness to act against [Cardin licensee’s customer 1] by stating: *“I’m ready to help in this big problem(how?)”*. On 20 February 2021, Cardin’s licensing director replied to the same Ahlers’ email as follows: *“we are working with our lawyers to write to [Cardin licensee’s customer 1].”*²⁴⁴
- (139) By email of 31 March 2021, Ahlers asked Cardin for news regarding [Cardin licensee’s customer 1]’s activities in Spain²⁴⁵. A few days later, in April 2021, Cardin replied as follows (emphasis added):
- “Regarding Spain, we asked [Cardin licensee’s customer 1] via our lawyer and they told us they ordered a stock from [Cardin licensee 8] before the end of 2019. We are therefore discussing with our lawyer to find another solution to limit these sales as quickly as possible.”*²⁴⁶

6.1.2.2.2.2. [...]

- (140) Another instance of coordinated actions by Ahlers and Cardin against any out-of-territory sales by customers of Cardin’s licensees or customers of the latter concerned [...]. [Cardin licensee 9] was a licensee of Cardin between 2010 and 2015. However, its licence only granted rights for the manufacture and distribution of underwear for men and pyjamas for men and women²⁴⁷. Evidence on file shows that at various times [...] also acted as a customer of other Cardin licensees or as a customer of Cardin’s licensees’ customers and sold into Ahlers’ exclusive territories.
- (141) On 10 March 2014, Cardin warned [...] about out-of-territory sales of sweaters into the Netherlands, when the latter acted as a customer of [Cardin licensee’s customer 1], which was a customer of Cardin’s licensee for Ireland and UK²⁴⁸. At the time, Ahlers had licensing rights for the manufacture and distribution of sweaters in the Netherlands²⁴⁹. Cardin forwarded this email to Ahlers:
- “You said that you bought a lot of “pullovers” to England ([Cardin licensee’s customer 1] ?) and that you sold them to Holland. [...] why you operate in Holland with “tricot Pierre Cardin” if you don’t have the licence? Please, explain me because it’s a clear forbidden action”*²⁵⁰
- (142) Correspondence from 11 March 2014 shows Ahlers expressing its discontent to Cardin about another instance in which [...] appears to have sold Pierre-Cardin licensed products into Ahlers’ licensed territory having sourced them from the customers of another Cardin licensee (emphasis added):

²⁴⁴ Email of 20 February 2021 from [Cardin licensing director 3] to [Ahlers management], via [assistant to Ahlers management 2]; Email of 19 February from [Cardin independent commercial agent 1] to [Ahlers management], via [assistant to Ahlers management 2] – ID 155-335 and 155-336.

²⁴⁵ Email of 31 March 2021 from [Ahlers management], via [assistant to Ahlers management 2], to [Cardin licensing director 3] – ID 155-173.

²⁴⁶ Email of 1 April 2021 from [Cardin licensing director 3] to [Ahlers management], via [assistant to Ahlers management 2] – ID 155-173.

²⁴⁷ See footnote 74 and ID 353-20.

²⁴⁸ In 2014, [Cardin licensee 2] had the license for knitwear, including sweaters, in Ireland and the UK. See ID 353-20.

²⁴⁹ See ID 353-20.

²⁵⁰ Email of 10 March 2014 from [Cardin independent commercial agent 1] to [...] – ID 155-487.

“[Cardin licensee 9] admitted that he already once broke the rules by buying poloshirts from [Cardin licensee’s customer 1] and reselling them into a territory where he has no distributionrights. This kind of behaviour is very worrying.”²⁵¹

- (143) In the meantime, Cardin urged [...] to cease all out-of-territory sales of Pierre Cardin-licensed products as a customer of other Cardin licensees. Correspondence from 19 May 2014 shows Cardin pressing [...], to stop sales in Germany (Ahlers’ licensed territory) and admitting that the restrictions included in its agreements were not in line with EU law (translation from French, emphasis added):

“In the meantime, you have to stop your illegal sales, [...]. The fact that there is a discrepancy between European law and our contracts does not mean that you have to act “stealthily”. Take a step back, [...], regarding your sales in Germany and others. It will be better for all, also for me.”²⁵²

- (144) Correspondence from August 2016 shows that Ahlers’ complaints to Cardin about [...] sourcing products from other licensees and reselling them into Ahlers’ licensed territories continued (emphasis added):

“It looks as if [...] has bought the merchandise by itself as this time it is obviously no merchandise made by [Cardin licensee 8] or bought from [Cardin licensee’s customer 1]. It is completely unacceptable for us that [...] keeps on distributing their cheap merchandise in our exclusive licensed territories”²⁵³

- (145) Similar complaints by Ahlers about [...] engaging in out-of-territory sales as a customer of other Cardin licensees continued until at least March 2021. An email from this time shows Ahlers informing Cardin about sales of cheap jeans in Germany by [...], as a customer of [Cardin licensee 8]. Ahlers also indicated to Cardin that it had communicated this information to the (common) lawyer of Cardin and Ahlers, [Ahlers and Cardin common lawyer] (emphasis added):

“Here in Germany this week we have found Pierre Cardin jeans sold for 1,99 euros at the German discounter [...] (2.500 stores). [...] On the first view the jeans look like as they come from [Cardin licensee 8], the GTIN number shows [...] as distributor. We already shared this information with [Ahlers and Cardin common lawyer]”²⁵⁴.

²⁵¹ Email of 11 March 2014 from [Ahlers sales manager 1] to Cardin’s assistant ([secretary to Cardin management 2]) – ID 155-32.

²⁵² Original text reads : « *Entretemps, tu dois arrêter tes ventes illégales, [...]. Le fait qu’il y ait un décalage entre la loi européenne et nos contrats ne veut pas dire que tu doives agir « furtivement ». Fais marche arrière, [...], sur tes ventes en Allemagne et autres. Ce sera mieux pour tous, aussi pour moi.* ». Email of 19 May 2014 from [...] to [...] – ID 5-9. In its reply to the SO, Cardin confirms that this complaint concerned products that [...] had purchased from other Cardin licensees, see paragraph 107 of Cardin’s reply to the SO. See also recital (356), which rebuts Cardin’s argument that its actions against [...] did not have as an objective to restrict out-of-territory sales.

²⁵³ Email of 23 August 2016 from [Ahlers management], via [assistant to Ahlers management], to [Cardin independent commercial agent 1] – ID 155-118.

²⁵⁴ Pierre Cardin 1st semester 2021 – Email of 31 March 2021 from [Ahlers management], via her assistant [assistant to Ahlers management 2], to [Cardin licensing director 3] – ID 155-149. Although [Cardin licensee 9] was a Cardin licensee from 2010 to 2017, [Cardin licensee 9] did not hold any licence for Pierre Cardin jeans. Therefore, in the episode reflected in this email, the [...] group seems to have acted as a customer of [Cardin licensee 8] and not as a licensee.

- (146) By email of April 2021, Cardin replied to Ahlers by requesting pictures of the products in question and indicating that they would also reach out to their common lawyer ([Ahlers and Cardin common Lawyer]²⁵⁵).

6.1.2.2.2.3. [Cardin licensee's customer 2]

- (147) On 11 April 2016, Cardin's lawyers urged the Spanish retailer [Cardin licensee's customer 2] to stop selling Pierre Cardin-licensed products (namely, men's t-shirts, shirts and polo shirts), on the ground that it was not a Cardin licensee and had not acquired the products from a Cardin licensee holding the rights to sell in Spain, and threatened to take further action²⁵⁶, should the request to stop such sales be ignored. In 2016, Ahlers held licensing rights for the manufacture and distribution of a number of Pierre Cardin-licensed products in Spain, including shirts²⁵⁷. The wording of the letter of 11 April 2016 does not reveal any attempt to determine whether the products at issue had resulted from active or passive sales. This letter read as follows (translation from Spanish):

*"According to our information, the "[Cardin licensee's customer 2]" shop is selling various products of the Pierre Cardin brand in Spain without holding a corresponding licence or acquiring them from the exclusive licensee for Spain. [...] Hereby, we expressly ask you to stop the sale of Pierre Cardin products and we reserve our right to take further action against you for the sale of these products, which we will be obliged to do should you, again, ignore this request."*²⁵⁸

- (148) A few days later, on 25 April 2016, Cardin forwarded the correspondence mentioned in paragraph (147) to Ahlers and stated: *"I hope that our pushing will be useful"*²⁵⁹.

6.1.3. *Restriction of the customers to whom Cardin licensees (and their customers) could sell*

- (149) From at least January 2008 until at least July 2019, Cardin included in agreements with its licensees (including Ahlers) contractual clauses that aimed to restrict the customers to whom Cardin's licensees could sell Pierre Cardin-licensed products in the EEA (see Section 6.1.3.1). These clauses excluded from Cardin's licensees' customer base mainly low-price retailers such as duty-free stores, supermarkets or

²⁵⁵ Email of 1 April 2021 from [Cardin licensing director 3] to [Ahlers management], via [assistant to Ahlers management 2] – ID 155-173.

²⁵⁶ See recital (361), which rebuts Cardin's argument that its actions against [Cardin licensee's customer 2] did not have as an objective to restrict out-of-territory sales.

²⁵⁷ See Agreement with Ahlers of 9 June 2013 – ID 155-35 (p. 227). This agreement covered ready-to-wear, sportswear and shirts for men. In addition, Ahlers' also held licensing rights for knitted shirts, sweaters and denim and jeans pants for men in Spain in 2016. See ID 353-20.

²⁵⁸ Original text reads: *"Según nuestra información, desde su tienda "[Cardin licensee's customer 2]" se están comercializando diversos productos de la marca Pierre Cardin en España [...] sin disponer de la correspondiente licencia ni haber adquirido los mismo al licenciatario exclusivo para España [...] Sirva la presente para hacer constar el requerimiento expreso de cese en sus actividades de comercialización de productos PIERRE CARDIN, así como para hacer expresa reserva de las acciones que nos pudieran corresponder contra Ustedes por la comercialización de estos productos, las cuales nos veremos en la obligación de ejercitar, en el caso de que, de nuevo, se haga caso omiso de este requerimiento"*. Letter of 11 April 2016 from [Cardin lawyer 2] to retailer [Cardin licensee's customer 2] – ID 155-200. See also recital (361), which rebuts Cardin's argument that its actions against [Cardin licensee's customer 2] did not have as an objective to restrict out-of-territory sales.

²⁵⁹ Email of 25 April 2016 from [Cardin independent commercial agent 1] to [Ahlers sales manager 1] – ID 155-199.

other discounters. Ahlers included similar clauses in its sub-licence agreement with [Ahlers sublicensee] (see recitals (168) and (169)).

- (150) In addition, from at least February 2009 to at least September 2018, Cardin and Ahlers engaged in coordinated actions to ensure that other Cardin licensees and their customers did not sell to specific retailers offering low prices in Ahlers' licensed territories (see Section 6.1.3.2). These actions were taken without there being a selective distribution policy in place²⁶⁰, and without Cardin/Ahlers²⁶¹ having reserved specific customer groups for itself or having allocated them exclusively to other licensees²⁶²/sub-licensees.

6.1.3.1. Contractual clauses

6.1.3.1.1. Cardin and its licensees (other than Ahlers)

- (151) The agreements between Cardin and 9 of its licensees ([...]) contained restrictions on the customers to which the licensee could sell.

- (152) Cardin's licence agreements with [Cardin licensee 2] included clauses explicitly **preventing the licensee from selling to certain types of customers**, namely duty-free shops. These clauses provided as follows:

*"The Duty Free Shops (airports, airline and maritime Companies) are excluded from the present agreement"*²⁶³

- (153) Licence agreements entered into by Cardin with [four Cardin licensees], as well as Cardin's licensing templates used until 2016, included clauses **making sales to duty-free shops conditional upon approval by the licensor**. Such clauses typically provided as follows (translation from French, emphasis added):

*"Sales in duty-free shops are excluded [from the agreement] unless the licensor agrees in writing."*²⁶⁴

²⁶⁰ Not only did Cardin not have a selective distribution system in place (see recital (56)), it also did not include in its agreements with licensees any criteria that would indicate when a customer would be considered compatible with the Pierre Cardin brand. Even in instances where it terminated licences due to sales by the licensee to customers not deemed compatible with the brand, Cardin did not specify which criteria such customers should have complied with. This further confirms that there was no selective distribution system in place. Furthermore, Cardin did not take other steps to ensure that the image and/or quality of Pierre Cardin-licensed products was preserved, see recitals (364) to (367).

²⁶¹ In its capacity as sub-licensor vis-à-vis [Ahlers sublicensee], Ahlers neither reserved specific customer groups for itself nor allocated them exclusively to other sub-licensees.

²⁶² An exception to this is the licence for [...], for which Cardin granted one licensee, [...], exclusive rights for sales to duty-free shops worldwide. However, no other Cardin licensee in the EEA had licensing rights to manufacture and/or distribute this category of product. See ID 353-20.

²⁶³ Agreement with [Cardin licensee 2] of 29 February 2008 – ID 209; Agreement with [Cardin licensee 2] of 29 February 2008 – ID 169; Agreement with [Cardin licensee 2] of 01 July 2008 – ID 207; Agreement with [Cardin licensee 2] of 01 July 2008 – ID 171; Agreement with [Cardin licensee 2] of 21 October 2011 – ID 170; Agreement with [Cardin licensee 2] of 21 October 2011 – ID 230; Agreement with [Cardin licensee 2] of 21 May 2013 – ID 168; Agreement with [Cardin licensee 2] of 18 December 2013 – ID 232; Agreement with [Cardin licensee 2] of 18 December 2013 – ID 173.

²⁶⁴ Original text reads: « *Les ventes en Duty-Free shops sont exclues sauf accord écrit du Concédant* ». See Cardin's Reply to RFI of 20 October 2021: Agreement with [Cardin licensee 11] of 8 September 2015 – ID 369. This type of clause was also included in two French licensing templates (one used until 2014 and another one used between 2014 and 2016) – ID 224 and ID 178. For examples of similar clauses in agreements with [...], see: Agreement with [Cardin licensee 3] of [...] – ID 1940; Agreement with [Cardin licensee 11] of 20 February 2013 – ID 357; Agreement with [Cardin licensee 9] of 15 October 2013 – ID 5-2; Agreement with [Cardin licensee 6] of 1 February 2012 – ID 546; Agreement with

- (154) Other licence agreements with [two Cardin licensees] included clauses explicitly **preventing sales to discounters and supermarkets**, such as (emphasis added):
“[T]he LICENSEE agrees not to distribute the licensed products carrying the PIERRE CARDIN trademark I) though distributorship networks which sell directly or indirectly to supermarkets, hypermarkets and hard discounts”²⁶⁵
- (155) At least two licence agreements with [Cardin licensee 12], which allowed online sales in the territory covered by the agreement, contained provisions that obliged the licensee to submit for Cardin’s approval all the websites on which the licensee wished to sell Pierre Cardin-licensed products and expressly **excluded the possibility of selling on outlet and discounter websites** (translation from French, emphasis added):
“The Licensee will propose to the Licensor the websites on which it would like to sell the products listed above. The Licensor shall approve in writing the proposed websites. It is agreed upon that outlet or discounters’ websites are excluded from this authorization”²⁶⁶
- (156) Cardin’s licence agreements with [two Cardin licensees] as well as Cardin’s French licensing template for the period 2014 to 2016, included a clause **allowing Cardin to prohibit licensees from selling to customers deemed incompatible with the prestige of the Pierre Cardin brand**, without specifying with which criteria such customers should comply. This clause provided as follows (translation from French):
“The Licensor may prohibit the sale of products in sales channels that are not compatible with the prestige attached to its name”²⁶⁷
- (157) The licence agreements that Cardin entered into with [five Cardin licensees] went further and **directly prohibited sales to such customers** (translation from French and [...], emphasis added):
“Consequently, the Licensee is not allowed to sell products i) in distribution networks that are not compatible with the standing of the Pierre Cardin brand and its reputation”²⁶⁸

[Cardin licensee 11] of 21 June 2010 – ID 367. See also Agreement with [Cardin licensee 9] of 15 October 2013 – ID 5-1, which made sales to duty free stores subject to an agreement between the parties.

²⁶⁵ Agreement with [Cardin licensee 9] of 2 January 2010 – ID 5-24. See also: Agreements with [Cardin licensee 3] [...] – ID 1937 and 1939.

²⁶⁶ Original text reads: « Le Licencié proposera au Concédant les sites marchands sur lesquels il désire commercialiser les produits mentionnés ci-dessus. Le Concédant devra valider par écrit les sites proposés. Il est d’ores et déjà convenu que les sites marchands de déstockage ou discounters sont exclus de cette autorisation ». See two Agreements with [Cardin licensee 12] of 20 June 2013 – ID 213 and 253; Amendment to Agreement with [Cardin licensee 12] of 15 February 2011 – ID 228.

²⁶⁷ Original text reads: « Le Concédant pourra interdire la vente d’articles dans les points de vente non compatibles avec le prestige attaché à son nom ». See Agreement with [Cardin licensee 9] of 21 December 2011 – ID 5-23. See also Agreement with [Cardin licensee 9] of 15 October 2013 – ID 5-1 which, in addition to this clause, also contains the clause described in recital (153) and Agreement with [Cardin licensee 11] of 8 September 2015 – ID 369. See also French template dated 2014 – ID 178.

²⁶⁸ Original text reads: « En conséquence, le Licencié s’interdit de distribuer les produits i) dans des réseaux de distribution non compatibles avec le standing de la Marque Pierre Cardin et sa notoriété ». See Agreement with [Cardin licensee 5] of [...] – ID 353-1; Agreement with [Cardin licensee 5] of [...] – ID 353-21; Agreement with [Cardin licensee 5] of [...] – ID 353-31; Agreement with [Cardin licensee 5] of [...] – ID 353-28. See also Agreement with [Cardin licensee 6] of 1 February 2012 – ID 546. The

*“SALES POINTS: No distribution and sales channels that are not prestigious or appropriate for the standing of the brand shall be used.”*²⁶⁹

- (158) By means of an amendment, Cardin introduced in three agreements with its licensee [Cardin licensee 7] a **list of specific retailers that were considered incompatible** with the standing of the Pierre Cardin brand and therefore could not be supplied, as follows:

*“The parties agree that [...] the companies [...] must be considered as being not compatible with the established standing of the brand of "Pierre Cardin" and its reputation.”*²⁷⁰

- (159) Cardin’s licence agreements with [two Cardin licensees], as well as its French licensing template from 2017²⁷¹, contained a clause allowing Cardin to impose economic **penalties if sales were made to customers that were not considered compatible with the prestige of the Pierre Cardin brand**, without specifying with which criteria such customers should comply. This clause provided as follows (translation from French, emphasis added): *“In the event of distribution or marketing in points of sale that are not compatible with the renown and prestige attached to the Brand by the Licensee or by one of its co-contractors, the Licensee irrevocably undertakes to pay the Holder a penalty of 25% of the turnover generated by this distribution or marketing operation, which may not be less than an amount of 50,000 per contravention found.”*²⁷²
- (160) The licence agreements mentioned in this Section 6.1.3.1.1 had all expired or had been replaced by July 2019 at the latest²⁷³.

6.1.3.1.2. Cardin and Ahlers

- (161) Ahlers also entered into licence agreements with Cardin that contained provisions imposing restrictions on the customers to which Ahlers could sell Pierre Cardin-licensed products.

same clause is also included in the template in French from 2017 – ID 179. See also Three agreements with [Cardin licensee 8] of 8 September 2009 – ID 1134-14, ID 1134-15 and ID 1134-16.

²⁶⁹ Original text reads: “[...]” See *Annex to Agreement with [Cardin licensee 1] of 1 June 2011 – ID 5-7. See also Annex to Agreement with [Cardin licensee 3] of [...] – ID 1940, which contains the following clause: « POINTS DE VENTE. Ne seront pas utilisés les réseaux de distribution et de vente sans prestige. Le licencié doit faire un effort pour utiliser les mêmes points de vente que les autres licenciés. »* translation from French: “*SALE POINTS: Non-prestigious distribution and sales networks shall not be used. The licensee must make an effort to use the same outlets as other licensees.*”) This agreement of [...] with [Cardin licensee 3] also includes the clause described in recital (153).

²⁷⁰ Amendment of 31 May 2010 to three licence agreements with [Cardin licensee 7] of 8 September 2009 – ID 1134-17. For the links between this amendment and Ahlers’ complaints to Cardin, see Sections 6.1.3.2.1 and 6.1.3.2.2.1.

²⁷¹ Template in French from 2017 – ID 179.

²⁷² Original text reads: « *En cas de distribution ou commercialisation dans des points de vente non compatibles avec la notoriété et le prestige attachés à la Marque par le Licencié ou par un de ses cocontractants, le Licencié s'engage irrévocablement à payer au Titulaire une pénalité de 25% du chiffre d'affaires réalisé par cette opération de distribution ou de commercialisation qui ne pourra être inférieure à un montant de 50.000 euros par contravention constatée* ». See Agreement with [Cardin licensee 5] of [...] – ID 353-1; Agreement with [Cardin licensee 5] of [...] – ID 353-21; Agreement with [Cardin licensee 5] of [...] – ID 353-31; Agreement with [Cardin licensee 5] of [...] – ID 353-28; Agreement with [Cardin licensee 11] of 5 September 2017 – ID 364.

²⁷³ See Cardin’s reply to the SO, paragraphs 173 and 174, Agreement of [...] with [Cardin licensee 3] – ID 1940 and ID 1125.

- (162) Ahlers entered into two agreements that explicitly **prevented sales to certain types of customers**, such as duty-free shops, unless the licensor (Cardin) agreed otherwise (translation from French, emphasis added):
- “Sales in duty-free shops are excluded [from the agreement] unless the licensor agrees in writing”²⁷⁴*
- (163) Two licence agreements between Cardin and Ahlers, which allowed online sales in the territory covered by the agreement, required Ahlers to submit for Cardin’s prior approval all websites on which it wished to sell Pierre Cardin-licensed products and expressly excluded the **right to sell on outlet and discounter websites** (translation from French, emphasis added):
- “The Licensee will propose to the Licensor the websites on which it would like to sell the products listed above. These sites will be subject to the Licensor’s written approval. It is agreed upon that outlet or discounters’ websites are excluded from this authorization”²⁷⁵*
- (164) A number of licence agreements between Cardin and Ahlers also allowed Cardin to prohibit, or directly prohibited, Ahlers from selling to customers deemed incompatible with the prestige of the Pierre Cardin brand, without specifying with which criteria such customers should comply. Such provisions read as follows (translation from French, emphasis added):
- “Furthermore, the Licensor reserves the right to prohibit the Licensee from selling the goods covered by the contract in certain points of sale which it considers not to be compatible with the prestige attached to his name”²⁷⁶*
- “Consequently, the Licensee is not allowed to sell products [...] in distribution networks that are not compatible with the standing of the Pierre Cardin brand and its reputation”²⁷⁷*
- (165) Two agreements between Cardin and Ahlers, as well as Cardin’s French licensing template from 2017²⁷⁸, also included clauses that allowed Cardin **to terminate the agreement in case of breach of the prohibition on sales to customers that were not compatible** with the prestige of the brand. In particular, these agreements

²⁷⁴ Original text reads: “Les ventes en Duty-Free shops sont exclues sauf accord écrit du Concédant”. Agreement with Ahlers of 14 April 2014 – ID 155-35 (p. 188). For a similar clause, see Agreement with Ahlers of 9 July 2013 – ID 155-35 (p. 227).

²⁷⁵ Original text reads: « Le Licencié proposera au Concédant les sites marchands sur les quels il désire commercialiser les produits mentionnés ci-dessus. Ces sites seront soumis à l'accord écrit du Concédant. Il est d'ores et déjà convenu que les sites marchands de déstockage ou discounters sont exclus de cette autorisation. ». Agreement with Ahlers of 14 November 2016 – ID 155-37 (p. 113) and Agreement with Ahlers of 20 December 2012 – ID 155-34 (p. 80).

²⁷⁶ Original text reads: « De plus, le Concédant se réserve le droit d'interdire au Concessionnaire la vente des articles, objets dudit contrat, dans certains points de vente qu'il ne juge pas compatibles avec le prestige attaché à son nom. ». Agreement with [...] of 15 January 2008 – ID 155-26 (p. 29); Agreement with [...] of 15 January 2008 – ID 155-29 (p. 115); Four agreements with [...] of 12 September 2016 – ID 155-186, ID 155-284, ID 155-285, ID 155-287.

²⁷⁷ Original text reads (emphasis added): « En conséquence, le Licencié s'interdit de distribuer les produits sous licence portant la marque « PIERRE CARDIN » i) dans des réseaux de distribution non compatibles avec le standing de la marque « PIERRE CARDIN » et sa notoriété ». Agreement with Ahlers of 16 December 2010 – ID 155-34 (p. 245); Agreement with Ahlers of 30 March 2015 – ID 155-21 (p. 100); see also: Agreement with Ahlers of 30 January 2018 – ID 155-21 (p. 7); Agreement with Ahlers of 30 January 2018 – ID 155-36 (p. 26).

²⁷⁸ Template in French from 2017 – ID 179.

contained a provision called “Marketing” which prohibited the licensee from selling to certain categories of customers not compatible with the prestige of the brand. This clause was reinforced through an additional provision in the same contracts that allowed Cardin to terminate the contract should the “Marketing” clause be breached by the licensee. This clause provided as follows (translation from French, emphasis added):

“On the basis of an express and formal agreement between the parties, this contract shall be automatically terminated, at the option of the Licensor and to the prejudice of the Licensee, one month after a registered letter noting [...] the failure to comply with Article 11 “Marketing””²⁷⁹

- (166) Finally, these same two licence agreements with Ahlers entitled Cardin to impose monetary penalties if Ahlers made sales to customers that were not considered compatible with the prestige of the Pierre Cardin brand, without specifying the criteria that customers had to comply with in order to be considered compatible. This clause provided as follows (translation from French, emphasis added):

“In the event of distribution or marketing in points of sale that are not compatible with the reputation and prestige attached to the Brand by the Licensee or by one of its co-contractors, the Licensee irrevocably undertakes to pay the Holder a penalty of 25% of the turnover generated by this distribution or marketing operation, which may not be less than an amount of 50,000 per contravention found.”²⁸⁰

- (167) The licence agreements mentioned in recitals (161) to (166) had all expired or had been replaced by July 2019 at the latest ²⁸¹.
- (168) Besides concluding agreements with Cardin that contained the above-mentioned restrictions, Ahlers also included some of these restrictions in its sub-licence agreement with [...], which granted [Ahlers sublicensee] rights to distribute Pierre Cardin-licensed products in [...] ²⁸² and [...] ²⁸³.
- (169) In particular, the sub-licence agreement between Ahlers and [Ahlers sublicensee] of [...] explicitly excluded discounters from the customers to which [Ahlers sublicensee] could sell Pierre Cardin-licensed products ²⁸⁴.

²⁷⁹ Original text reads: « De convention expresse et formelle entre les parties, le présent contrat sera résilié de plein droit, si bon semble au Titulaire et aux torts et griefs du Licencié, un mois après une lettre recommandée constatant [...] le non-respect de l'article 11 « la commercialisation » [...] ». Agreement with Ahlers of 30 January 2018 – ID 155-36 (p. 30); Agreement with Ahlers of 30 January 2018 – ID 155-21 (p. 11).

²⁸⁰ Original text reads : « En cas de distribution ou commercialisation dans des points de vente non compatibles avec la notoriété et le prestige attachés à la Marque par le Licencié ou par un de ses cocontractants, le Titulaire avertira le Licencié par lettre recommandée. Le Licencié devra alors tout mettre en œuvre pour faire cesser immédiatement la vente des Produits. S'il est constaté que la vente se poursuit, malgré l'avertissement par le Titulaire, le Licencié s'engage irrévocablement à payer au Titulaire une pénalité de 25% du chiffre d'affaires réalisé par cette opération de distribution ou de commercialisation qui ne pourra être inférieur à un montant de 50.000 euros par contravention constatée ». Agreement with Ahlers of 30 January 2018 – ID 155-36 (p. 26); Agreement with Ahlers of 30 January 2018 – ID 155-21 (p.7).

²⁸¹ See Cardin’s reply to the SO, paragraph 174.

²⁸² [...].

²⁸³ [...].

²⁸⁴ See clause 1.4 of Agreement with [Ahlers sublicensee] of [...] – ID 1141.

- (170) The term of this sub-licence agreement between Ahlers and [Ahlers sublicensee] ran until [...]. [...].²⁸⁵ Ahlers' relationship with [Ahlers sublicensee] was terminated as of [...].²⁸⁶

6.1.3.2. Coordinated actions

- (171) In addition to contractual clauses, Cardin and Ahlers engaged in coordinated action against other Cardin licensees ([three Cardin licensees]), customers of the latter and customers of Cardin's licensees' customers ([...]), including discounters, to ensure that Pierre Cardin-licensed products were not sold by retailers offering low prices in Ahlers' licensed territories. Ahlers did so by creating blacklists of retailers, which it shared with Cardin, and by repeated complaints and requests to Cardin asking it to act against such sales. The evidence on file shows that Cardin shared Ahlers' concerns and on several occasions intervened against sales by low-price retailers operating in Ahlers' territories.

6.1.3.2.1. The blacklist of low-price retailers and complaints against such retailers

- (172) From 2009, Ahlers repeatedly complained to Cardin about sales in its licensed territories of Pierre Cardin-licensed products by low-price retailers. In parallel to these complaints, Ahlers sought to influence Cardin's distribution policy for Pierre Cardin-licensed products by proposing that Cardin should prohibit sales of those products to certain low-price retailers identified in a blacklist drawn up by Ahlers. Cardin indicated its support for this proposal, first, by including in its agreements with the licensee [Cardin licensee 7] a list of retailers that it considered to be incompatible with the standing of its brand²⁸⁷; secondly, by requesting to Ahlers, in at least one occasion, the establishment of the said blacklist of retailers; and thirdly, by informing Ahlers of its intention to include retailer blacklists in future licence agreements²⁸⁸.
- (173) In an email from February 2009, Ahlers complained to Cardin about Pierre Cardin-licensed products being sold at low prices by the German discounter [...] (translation from German, emphasis added):
- "At discounter [...] (lowest category), jeans are appearing again at a price of 9.98, which obviously come from Greek production. We had thought it was finally over with these offers. We are sending this to you for information. [...] We simply cannot understand how our brand Pierre Cardin Jeans can be allowed to be misused by dubious business people."*²⁸⁹
- (174) By email of April 2010, Ahlers went further, by explicitly calling on Cardin to prohibit sales of Pierre Cardin-licensed products to "cash & carry" distributors ([...]) operating in several Member States (translation from German, emphasis added):

²⁸⁵ Email of 14 September 2022 from Ahlers' lawyer to the Commission – ID 1142.

²⁸⁶ ID 1320.

²⁸⁷ See also recitals (188) to (194).

²⁸⁸ See recitals (176), (183) and (184).

²⁸⁹ Original text reads: *"es tauchen beim Discounter [...] (unterste Kategorie) wieder Jeanshosen zum Preis von 9,98 auf, die offensichtlich aus griechischer Produktion stammen. Wir hatten geglaubt, es wäre endlich zu Ende mit diesen Angeboten. Wir senden Ihnen dies zur Information. [...] Für uns ist es einfach nicht mehr begreiflich, wie es zu gelassen werden kann, dass unsere Marke Pierre Cardin Jeans von unseriösen Geschäftsleuten derartig missbraucht wird."* Email of 23 February 2009 from [Ahlers group entity manager] to [Cardin licensing director 1], via Cardin's assistant ([assistant to Cardin management]) – ID 155-8339.

“The following group profile for [...].

*It is our urgent request that these Cash & Carry food wholesalers should not be supplied with the Pierre Cardin brand, as our high-quality specialist clothing retailers would not understand this and would react with further buy back or order cancellation.”*²⁹⁰

- (175) A draft email from Ahlers to Cardin dated 16 May 2010 shows Ahlers intending to urge Cardin (i) to prohibit sales to discounters by other licensees and (ii) to terminate contracts with licensees that supplied this type of customer, by threatening to commence legal action against Cardin if it did not take such action (translation from French, emphasis added):

*“We are currently determining the extent of the injury we are suffering as a result of low-priced parallel imports in breach of contract by food discounters. If we were to claim damages from Pierre Cardin, we would also denounce the damage to our business. This is because, as is clear from [...]’s reply, Cardin has authorised, in breach of the contracts, the supply to food discounters, mail order retailers and internet distributors, which is expressly prohibited under our licence agreements. [...] We would prefer not to make such a claim for damages for the time being. But we must once again call on Mr Cardin to ensure that these low-price discounters are not supplied in the future and that the contracts with the suppliers of those discounters are terminated immediately.”*²⁹¹

- (176) On 31 May 2010, Cardin signed an amendment to three licence agreements with [Cardin licensee 7] to prohibit the latter from supplying certain retailers (including [...], about which Ahlers had complained) on the grounds that they were incompatible with the “standing” of the Pierre Cardin brand²⁹².
- (177) On 12 July 2010, Ahlers welcomed this amendment to [Cardin licensee 7]’s agreements²⁹³, but continued to express to Cardin its opposition to Pierre Cardin-

²⁹⁰ Original text reads: “Nachfolgend Gruppenprofil für [...], entnommen aus dem Internet. [...]. Es ist unsere dringende Bitte, dass diese Cash & Carry Lebensmittel-Großhändler nicht mit der Marke Pierre Cardin beliefert werden, denn unsere hochwertigen Bekleidungs-Fachhändler würden das nicht verstehen und mit weiterer Kauf-Zurückhaltung bzw. Order-Stornierung reagieren.” Email of 20 April 2010 from [Ahlers management], via [assistant to Ahlers management 1] to [Cardin licensing director 1], via Cardin’s assistant ([assistant to Cardin management]) – ID 155-8443.

²⁹¹ Original text reads: « Nous déterminons actuellement l’ampleur du préjudice que nous subissons en raison des importations parallèles à bas prix et en violation contractuelle par des discounteurs d’alimentation. Si nous venions à réclamer des dommages intérêts à la Maison Pierre Cardin, nous dénoncerions également l’entrave à notre commerce. Car la Maison Cardin a autorisé, en violation contractuelle, cela résulte des conclusions en réponse de [...], la fourniture à des discounters d’alimentation, des revendeurs par correspondance et des distributeurs par internet, ce qui nous est expressément interdit aux termes de nos contrats de licence. [...] Nous préférierions pour l’instant nous abstenir de présenter une telle demande de dommages intérêts. Mais nous devons une fois encore sommer Monsieur Cardin de veiller à ce que ces discounteurs à bas prix ne soient plus fournis à l’avenir et que les contrats avec leurs fournisseurs soient immédiatement résiliés. » Internal email with the draft between WTW Ahlers assistants of 19 May 2010 – ID 155-208.

²⁹² Originally, the three agreements with [Cardin licensee 7] of 8 September 2008 contained a clause prohibiting the licensee from selling products to “distribution networks that are not compatible with the standing of the Pierre Cardin brand”. This clause was then amended to prohibit sales to a list of specific retailers. See recitals (157) and (158). See also paragraph 223 SO.

²⁹³ Letter of 12 July 2010 from [Ahlers sales manager 3], to [Cardin external supplier]– ID 155-8547. See also paragraph 226 SO.

licensed products being sold in “food discounters”, stating that such sales would lead to significant damage to Ahlers’ business²⁹⁴.

- (178) In a letter sent to Cardin in April 2011, in which, due to disruption caused by discounters’ sales into its territory²⁹⁵, Ahlers asked for a reduction of the minimum turnover agreed with Cardin, it *emphasised* that Cardin had promised several times to intervene against sales to food discounters²⁹⁶.
- (179) In another letter from November 2011, Ahlers insisted that the agreements with other Cardin licensees should prohibit sales to low-price retailers (translation from German, emphasis added): “*We have pointed out on several occasions that your licensee for socks and underwear should be bound by a contract that only customers which correspond to the brand’s high image will be supplied and that supplies to discount stores, pick up-wholesalers or other low-cost suppliers will not be supplied. This applies not only to Germany and Austria, but also to Eastern Europe and Russia. [...]*”²⁹⁷
- (180) Correspondence from 2012 shows that Ahlers’ complaints to Cardin about supplies of Pierre Cardin-licensed products to low-price retailers (here, food discounters) continued, and again indicates that Cardin had promised several times to Ahlers that it would take action against such sales (translation from German, emphasis added):

“Cardin did not comply with the exclusivity contractually promised to us and, despite our repeated requests to stop the illegal imports, continued to allow food discounters to be supplied in our contract area. [...] Mr Cardin had promised us

²⁹⁴ The email reads as follows (translation from French, emphasis added) “*As you rightly mentioned in your e-mail reply of 16 June 2010 to [Ahlers management] concerning this unacceptable distribution of Pierre Cardin products in food discounters such as [...] or [...], these distributions generate significant damage both directly to the image and reputation of Mr Cardin and to our commercial distribution of Ahlers in Europe.*” Original text reads: « Comme vous l’évoquez très justement dans votre réponse Mail du 16 Juin 2010 vers [Ahlers management] concernant cette intolérable distribution des produits Pierre Cardin dans les discounts alimentaires tels que [...] ou [...], ces distributions génères d’importants préjudices tant directement à l’image et la notoriété de M. Cardin que également notre distribution commerciale Ahlers en Europe. ». Letter of 12 July 2010 from [Ahlers sales manager 3] to [Cardin external supplier] – ID 155-8547. On 21 July 2010, the above letter was shared internally with [Ahlers management] by an employee of Ahlers, who wrote to the former (translation from German, emphasis added): “[Y]ou will receive a copy of my letter to [Cardin external supplier] in which I also clearly stated how much the discount stores, such as [...], cause considerable damage to the name Pierre Cardin and the company Ahlers.” Original text reads: “Wie soeben telefonisch besprochen erhalten Sie noch kopie mein Schreiben an [Cardin external supplier] in dem ich ebenfalls und klar zum Ausdruck gebracht habe wie sehr die Discounter Geschäften wie [...] dem Namen Pierre Cardin und dem Unternehmen Ahlers einen hohen Schaden verursachen.” Internal Email of 21 July 2010 from [Ahlers sales manager 3] to [Ahlers management], via [assistant to Ahlers management 4] – ID 155-8546.

²⁹⁵ For Ahlers’ withholding of royalties on the basis of sales of Pierre Cardin-licensed products by discounters, see Section 6.2.2.2.

²⁹⁶ Letter of 29 April 2011 from [Ahlers management] to [Cardin licensing director 1] – ID 155-208.

²⁹⁷ Original text reads: “*Wir haben schon mehrfach darauf hingewiesen, dass Ihr Lizenznehmer für Socken und Unterwäsche vertraglich gebunden sein sollte, dass nur solche Kunden beliefert werden, die dem hohem Image der Marke entsprechen und dass Lieferungen an Discounter, Abhol-Großhändler oder sonstige Billig-Anbieter unterbleiben. Das gilt nicht nur für Deutschland und Österreich, sondern auch für Osteuropa und Russland.*“ . Letter of 8 November 2011 from [Ahlers management] to [Cardin licensing director 1] – ID 155-208.

several times to stop the illegal imports and the supply to food discounters, but the market is still flooded with cheap imports.”²⁹⁸

- (181) In parallel with the above complaints, in March 2010 Ahlers contacted its local distributors and agents²⁹⁹ in several Member States to ask them to provide a list of all the discounters that were operating in their territories, with the aim of sharing a so-called “blacklist” with Cardin (emphasis added): *“We would send these names to Paris as a “Blacklist” of customers that are forbidden to be delivered by any company that deals with the same products as ours”*³⁰⁰.
- (182) In May 2013, Ahlers made similar requests to its local distributors and agents for Poland, the Czechia, Slovakia, Lithuania and Latvia³⁰¹; Denmark³⁰²; France³⁰³; Belgium and Luxembourg³⁰⁴. In their replies, each of these distributors provided a list of low-price retailers active in their respective territory/ country.
- (183) Internal correspondence from 5 June 2013 shows Ahlers preparing a blacklist of low-price retailers at the request of Cardin’s licensing director ([Cardin licensing director 1])³⁰⁵. Two days later, on 7 June 2013, Ahlers sent to Cardin the requested (translation from German, emphasis added) *“list of discounters in Germany and abroad where Pierre Cardin should not be distributed”*. The file shared with Cardin was named (translation from German) *“Blacklist Pierre Cardin International and Germany”* and contained a list of more than 100 retailers located in 18 Member States³⁰⁶ and three non-EEA Contracting Parties³⁰⁷ (including [...])³⁰⁸.

²⁹⁸ Original text reads: *“Die uns vertraglich zugesicherte Exklusivität hat das Haus Cardin nicht eingehalten und trotz unserer wiederholten Aufforderungen, die illegalen Importe abzustellen, nach wie vor zugelassen, dass in unserem Vertragsgebiet Lebensmittel-Discounter beliefert wurden. [...] Herr Cardin hatte uns zwar mehrfach zugesagt, die illegalen Importe und die Belieferung an Lebensmittel-Discounter abzustellen, aber der Markt ist noch immer überschwemmt mit Billig-Importen.”* Letter of 31 May 2012 from [Ahlers management] to [Cardin licensing director 1] – ID 155-24.

²⁹⁹ List of Ahlers’ sub-distributors, sub-licensees, agents – ID 1090.

³⁰⁰ Emails of 11 and 15 March 2010 from [Ahlers sales manager 1] to local distributors and Italian distributor – ID 155-8125.

³⁰¹ Original text reads (emphasis added): *“We need information about customers which should not be served with Pierre Cardin - products. This concerns big customers and chains (not necessarily only clothing specialists, but also companies like [...]). Please send us this list asap for all countries managed through Ahlers Poland.”* Emails of 22 May 2013 from [Ahlers sales manager 5] to local distributor – ID 155-8084.

³⁰² Email of 4 June 2013 from [Ahlers sales manager 1] to local distributor – ID 155-512.

³⁰³ Email of 28 May 2013 from [Ahlers sales manager 3] to local distributors – ID 155-8511.

³⁰⁴ Email of 22 May 2013 from [Ahlers sales manager 5] to local distributor – ID 155-8454.

³⁰⁵ See Ahlers’ internal email of 5 June 2013, in which [Ahlers sales manager 1] wrote to [Ahlers management] (translated from German): *“Please find enclosed the list as requested by [Cardin licensing director 1]”* and attached a draft of the blacklist of forbidden retailers. Original text reads: *“[A]nbei erhalten Sie die Liste wie sie von [Cardin licensing director 1] gewünscht wurde.”* Email of 5 June 2013 from [Ahlers sales manager 1] to [Ahlers management], via [assistants to Ahlers management] – ID 155-8513. The list was sent to [Cardin licensing director 1].

³⁰⁶ Spain, Italy, Belgium, Luxembourg, Denmark, Sweden, Finland, the Netherlands, Austria, France, Czechia, Slovakia, Poland, Hungary, Croatia, Lithuania, Latvia and Germany. Paragraph 254 SO had erroneously stated that this list contained a “comprehensive inventory of retailers in 17 Member States”; however, the list actually covered 18 Member States.

³⁰⁷ Switzerland, Russia and Ukraine.

³⁰⁸ Original text reads: *“Liste der Discounter in Deutschland und im Ausland, in denen Pierre Cardin nicht vertrieben werden sollte”* and *“20130607 Sperrliste Pierre Cardin International und Deutschland”*. Email of 7 June 2013 from [Ahlers management], via [assistant to Ahlers management 2], to [Cardin

- (184) Several months later, in an email dated December 2013, Cardin informed Ahlers of its intention to include in all licence agreements a list of shops to which sales would be prohibited (emphasis added):

*"I'm informing you that I have send a proposal to [Cardin licensing director 1] and [Cardin independent commercial agent 2] for a meeting with the object to find a way to stop the irregular sales in centre Europe for socks and underwear ([...], etc.). The idea is to put the list of the forbidden shops (discounters) in all the contracts with the cancelation of the contract."*³⁰⁹

- (185) Lastly, correspondence from Ahlers to Cardin from 2018 shows Ahlers continuing to complain to Cardin about Pierre Cardin-licensed products being sold at very low prices by discounters located in Ahlers' licensed territories (translation from Italian, emphasis added):

*"[D]ifficult market conditions, due to the continued availability of "non-Ahlers" products at discounters in our licensed territories [...] [W]e have received a number of cancellations from our customers due to the widespread availability of non-Ahlers products in our territories at very low prices".*³¹⁰

6.1.3.2.2. Actions against licensees

6.1.3.2.2.1. [Cardin licensee 7]

- (186) In September 2009, Cardin concluded three licence agreements with [Cardin licensee 7] for the manufacture and distribution of stockings and nylons for women, men's underwear and socks for men and women in a number of EEA Contracting Parties³¹¹, including Germany, for which Ahlers held licensing rights for other Pierre Cardin-licensed products at the relevant time³¹².
- (187) The licence agreements between Cardin and [Cardin licensee 7] contained inter alia an obligation "not to distribute the licensed products carrying the PIERRE CARDIN trademark [...] through distributorship networks, which do not match with the high quality standard and notoriety of the PIERRE CARDIN trademark"³¹³. However, the agreements did not specify any customers or categories of customers that did not meet this standard.
- (188) In October 2009, Ahlers wrote to Cardin to try to influence the content of its licence agreements with [Cardin licensee 7] regarding sales to food discounters and other

licensing director 1], via Cardin's assistant ([assistant to Cardin management]) to Cardin – ID 155-8518 and ID 155-8335.

³⁰⁹ Internal email Ahlers of 16 December 2013, where an email of 16 December 2013 from [Cardin independent commercial agent 1] to [Ahlers management], via [assistant to Ahlers management 4] is forwarded – ID 155-8548.

³¹⁰ Original text reads: "[...] le difficili condizioni di mercato, per la continua apparizione nei discounter di prodotti « non-Ahlers » nei nostri territori licenziatari" [...] "[...] abbiamo già ricevuto alcune disdette dai nostri clienti, causate per la massa di apparizioni di prodotti « non-Ahlers » nei nostri territori a prezzi bassissimi." Email of 6 September 2018 from [Ahlers sales manager 2] to [Cardin licensing director 3] – ID 155-150.

³¹¹ [Cardin licensee 7] was Cardin's licensee for (i) stockings and nylons for women in Germany, Austria and Switzerland; (ii) classic underwear for men in Austria, Czechia, Denmark, Germany, Hungary, Sweden, Slovakia and Norway; and (iii) socks for men and women in Austria, Germany, and the Netherlands. See ID 353-20.

³¹² See ID 353-20.

³¹³ Licence agreements with [Cardin licensee 7] of 8 September 2009 – ID 1134-14, ID 1134-15 and ID 1134-16.

low-price retailers, requesting that sales to these types of retailers be prevented (translation from German, emphasis added):

*"I must once again point out that [Cardin licensee 7]'s activities continue to unsettle the market and that we do not agree with this. If [Cardin licensee 7] were to get a new licence contract, then sales to groceries discounters and to other discount retailers would have to be explicitly excluded. Instead, only sales to retailers who live up to the high standards of the brand would be allowed."*³¹⁴

- (189) In May 2010, Cardin and [Cardin licensee 7] signed an amendment to the three licence agreements mentioned in recital (187), which stipulated that sales to certain identified retailers were to be considered as incompatible with the "standing" of the Pierre Cardin brand:

*"The parties agree that [...] the companies [...] must be considered as being not compatible with the established standing of the brand of "Pierre Cardin" and its reputation."*³¹⁵

- (190) By this amendment, Cardin again implemented the policy proposed by Ahlers that sales to certain retailers should be prohibited, and in particular sales to [...]: the retailers about which Ahlers had already complained³¹⁶.

- (191) By letter to Cardin of 16 June 2010, Ahlers continued its efforts to prevent sales by [Cardin licensee 7] to discounters, this time with regard to a potential future licence to be granted by Cardin to [Cardin licensee 7] (translation from German, emphasis added):

*"We must therefore protest strongly against the Homewear licence awarded to [Cardin licensee 7], under which the Pierre Cardin brand can be offered to food discounters. This should be expressly forbidden to [Cardin licensee 7], and supply should only be permitted to those shops where other comparable designer brands are also offered, for example brands such as Armani, Hugo Boss or Daniel Hechter."*³¹⁷

- (192) In a subsequent letter dated 28 June 2010, Ahlers again insisted on the matter and proposed that Cardin should include provisions in its licence agreements with [Cardin licensee 7] excluding sales to certain types of discounters (translation from German, emphasis added):

³¹⁴ Original text reads: "Ich muss nochmals darauf hinweisen, dass die Aktivitäten von [Cardin licensee 7] auch weiterhin den Markt verunsichern und dass wir damit nicht einverstanden sind. Sollte [Cardin licensee 7] einen neuen Lizenzvertrag erhalten, dann müsste ausdrücklich ausgeschlossen sein, dass an Lebensmittel-Discounter verkauft wird und dass auch nicht an sonstige Billig-Händler verkauft werden darf, sondern nur an solche Händler, die dem hohen Anspruch der Marke entsprechen." Letter of 8 October 2009 from [Ahlers management] to [Cardin licensing director 1] – ID 155-38.

³¹⁵ Amendment to licence agreements with [Cardin licensee 7] of 31 May 2010 – ID 1134-17.

³¹⁶ See recitals (173) and (174).

³¹⁷ Original text reads: "Wir müssen also erheblich dagegen protestieren, wenn [Cardin licensee 7] eine Homewear-Lizenz erhält, unter der die Marke Pierre Cardin bei Lebensmittel-Discountern angeboten werden kann. Das sollte [Cardin licensee 7] ausdrücklich untersagt sein und eine Belieferung nur an solche Geschäfte gestattet sein, in der auch andere vergleichbare Designer-Marken angeboten werden, beispielsweise Marken wie Armani, Hugo Boss oder Daniel Hechter". Letter of 16 June 2010 from [Ahlers management] to [Cardin licensing director 1] (p. 7) – ID 155-38.

*“We would be very grateful if you could contact Mr Cardin and ask him to design the contracts with [Cardin licensee 7] in such a way that food discount stores and Cash & Carry markets may no longer be supplied in the future.”*³¹⁸

- (193) In another letter to Cardin of July 2010, Ahlers specifically welcomed the “recent commitments and amendments validated by the company [Cardin licensee 7] through which they accept[ed] to stop supplying to food discounters or low-end retailers”³¹⁹. These amendments were the ones signed on 31 May 2010 (see recital (189)).
- (194) In a further email sent by Ahlers to Cardin in April 2011, Ahlers thanked Cardin for a meeting held in March 2011, attended by Ahlers, Cardin and representatives of [Cardin licensee 7]. Based on the email, the meeting concerned the distribution of Pierre Cardin-licensed products in low-price retailers, the topic discussed being (translation from German, emphasis added): *“How do we protect the Pierre Cardin brand from the low-cost items offered in the socks, T-shirt, men’s underwear and pyjamas sectors”*. In the meeting Ahlers highlighted that certain products were offered at “ruinous prices” while Ahlers’ “desire is to increase the turnover of the Pierre Cardin brand at the higher level of premium brands”. Ahlers concluded the email by highlighting that “[t]he success of the Pierre Cardin brand is seriously jeopardised by the low-priced offers in consumer markets” as well as their intention “to convince Mr Cardin that [Cardin licensee 7]’s approach leads to the ruin of the brand through the cheapest distribution channels”.³²⁰
- (195) In January 2012, [Cardin licensee 7] and Cardin concluded a settlement terminating the licence agreements between them.³²¹ This document referred to the amendments of 31 May 2010, by which sales to certain discounters were prohibited (see recital (189)). The settlement agreement stated that “[f]ollowing these amendments, company [Cardin licensee 7] could not carry out commitments which fell on to him, in particular in terms of minimum of yearly royalties”.

6.1.3.2.2.2. [Cardin licensee 1]

- (196) [Cardin licensee 1] was Cardin’s licensee for the manufacture and distribution of socks in Spain between 2008 and 2014³²² and [...] was one of its customers. In 2013,

³¹⁸ Original text reads: “Wir wären Ihnen sehr dankbar, wenn Sie Herrn Cardin dazu ansprechen könnten und ihn bitten würden, die Verträge mit [Cardin licensee 7] so zu gestalten, dass Lebensmittel-Discounter und Cash & Carry Märkte in Zukunft nicht mehr beliefert werden dürfen”. Letter of 28 June 2010 from [Ahlers management] to [Cardin licensing director 1] – ID 155-38.

³¹⁹ Original text reads: «Les récents engagements et amendements validés par la [Cardin licensee 7] dans lesquels ils acceptent ne plus vouloir servir ces filiales de discount alimentaire ou de très bas de gamme.» Letter of 12 July 2010 from [Ahlers sales manager 3], to [Cardin external supplier] – ID 155-8547.

³²⁰ Original text reads: „Das zu besprechende Thema: „Wie schützen wir die Marke Pierre Cardin vor den maßlos angebotenen Billigartikeln im Bereich Socken, T-Shirt, Herren-Unterwäsche und Schlafanzügen“; „Die Ware wird [...] zu ruinösen Preisen angeboten“; „Unser Wunsch ist es, den Umsatz mit der Marke Pierre Cardin in dem gehobenen Niveau der Premium-Marken noch mehr zu steigern.“; „Der Erfolg, den wir mit der Marke Pierre Cardin erzielt haben, ist durch die Billigangebote in den Verbrauchermärkten stark gefährdet. Es ist unsere Pflicht, Herrn Cardin davon zu überzeugen, dass die Vorgehensweise der Firma [Cardin licensee 7] mit billigsten Vertriebswegen zum Ruin der Marke führt.“ Email of 8 April 2011 from [Ahlers group entity manager] to [Cardin licensing director 1], via Cardin’s assistant ([assistant to Cardin management]) – ID 155-8113.

³²¹ Termination settlement between Cardin and [Cardin licensee 7] of 18 January 2012 – ID 353-18.

³²² See ID 353-20.

Cardin granted Ahlers a licence to manufacture and distribute socks in other Member States, including Germany³²³.

- (197) Cardin took action to prevent sales by [Cardin licensee 1]’s customers to certain retailers in Ahlers’ territory.
- (198) By email of 7 May 2014, Cardin requested [Cardin licensee 1] to stop selling Pierre Cardin-licensed socks to [...], as the latter had been selling to (translation from Spanish) “*establishments located in Germany that damage significantly the image of the brand*”³²⁴, without specifying which criteria should have been respected to preserve the image of the brand. This request went beyond the clause in Cardin’s licence agreement with [Cardin licensee 1], which entitled Cardin to prevent [Cardin licensee 1] “*from selling the items [covered by the agreement] in certain retail outlets which may be deemed to be incompatible with the prestige attached to [Pierre Cardin]*”³²⁵. That clause did not oblige [Cardin licensee 1] to pass on to its customers the prohibition of sales to certain retailers. As Cardin acted against sales by [Cardin licensee 1]’s customer ([...]) to specific retailers that were supposedly not aligned with the brand, this reveals that the actions taken by Cardin were even more restrictive than what was contractually agreed.
- (199) On 12 May 2014, Ahlers sent Cardin a report on [Cardin licensee 1]’s commercial activities and turnover. By email of 14 May 2014, Cardin thanked Ahlers for the report and acknowledged that it was monitoring [Cardin licensee 1] (translation from Spanish):
- “Our lawyer, [Cardin lawyer 1], has sent them a request not to sell to customers that do not guarantee compliance with the contract, the brand, etc. Tell [Ahlers management] that I am also worried about [Cardin licensee 1] and its alliance with [...] and that we are monitoring them very closely.”*³²⁶
- (200) By letter of August 2014, Cardin terminated [Cardin licensee 1]’s licence agreement with immediate effect.³²⁷
- (201) By email of 14 October 2015, Cardin provided Ahlers with a copy of an annex to the licence agreement between Cardin and [Cardin licensee 1] that had been terminated in August 2014. This annex prohibited the sale of Pierre Cardin-licensed products to customers that did not meet the standards of the Cardin brand, without specifying

³²³ Austria, Croatia, Czechia, Denmark, Germany, Hungary, the Netherlands and Poland. See ID 353-20.

³²⁴ Original text reads: “Esta empresa a su vez a revendido esta mercancía a establecimientos ubicados en Alemania que perjudican de modo relevante la imagen de la marca”. See Email of 7 May 2014 from [...] to [...] – ID 5-17.

³²⁵ Agreement with [Cardin licensee 1] of 1 June 2011 – ID 5-7. An annex to the agreement with [Cardin licensee 1] contained an additional clause with customer restrictions that read as follows (translation from Spanish): “*SALES POINTS: No distribution and sales channels that are not prestigious or appropriate for the standing of the brand shall be used” (original wording: “*PUNTOS DE VENTA: No se usarán canales de distribución y venta desprestigiados o inadecuados al nivel de la marca.*”). This additional clause does not provide that these customer restrictions also applied to customers of the licensee ([Cardin licensee 1]) either.*

³²⁶ Original text reads: “*Nuestro abogado, el [Cardin lawyer 1], les ha enviado un requerimiento para que no vendan a clientes que no aseguran el respecto del contrato, la marca, etc. Dígame a la [Ahlers management] que yo también estoy preocupado con [Cardin licensee 1] y su alianza con [...] y que los estamos vigilando de cerca.*” – ID 155-473. See recital (284), which rebuts Cardin’s argument that its actions against [Cardin licensee 1] were not a concerted practice.

³²⁷ The reason given for the termination in the letter was [Cardin licensee 1]’s sales to customers who engaged in out-of-territory sales. See Letter of 1 August 2014 from [...] to [...] – ID 5-18.

any such standards. Together with the copy of this annex, there was a handwritten note by Cardin's Spanish agent, which indicated his intention to include a similar annex in licence agreements with other licensees. The note read as follows:

*"[T]here is the copy of the last contract from [Cardin licensee 1], now cancelled. I'm proud about the last page that I'm including in all the contracts."*³²⁸

- (202) This intention by Cardin is in line with Ahlers' complaints against sales of Pierre Cardin-licensed products by low price retailers referred to in Sections 6.1.3.2.1 and 6.1.3.2.2.1.

6.1.3.2.2.3. [Cardin licensee 9]

- (203) Between January 2010 and April 2015, [Cardin licensee 9] held licensing rights to manufacture and distribute certain Pierre Cardin-licensed products (underwear for men and pyjamas for men and women) in several Member States³²⁹. From July 2014 until June 2019, Ahlers held the licence for the manufacture and distribution of underwear for men in other EEA territories, including Germany³³⁰.

- (204) Cardin and Ahlers engaged in coordinated action to prevent sales by [Cardin licensee 9] to specific customers in Germany, i.e. Ahlers' licensed territory.

- (205) In March 2014, Ahlers expressed concerns to Cardin about [Cardin licensee 9]'s business with low-price retailers and asked Cardin to consider this issue (emphasis added): "[...] can only do business with such accounts that are only interested in price offers, like [...]. This all is very dangerous to the high prestige of the brand Pierre Cardin. We kindly ask you to take our opinion into account."³³¹

- (206) In an internal email of Ahlers dated 29 October 2014, an employee of Ahlers reported to [Ahlers management] on a call that he had had on the same day with Cardin's licensing director ([Cardin licensing director 1]). The email indicates that, during the call, the employee in question had raised concerns about Cardin's contracts with [Cardin licensee 9] (that had been concluded thanks to Cardin's agent for Spain, [Cardin independent commercial agent 1]). In the email, the employee asked for [Ahlers management]'s approval to occasionally contact the Spanish agent in question about this matter (translation from German, emphasis added):

"Today's call is to be viewed as a complaint against [Cardin independent commercial agent 1]. He is disrupting the entire German market with his contracts with [...] (socks, pyjamas). [...] [Cardin independent commercial agent 1] is thereby damaging the work of Mr Cardin and the Ahlers company. Being an agent and living off commissions makes him a time bomb. Hence his request: If there is an

³²⁸ Agreement with [Cardin licensee 1] of 1 June 2011 and handwritten note of 14 October 2015 from [Cardin independent commercial agent 1] to [Ahlers management] – ID 155-8130.

³²⁹ [Cardin licensee 9] held a licence for (i) men's underwear in Bulgaria, Croatia and Romania (agreement which started in 2011 and was terminated as of April 2015); (ii) men's underwear in Estonia, Finland, Latvia and Lithuania (agreement which started in 2012 and expired in December 2014); (iii) men's underwear in the Netherlands (agreement which started in 2010 and expired as of December 2014); and (iv) men's and women's pyjamas in Spain (agreement which started in 2012 and was terminated as of April 2015). See ID 353-20.

³³⁰ As of 1 July 2014, Ahlers held the licence for men underwear in Austria, Czechia, Denmark, Germany, Hungary, Poland. As of 1 January 2015, Ahlers held the licence for men underwear in Estonia, Finland, Latvia, Lithuania and the Netherlands. See ID 155-8138.

³³¹ Email of 11 March 2014 from [Ahlers sales manager 1] to Cardin's assistant ([secretary to Cardin management 2]) – ID 155-32.

opportunity, I should, on occasion, point this matter out to [Cardin independent commercial agent 1]. If so, I ask for your consent.”³³²

- (207) On 15 January 2015, Cardin informed [Cardin licensee 9] that it was launching an internal audit of that company for, amongst other things, selling to German discounters and, in particular, to a customer that, according to Cardin, did not respect the image of the Pierre Cardin brand (translation from Spanish, emphasis added):

*“Based on the information received there has been a serious breach of the contract that necessitates the start of an internal procedure to audit and establish the facts. The serious facts relate to the marketing of Pierre Cardin products in hard discounters located in Germany [...] These facts constitute an obvious breach of the contracts for several reasons and in particular for the following: 1.- Marketing of goods outside the territorial scope of the contract. 2.- Sale to an establishment for marketing which does not respect the brand image.”*³³³

- (208) On 28 January 2015, Cardin emailed Ahlers about [Cardin licensee 9] and announced that it would keep Ahlers “*informed about the future cancellation and about the control of stocks*”.³³⁴ By email of 2 February 2015, Cardin forwarded to Ahlers a copy of the letter sent to [Cardin licensee 9] on 15 January 2015, as referred to in recital (207), and stated that the “[n]ext step [would] be the cancellation of the contracts”.³³⁵

- (209) In another email dated 18 February 2015, Cardin shared with Ahlers further correspondence exchanged with [Cardin licensee 9] and told Ahlers to get in touch should it need further information. On this point, Cardin noted that the (common) lawyer of Cardin and Ahlers, [Ahlers and Cardin common lawyer], had a copy of “everything”:

“[Ahlers management], I’m informing you confidentially about all of that, because the sales from [...] in Germany are a big injure to your work and all the Pierre Cardin licensees in Germany. If never you need other information, please, ask me,

³³² Original text reads: “*heutiger Anruf war als Beschwerde gegen [Cardin independent commercial agent 1] zu sehen. Er würde mit seinen Verträgen mit [...] den kompletten deutschen Markt stören (Socken, Pyjamas). [...] [Cardin independent commercial agent 1] würde damit die Arbeit von Herrn Cardin und von der Firma Ahlers schädigen. Dadurch dass er ein Agent wäre und von Provisionen lebe, wäre er eine Zeitbombe. Daher seine Bitte: Wenn es die Möglichkeit gib,t sollte ich [Cardin independent commercial agent 1] gelegentlich doch ein Mal auf dieser Misstand hinweisen. Wenn so gewünscht bitte ich um Ihre Zustimmung.*”. Internal email of 29 October 2014 from [Ahlers sales manager 1] to [Ahlers management] via [assistants to Ahlers management] – ID 155-362.

³³³ Original text reads: “*Según la información recibida se ha producido una flagrante infracción del contrato que obliga a incoar un procedimiento interno de investigación y fijación de hechos. Los hechos graves se refieren a la comercialización en establecimientos de hard discount en Alemania [...]. Estos hechos constituirían una flagrante infracción del contrato por varios motivos y en particular por los siguientes: 1. - Comercialización de mercancía fuera del ámbito territorial del contrato. 2. - Venta a un establecimiento para su comercialización que no respeta la imagen de la marca*”. See Letter of 15 January 2015 from [Cardin lawyer 1] to [Cardin licensee 9] – ID 27-149.

³³⁴ Email of 28 January 2015 from [Cardin independent commercial agent 1] to [Ahlers management], via [assistants to Ahlers management] – ID 155-8111.

³³⁵ Email of 2 February 2015 from [Cardin independent commercial agent 1] to [Ahlers management], via [assistants to Ahlers management] – ID 155-288.

but remember that [secretary to Cardin management 2] has always copy of everything and also [Ahlers and Cardin common lawyer].”³³⁶

- (210) On 1 April 2015, Cardin informed Ahlers that it was gathering information about [Cardin licensee 9]’s sales and stated that, in parallel, it would “*cancel [...] contracts with the idea to break up [[Cardin licensee 9]’s] relation with [Cardin]*” and that it would keep Ahlers informed.³³⁷
- (211) Finally, one week later, on 7 April 2015, Cardin terminated two licence agreements with [Cardin licensee 9] overing pyjamas and underwear³³⁸.

6.1.3.2.3. Actions against customer of a licensee’s customer

6.1.3.2.3.1. [Cardin licensee’s customer 3]

- (212) Based on information provided by Ahlers to Cardin, in 2016 Cardin intervened against the Spanish retailer [Cardin licensee’s customer 3], claiming that [Cardin licensee’s customer 3] did not respect Cardin’s brand image, without specifying which criteria it should comply with to respect that image, and requesting it to stop selling Pierre Cardin-branded products. During this period, Ahlers held licensing rights for the manufacture and distribution of various Pierre Cardin-licensed products in Spain³³⁹.
- (213) On 29 May 2016³⁴⁰, Ahlers informed Cardin of sales of (non-Ahlers) Pierre Cardin-licensed products by [Cardin licensee’s customer 3] in Spain.
- (214) In an email of 19 September 2016, Ahlers informed Cardin again of sales of Pierre Cardin-licensed products by [Cardin licensee’s customer 3] in Spain, that had not been bought from Ahlers³⁴¹.
- (215) Following Ahlers’ complaints, on 29 September 2016, Cardin contacted [Cardin licensee’s customer 3] to express concerns about sales of Pierre Cardin-licensed being made on its website³⁴². On 17 November 2016, Cardin’s lawyers again contacted [Cardin licensee’s customer 3] to request it to stop such sales. The letter stated that the products had not been purchased from Cardin’s Spanish licensee and that such sales were incompatible with the brand image (translation from Spanish, emphasis added):

“According to our information, the Web [www.\[Cardin licensee’s customer 3\].com](http://www.[Cardin licensee’s customer 3].com) is selling various Pierre Cardin products in Spain via the internet, without having a license or having purchased them from the Spanish exclusive licensee. Moreover, those products are shown on your website at a discounted price, highlighting that characteristic of the products, such characterisation seriously undermines my client’s brand image and, in particular, the positioning of the brand on the market. I

³³⁶ Email of 18 February 2015 from [Cardin independent commercial agent 1] to [Ahlers management], via [assistants to Ahlers management] – ID 155-8083.

³³⁷ Email of 1 April 2014 from [Cardin independent commercial agent 1] to [Ahlers management], via [assistants to Ahlers management] – ID 155-8087.

³³⁸ Letter of 7 April 2015 from Mr Cardin to [...] – ID 5-14.

³³⁹ See ID 353-20.

³⁴⁰ Email of 29 May 2016 from [...] (Ahlers’ agent for Spain, in the following footnotes referred to as “[...]”) to [Ahlers sales manager 1] and [Cardin independent commercial agent 1] – ID 155-4.

³⁴¹ Email of 19 September 2016 from [...] to [Cardin independent commercial agent 1] – ID 155-598.

³⁴² Letter of 29 September 2016 from [Cardin independent commercial agent 1] to [Cardin licensee’s customer 3] – ID 155-621.

*hereby remind you of the express request to stop the sale of PIERRE Cardin products on your website.”*³⁴³

- (216) By letter of 22 November 2016, [Cardin licensee’s customer 3] replied to Cardin’s lawyers by stating that the products in question had been bought from a customer of people entitled to sell them (i.e. a licensee)³⁴⁴.
- (217) A few days later, on 28 November 2016, Cardin shared the letters referred to in footnotes 343 and 344 with Ahlers in an email in which it stated that [Cardin licensee’s customer 3] “*sells Pierre Cardin products [at] low price*” and announced that it would “*continue to clarify the situation*”³⁴⁵.
- (218) In a further letter dated 1 December 2016 to [Cardin licensee’s customer 3], Cardin’s lawyers insisted on the issue and urged [Cardin licensee’s customer 3] again to stop its sales by mentioning Cardin’s right to take legal action (translation from Spanish, emphasis added):

*“As regards the exhaustion of trade mark rights, there is relevant case-law of the Court of Justice of the European Union, which provides that exhaustion shall not occur where the licensee has transferred the goods in breach of contractual provisions, in particular by transferring the goods to discounters which harm the licensor’s brand image. It is our duty to inform you that the products you are selling on your website are infringing these rights. In this sense, we hereby request you again to stop selling Pierre Cardin-branded products, and reserve our rights to take legal action.”*³⁴⁶

- (219) A few days later, Cardin shared with Ahlers the letter that it had sent to [Cardin licensee’s customer 3]³⁴⁷.

³⁴³ Original text reads: “Según nuestra información, desde la Web *www.[...].com* se están comercializando diversos productos de la marca Pierre Cardin en España a través de internet, sin disponer de licencia ni haber adquirido los mismos al licenciatario exclusivo para España. Dichos productos, además, se presentan en la Web, a precio de saldo, remarcando precisamente esta cualidad de los productos, características que perjudican seriamente la imagen de marca de mi mandante y en particular, el posicionamiento de la marca en el mercado. Sirva la presente, para hacer constar el requerimiento expreso de cese en sus actividades de comercialización de productos PIERRE CARDIN a través de su página Web.” Letter of 17 November 2016 from [Cardin lawyer 2] to [Cardin licensee’s customer 3] – ID 155-459.

³⁴⁴ Letter of 22 November 2016 from [Cardin licensee’s customer 3] to [Cardin lawyer 2] – ID 155-460. See also recital (370), which rebuts Cardin’s argument that its actions against [Cardin licensee’s customer 3] did not have as an objective to restrict the customers to whom Cardin licensees and/or their customers could sell.

³⁴⁵ Email of 28 November 2016 from [Cardin independent commercial agent 1] to [Ahlers management], via [assistant to Ahlers management] – ID 155-458.

³⁴⁶ Original text reads: “En relación con el agotamiento del derecho de marca, existe jurisprudencia relevante del Tribunal de Justicia de la Unión Europea, que establece que no se producirá el citado agotamiento cuando el licenciatario hubiera transmitido los productos incumpliendo disposiciones contractuales, en particular, transmitiendo los productos a saldistas que perjudican la imagen de marca del licenciante. Es nuestro deber informarles del hecho de que los productos que venden en su web se hallan infringiendo estos derechos. En este sentido, efectuamos de nuevo el requerimiento de que dejen de comercializar los productos de la marca Pierre Cardin, haciendo reserva expresa de las acciones que en derecho nos amparen”. Letter of 1 December 2016 from [Cardin lawyer 2] to [Cardin licensee’s customer 3] – ID 155-398.

³⁴⁷ Email of 12 December 2016 from [Cardin independent commercial agent 1] to [Ahlers management], via [assistant to Ahlers management 1] – ID 155-397.

6.2. Other measures taken by Cardin and Ahlers

- (220) In addition to the contractual clauses and coordinated actions described in Section 6.1, Ahlers took other measures to ensure the effectiveness of Cardin's and Ahlers' restrictive practices, namely (i) monitoring its territories to detect any out-of-territory sales by other Cardin licensees and their customers, including sales by discount retailers and using the results of that monitoring to inform Cardin about such sales and (ii) putting pressure on Cardin to take action against the sales that it had identified through its monitoring activities, including by withholding contractually agreed royalties. For its part, Cardin not only accepted Ahlers' withholding of royalties, but also promised to address Ahlers' concerns.

6.2.1. Ahlers' monitoring system

- (221) From at least 2013 until 2021, Ahlers implemented a monitoring system to detect any out-of-territory sales into its exclusive territories (thereby including passive sales). The evidence shows that this system allowed to check whether Cardin licensees acted in compliance with the out-of-territory sales and customer restrictions.
- (222) Ahlers used this system to collect evidence about such sales and shared it with Cardin in support of Ahlers' requests for Cardin to take action against the licensees and their customers that were engaging in such sales and thereby protect Ahlers' absolute territorial exclusivity.
- (223) A document attached to an Ahlers internal email dated December 2017 shows the scope and purpose of Ahlers' monitoring system³⁴⁸ (translation from German, emphasis added):
- "Permanent exchanges with the closest employee of Mr Cardin" [...] "Preparation of data sheets for purchased random samples of parallel imports into our licenced areas (approx. 200 per year – see annex)"; "Factsheets are regularly made available to Cardin"; "Explore various newsletters on Pierre Cardin products"; "Observe market, view goods, buy sample parts"; "Document sample products, i.e. photograph, create file, archive products, etc."; "Continuous monitoring of the websites of different providers of parallel imports"*³⁴⁹
- (224) Ahlers' monitoring system relied on various sources: (i) asking retailers offering Pierre Cardin-licensed products for sale in Ahlers' territories to disclose **sourcing information** about such products, (ii) conducting **test purchases**, and (iii) collecting **photographs** of Pierre Cardin-licensed goods sold in Ahlers' territories but originating from other licensees. The system was targeted at **both online and offline sales**, and **Ahlers informed Cardin regularly** about the results of its monitoring activities.

³⁴⁸ Internal email of 8 December 2017 from Ahlers' assistant [assistant to Ahlers management 1] to [Ahlers management] – ID 155-53; Internal note by Ahlers' assistant [assistant to Ahlers management 1] of 7 December 2017 – ID 155-366.

³⁴⁹ Original text reads: "Permanenter Austausch mit der engsten Mitarbeiterin von Herrn Cardin" [...] "Erstellung von Datenblättern der als Stichproben gekauften Muster von Parallelimporten in unsere Lizenzgebiete (ca. 200 pro Jahr – siehe Anlage)"; "Datenblätter werden regelmäßig dem Haus Cardin zur Verfügung gestellt."; "Durchforsten diverser Newsletter betreffend Pierre Cardin Produkten"; "Markt beobachten, Ware sichten, Musterteile kaufen"; "Musterprodukte dokumentieren, d.h. fotografieren, Datei erstellen, Produkte archivieren etc. "; "Permanentes Monitoring der Homepages verschiedener Anbieter von Parallelimporten" Internal Email Ahlers of 8 December 2017 – Email attachment: "Gegenüberstellung der Leistungen des [...] und der WTW KG" – ID 155-8147.

- (225) As regards the **sourcing information**, Ahlers sent letters through its lawyers (mainly [Ahlers and Cardin common lawyer]) to companies such as [...] and other retailers³⁵⁰ that sold Pierre Cardin-licensed products in Ahlers' licensed territories. In these letters, the companies were asked to identify the licensee that had supplied them and to submit extensive documentation, including invoices, relating to the Pierre Cardin-licensed products that they had sold. None of the letters included questions relating to who had initiated the sale (supplier or customer).
- (226) As regards the **test purchases**, these were conducted by Ahlers' lawyers or Ahlers' employees to check which licensee had supplied Pierre Cardin-licensed products to retailers selling in Ahlers' licensed territories. Ahlers would then share photographs of the products in question with Cardin.³⁵¹ For example, with respect to a test purchase conducted at the retailer [...], a letter from [Ahlers and Cardin common lawyer] to Ahlers stated (translation from German): *"Please find enclosed the agreed test purchase from [...] of the socks from [Cardin licensee 4] and the American T-shirt, which is likely to have come from [...]. In order to save you the effort of taking the photographs, please find enclosed a USB stick with the corresponding detailed pictures of the test purchase."*³⁵²
- (227) As regards the **photographs** of Pierre Cardin-licensed products, the evidence gathered by the Commission during inspections indicates that Ahlers collected thousands of such images in the period 2013 to 2018³⁵³, demonstrating the intensity of Ahlers' monitoring of parallel imports.
- (228) Ahlers' monitoring system extended to Pierre Cardin-licensed products sold **both offline and online**³⁵⁴. This is apparent from the following two examples:

³⁵⁰ Letter of 15 January 2016 from [Ahlers and Cardin common lawyer] to [...] – ID 27-16; Letter of 26 June 2015 from [Ahlers and Cardin common lawyer] to the company [...], Scan_23.06_014 – ID 155-218 (p.72); Letter of 6 November 2015 from [Ahlers and Cardin common lawyer] to [...], Scan_23.06_014 – ID 155-218 (p. 74).

³⁵¹ Letter of 7 March 2017 from [Ahlers and Cardin common lawyer] to Ahlers' assistant [assistant to Ahlers management 1] – ID 155-630; Letter of 16 July 2015 from [Ahlers and Cardin common lawyer] to Ahlers' assistant [assistant to Ahlers management 1] – ID 155-639; Letter of 13 May 2015 from [Ahlers and Cardin common lawyer] to Ahlers' assistant [assistant to Ahlers management 1] – ID 155-647; Internal email of 28 August 2015 from an Ahlers' employee to Ahlers' assistant [assistant to Ahlers management 1] – ID 155-63.

³⁵² Original text reads: *"beigefügt übersenden wir Ihnen den vereinbarungsgemäß bei [...] vorgenommenen Testkauf der Socken von [Cardin licensee 4] sowie des American T-Shirts, welches von [...] stammen dürfte. Um Ihnen gegebenenfalls den entsprechenden Aufwand für die Erstellung der Fotografien zu ersparen, übersenden wir zudem beigefügt einen USB-Stick mit den entsprechenden Detailbildern des Testkaufs"* Letter of 7 March 2017 from [Ahlers and Cardin common lawyer] to Ahlers' assistant [assistant to Ahlers management 1] – ID 155-630.

³⁵³ See: USB01-USB22 – Records of Ahlers monitoring and surveillance system from 2013-2018 – USB01 (ID 155-648 to 155-667), USB02 (ID 155-668 to 155-780), USB03 (ID 155-781 to 155-806), USB04 (ID 155-807 to 155-943), USB05 (ID 155-944 to 155-1046), USB06 (ID 155-1047 to 155-1190), USB07 (ID 155-1191 to 155-1458), USB08 (ID 155-1459 to 155-2762), USB09 (ID 155-2763 to 155-4451), USB10 (ID 155-4452 to 155-4589), USB11 (ID 155-4590 to 155-4731), USB12 (ID 155-4732 to 155-4834), USB13 (155-4835 to 155-5443), USB14 (ID 155-5444 to 155-6043), USB15 (ID 155-6044 to 155-6194), USB16 (ID 155-6195 to 155-6278), USB17 (ID 155-6279 to 155-6355), USB18 (ID 155-6356 to 155-6584), USB19 (ID 155-6585 to 155-7208), USB20 (ID 155-7209 to 155-7341), USB21 (ID 155-7342 to 155-7660) and USB22 (ID 155-7661 to 155-8079); See also Internal note of Ahlers of 10 March 2020 – ID 155-52; Email of 2 October 2019, with pictures of detected products originating from parallel trade attached, from Ahlers' agent [...] to an Ahlers' employee – ID 155-549.

³⁵⁴ Internal email of Ahlers of 8 December 2017 – Email attachment "Gegenüberstellung der Leistungen des [...] und der WTW KG" – ID 155-8147; Email of 30 September 2015 from [Ahlers management] to

- (229) First, in an email of September 2015 from Ahlers to Cardin, Ahlers shared a link to pictures of Pierre Cardin-licensed products offered by [Cardin licensee 8]’s customer, [Cardin licensee’s customer 1]³⁵⁵, and by other online retailers in Germany (translation from French, emphasis added): *“Further to our email of 10 September 2015, please find attached a link to the latest documentation of examples of imports from [Cardin licensee 8]/[Cardin licensee’s customer 1] into the territories where we have an exclusive licence. In addition to photos of individual products, you will also find photos showing the poor presentation of the products bearing the Pierre Cardin brand in [Cardin licensee’s customer 1] shops. In addition, you will find photos of the products sold online under the Pierre Cardin brand in Germany by third parties.”*³⁵⁶
- (230) Second, in a presentation dated September 2018 called “*Pierre Cardin – Parallel Imports Market Update – The Netherlands*”, an agent working for Ahlers reported to the latter on the results of market monitoring, including the monitoring of online discounters and online sales. The agent noted that he had frequently had to engage in discussions with Ahlers’ customers about parallel imports of Pierre Cardin-licensed products offered in online discounters. The agent identified the main players in the market offering such products and noted that: *“The current situation heavily obstructs the further development of our Sales Strategy and negatively impacts the brand, our customers, our sales organization, the Ahlers Group in Germany and our mutual revenues.”*³⁵⁷.
- (231) **Ahlers kept Cardin regularly informed**³⁵⁸ about the results of its monitoring activities, as the following correspondence demonstrates.
- (232) First, in February 2017 Ahlers wrote to Cardin (emphasis added):
*“In the last few weeks we unfortunately heard in many discussions with our customers complaints about the ongoing cheap imports of Pierre Cardin products within our licensed territories especially Germany, Belgium, Poland, the Baltic States and Czech republic.” [...] “We have informed you and [secretary to Cardin management 2] on numerous occasions that unauthorized sales are made in the territories in which we have an exclusive licence to distribute products under the Pierre Cardin brand.”*³⁵⁹

[Cardin licensing director 1] – ID 155-91; Ahlers internal email of 3 June 2020 from an Ahlers employee to Ahlers’ assistant [assistant to Ahlers management 2] – ID 155-109.

³⁵⁵ For the Parties’ coordinated actions against [Cardin licensee’s customer 1], see Section 6.1.2.2.2.1.

³⁵⁶ Original text reads: « Suite à notre courriel en date du 10 septembre 2015 veuillez trouver ci-joint un lien avec la dernière documentation en date des exemples concernant des importations de la société [Cardin licensee 8]/[Cardin licensee’s customer 1] dans les territoires où nous disposons d’une licence exclusive. En plus des photos de produits individuels vous trouverez aussi des photos qui montrent la mauvaise présentation des produits sous la marque Pierre Cardin dans les boutiques de [Cardin licensee’s customer 1]. De plus vous trouverez des photos des produits sous la marque Pierre Cardin revendus en ligne en Allemagne par des tiers. » Email of 30 September 2015 from [assistant to Ahlers management 1] to [Cardin licensing director 1] – ID 155-91.

³⁵⁷ Emails of 3 September 2018 and 5 October 2018 from Ahlers’ agent [...] to [Ahlers management] via [assistant to Ahlers management 3] – ID 155-290.

³⁵⁸ Email of 15 December 2017 from Ahlers’ assistant [assistant to Ahlers management 1] to Cardin’s assistant ([secretary to Cardin management 1]) – ID 155-160; Email of 12 December 2017 from [Ahlers management] to [Cardin licensing director 3] – ID 155-142; Email of 29 September 2015 from Ahlers’ assistant [assistant to Ahlers management 1] to [Cardin licensing director 1] – ID 155-99.

³⁵⁹ Email of 2 February 2017 from [Ahlers management] to Cardin’s assistant ([secretary to Cardin management 1]) – ID 155-213.

- (233) Second, an email from Ahlers to Cardin dated December 2017 indicates the regularity of Ahlers' reports to Cardin on its monitoring activity (emphasis added):

*"We usually inform you regarding parallel imports every few months. In the last months we got notice about problems – besides Germany – in Spain, Belgium, Netherlands, Russia, Bulgaria, Czech Republic, Switzerland and Austria."*³⁶⁰

- (234) Third, Ahlers' monitoring and reporting of sales of Pierre Cardin-licensed products in its licensed territories continued until at least 2021, as in February 2021 Ahlers wrote to Cardin in relation to sales by [Cardin licensee 8/ Cardin licensee's customer 1] in Ahlers' licensed territory in Spain (emphasis added):

*"Therefore it is a great disaster that [Cardin licensee's customer 1] has just now opened a new store in the [...]. Please find enclosed photos of the store and the large range of Pierre Cardin products offered by them."*³⁶¹

6.2.2. Reduction of royalties by Ahlers

- (235) As explained in recital (57)(e), during the Relevant Period, [...].

- (236) From at least 2011³⁶², Ahlers used sales by other Cardin licensees (or their customers) to low-price retailers as grounds not to adhere to the commercial terms previously agreed on with Cardin. By doing so, Ahlers put pressure on Cardin to act against sales of Pierre Cardin-licensed products to such retailers. From at least 2015, Ahlers also used threats to reduce its payments of the contractually-agreed royalties as a means to put pressure on Cardin to enforce out-of-territory sales restrictions and ensure the protection of the territorial exclusivity granted by its licensing agreements with Cardin, which Ahlers understood as absolute (meaning that no out-of-territory sales should enter its own contractual territories). In practice, Ahlers did this either by withholding a substantial share of the royalties due under its licence agreements or by negotiating reductions in the royalties due. In several cases, Cardin accepted these reductions in royalties and expressed sympathy with Ahlers' concerns.

6.2.2.1. Withholding of royalties on the basis of parallel sales in Ahlers' licensed territories

- (237) On 6 February 2015, Ahlers referred to the fact that it had provided documentation to Cardin proving that products originating outside its licensed territory were being distributed inside it, and used this as a justification to refuse to pay the full amount of royalties that had been agreed in its licence. The email reads as follows (emphasis added):

"Referring to our yesterday's e-mail we will send you by DHL a documentation regarding underwear and socks distributed in "our" countries, i.e. licensed territory. This will show - although it is only the "tip of the iceberg" because we cannot make all the purchases of what is offered - that it is nearly impossible to build up normal and regular sales and distribution. Next week we will send you more examples that

³⁶⁰ Email of 12 December 2017 from [Ahlers management] to [Cardin licensing director 3] – ID 155-142.

³⁶¹ Email of 18 February 2021 from Ahlers' assistant [assistant to Ahlers management 2] to [Cardin licensing director 3] – ID 155-602. See also WTW Ahlers internal email of 3 June 2020 from an Ahlers' employee to Ahlers' assistant [assistant to Ahlers management 2] – ID 155-109.

³⁶² See correspondence from 2011 in recital (246).

the destructive distribution in our licensed territory keeps moving in 2015. Therefore we cannot pay the whole royalties for the first half-year 2015."³⁶³

- (238) A few days later, on 19 February 2015, Cardin accepted the reduction of royalties: "[P]lease find attached the credit notes which cancel [...] of the invoices regarding the socks and underwear"³⁶⁴.

- (239) In correspondence from February 2016, Ahlers again invoked an infringement of its territorial exclusivity as a justification for withholding royalties (emphasis added):

*"Unfortunately the imports of very cheap shirts, poloshirts, pullovers and sportswear into our licensed territories which are violating our license agreements also continue unabated. Responsible for these cheap offers [...] of course to a large extent also [Cardin licensee 8], [Cardin licensee 8] sell their products not only online (1026! products are currently available in each European online shop of [Cardin licensee's customer 1]), but also in the magazines of them all over Europe. [...] Thus the exclusivity ensured by our license agreements is extremely violated. Therefore we reduced the royalties for some license contracts"*³⁶⁵

- (240) Ahlers repeated this claim on 2 February 2017 (emphasis added):

*"The deductions in 2016 were made in light of our corresponding agreements for 2015 regarding the ongoing violations of the exclusivity rights granted to us in our license agreements and the continuing economic crisis in parts of the licensed territory, namely Russia, Belarus and Ukraine. We reached an agreement that these issues justify a deduction of royalties during our discussions of the royalty payments for the year 2015. Unfortunately the situation especially the violation regarding our exclusivity rights did not improve in 2016."*³⁶⁶

- (241) By email of 15 February 2017, Cardin accepted the above royalty deductions³⁶⁷ and stressed the efforts that it was making to combat parallel sales (emphasis added):

*"He [Mr Cardin] feels obviously very concerned about all these issues and he wishes to recall that we are trying our best to fight against parallel market and unfair selling methods through legal procedures. Therefore he consents to approve the withheld amounts on the royalties 2016. I have then issued credit notes on all the unsettled 2016 invoices."*³⁶⁸

- (242) A draft email by Ahlers to Cardin dated February 2018 also demonstrates the link made by Ahlers between its withholding of royalties and its perception that its licences were in practice "non-exclusive" (emphasis added):

"[W]e cannot accept to pay the full amount due for exclusive licenses as long as these licenses continue to be non-exclusive in practice. We are of course happy to

³⁶³ Email of 6 February 2015 from [Ahlers management], via [assistant to Ahlers management 1], to Cardin's assistant ([secretary to Cardin management 1]) – ID 155-8550.

³⁶⁴ Email of 19 February 2015 from Cardin's assistant ([secretary to Cardin management 1]) to [Ahlers management]' assistant [assistant to Ahlers management 1] – ID 155-179.

³⁶⁵ Email of 11 February 2016 from [Ahlers management], via [assistant to Ahlers management 1], to Cardin's assistant ([secretary to Cardin management 1]) – ID 155-196.

³⁶⁶ Email of 2 February 2017 from [Ahlers management], via [assistant to Ahlers management 1], to Cardin's assistant ([secretary to Cardin management 1]) – ID 155-213.

³⁶⁷ Recitals (239) and (240).

³⁶⁸ Email of 15 February 2017 from Cardin's assistant ([secretary to Cardin management 1]) to [Ahlers management], via [assistant to Ahlers management 1] – ID 155-215.

*discuss how we can be of any help to find solutions for this ongoing disturbance. Therefore we cannot pay the full amount for 2017.”*³⁶⁹

- (243) In 2019 Ahlers again asked for a reduction of royalties on the basis that Cardin was not ensuring that it enjoyed absolute exclusivity in its licensed territory. On this occasion, Ahlers also made it clear that it was aware that Cardin could not legally ensure “true” exclusivity. By email of November 2019, Ahlers wrote to Cardin (emphasis added):

*“Apart from this generally very difficult market development in the fashion industry, our business continues to be strongly affected by large parallel imports in our exclusive licence territories. We have repeatedly pointed to this problem which has a strong negative impact on the Pierre Cardin brand image and the sales potential in a large number of affected countries and we have submitted comprehensive documentations regarding this issue. I gave you our latest documentation at the occasion of our last meeting in Paris at the beginning of October. It shows that despite your efforts, the situation has unfortunately not changed.” [...] “Even as far as you are prevented, for legal reasons, from establishing true exclusivity, this does not change the fact that the sales potential of the in reality non-exclusive licences resulting therefrom is lower. This must have an effect on the amount of the minimum royalties. [...] we would very much appreciate if Mr Cardin could agree to this reduction of royalties in addition to the [...] percent.”*³⁷⁰

- (244) Finally, on 8 June 2020, Ahlers again withheld a significant proportion of the royalties due under its licence agreement, invoking the same reasons that it had used in 2019 (emphasis added):

*“Nevertheless, we have to come back to the reduction of royalties of [...] euros made for the first semester 2020. Apart from the very difficult market situation in the fashion industry in these days, our business continues to be strongly affected by cheap parallel imports to our exclusive license territories with a negative impact on the Pierre Cardin brand image and our sales potential in these countries. For this reason, we deducted the amount of [...] euros from our license payment for the first semester 2020. We can provide you with a detailed documentation of cheap parallel imports in the first four months of this year for your information, if you wish. As we assume that this situation will not improve significantly despite the efforts of the House of Cardin, we would very much appreciate if Mr Cardin could agree to this reduction of royalties in addition to the [...] percent.”*³⁷¹

- (245) A few days later, by an email dated 11 June 2020, Cardin agreed to the reduction, and stressed its own efforts to stop the parallel imports encountered by Ahlers (emphasis added):

³⁶⁹ Email of 14 February 2018 from Ahlers’ assistant [assistant to Ahlers management 1] to [Ahlers management] with a draft to be sent by [Ahlers management], via [assistant to Ahlers management 1], to [Cardin licensing director 3] – ID 155-93.

³⁷⁰ Email of 5 November 2019 from [Ahlers management] to [Cardin licensing director 3] – ID 155-216.

³⁷¹ Email of 8 June 2020 from [Ahlers management], via [assistant to Ahlers management 2], to [Cardin licensing director 3] – ID 155-8556.

“Regarding the [...] reduction granted by Mr Cardin, it obviously responds to the consequences of the Covid-19 epidemic but also takes into account the risks of parallel imports that you may still encounter despite our efforts to put it a term.”³⁷²

6.2.2.2. Withholding of royalties on the basis of sales to retailers offering Pierre-Cardin licensed products at low prices

- (246) Correspondence from December 2011 shows that Ahlers referred to sales by discounters as one of the grounds for requesting a reduction of the minimum sales specified in its licence agreement and proposed to discuss this issue with Cardin (translation from German, emphasis added):

“The reason for this is the considerable market disruptions in the past three years, as well as the unclear situation regarding exclusivity in Russia - and further market disruptions on the part of [...] and other discounters whose market position does not correspond to the high image of the Pierre Cardin brand. For the past financial year, we had agreed on a minimum turnover of [...] euros, or [...] euros as an annual licence fee. We now ask that the minimum turnover be reduced accordingly for the next year and the year after, for the reasons mentioned above and also in view of the looming financial crisis in the euro area. [...] I would like to talk to you on the phone about this.”³⁷³

- (247) Correspondence from August 2015 shows that, due to sales of Pierre Cardin-licensed products by discounters supplied by other Cardin licensees or by their customers, Ahlers paid lower royalties than those specified in its licence agreement (emphasis added):

“Due to the continuous distribution of socks and underwear in discounters in Germany and elsewhere, it is very hard to build up a regular business. Therefore, we only wired [...] the amounts for these products. A documentation of this bad and destructive distribution has been handed over to [Cardin licensing director 1].”³⁷⁴

“[W]e herewith would like to inform you that - due to the ongoing problems with discounters in Germany and [Cardin licensee’s customer 1] in many countries – we deducted [...] from the payment for shirts (in Germany, Austria, Switzerland and Netherlands) and [...] from the payment for knitwear (in Germany and Austria).”³⁷⁵

- (248) By email of March 2016, Cardin accepted the deductions made by Ahlers from the royalties due for 2015:

³⁷² Email of 11 June 2020 from [Cardin licensing director 3] to [Ahlers management], via [assistant to Ahlers management 2] – ID 155-213.

³⁷³ Original text reads: “Der Grund dafür sind die erheblichen Marktstörungen in den vergangenen drei Jahren, ferner die ungeklärte Situation betreffend Exklusivität in Russland – sowie erneute Marktstörungen seitens [...] und sonstige Discounter, deren Marktstellung nicht dem hohen Image der Marke Pierre Cardin entspricht. Für das abgelaufene Geschäftsjahr hatten wir uns auf einen Mindest-Umsatz von [...] einigen können bzw. [...] Euro als jährliche Lizenzgebühr. Wir bitten nun darum, dass der Mindest-Umsatz auch für das nächste und übernächste Jahr entsprechend reduziert wird, aus den oben genannten Gründen und auch im Hinblick auf die sich abzeichnende Finanzkrise im Euro-Raum. [...] Dazu würde ich gerne mit Ihnen telefonieren”. Email of 15 December 2011 from [Ahlers management], via [assistant to Ahlers management 1] to [Cardin licensing director 1] – ID 155-625.

³⁷⁴ Email of 7 August 2015 from [Ahlers management], via [assistant to Ahlers management 1], to Cardin’s assistant ([secretary to Cardin management 1]) – ID 155-192.

³⁷⁵ Email of 20 August 2015 from [Ahlers management], via [assistant to Ahlers management 1], to Cardin’s assistant ([secretary to Cardin management 1]) – ID 155-191.

*"We have duly noted your remarks. You will find here attached the credit notes which cancel all the remaining [royalties] due for 2015."*³⁷⁶

- (249) Ahlers' withholding of royalty payments on the basis of sales by discounters supplied by other Cardin licensees is also evidenced by correspondence from 2016 and 2018 (emphasis added):

*"As last year large amounts of [...] continue to be distributed in discounters and through a number of different low-price distribution channels. [...] In view of these difficult circumstances it is almost impossible to build up a regular business relationship. Therefore we only wired [...] of the royalties for these two product ranges."*³⁷⁷

*"We would like to inform you that yesterday we have already transferred the royalties totally amounting to [...] (divided as per attached). Two deductions were made [...] The deduction regarding [...] was made because we will not achieve any turnover in the first half-year. [Cardin Licensee 5] is still supplying German Discounters [...] Just like last year, in Germany [...] were sold again at a price of [...] - therefore the deduction."*³⁷⁸

- (250) By email of February 2017, Cardin agreed to accept the deductions made by Ahlers from the royalties due for 2016³⁷⁹. With regard to the royalties withheld by Ahlers in 2018, it appears that Cardin acknowledged the information sent by Ahlers, asked Ahlers to provide more evidence of the sales made by Cardin's [...] licensee [Cardin licensee 5] in Germany and suggested a meeting between Cardin and Ahlers³⁸⁰.

- (251) Correspondence from Ahlers to Cardin dated 1 April 2019 shows that Ahlers continued to react to sales by discounters by withholding part of the royalties that were contractually due to Cardin. As well as withholding royalties, Ahlers informed Cardin that it had repeatedly complained to [Cardin licensee 5] about its sales to discounters in Ahlers' territory (emphasis added):

*"Our business continues to be heavily affected by cheap parallel imports. This applies above all to [...]. Despite repeated complaints made about this to [Cardin licensee 5], [...] is regularly offered by discounters. It is therefore almost impossible for us to sell [...]. The same applies to [...]. Sales of [...] at very low prices also have a particularly negative effect. Although this applies to almost all markets, we only made deductions for Germany and Poland."*³⁸¹

³⁷⁶ Email of 25 March 2016 from Cardin's assistant ([secretary to Cardin management 1]) to [Ahlers management], via [assistant to Ahlers management 1] – ID 155-71.

³⁷⁷ Email of 11 February 2016 from Ahlers' assistant [assistant to Ahlers management 2] to Cardin's assistant ([secretary to Cardin management 1]) – ID 155-213.

³⁷⁸ Email of 2 March 2018 from Ahlers' assistant [assistant to Ahlers management 1] to Cardin's assistant ([secretary to Cardin management 1]) – ID 155-8135.

³⁷⁹ Email of 15 February 2017 from Cardin's assistant ([secretary to Cardin management 1]) to Ahlers' assistant [assistant to Ahlers management 1] – ID 155-160.

³⁸⁰ Email of 6 March 2018 from [Cardin licensing director 3] to Ahlers' assistant [assistant to Ahlers management 1] – ID 155-181.

³⁸¹ Email of 1 April 2019 from Ahlers' assistant [assistant to Ahlers management 2] to Cardin's assistant ([secretary to Cardin management 1]) – ID 155-330.

- (252) By email of April 2019, Cardin replied to Ahlers' regarding the royalties withheld for 2019 by stating: "*Thank you for your feedback. We have duly noted the figures and the issues your business is going through*"³⁸².

7. LEGAL ASSESSMENT

7.1. Relationship between the Treaty and the EEA Agreement

- (253) Article 101(1) TFEU prohibits as incompatible with the internal market agreements between undertakings, decisions by associations of undertakings and concerted practices that (i) may affect trade between Member States and (ii) have as their object or effect the prevention, restriction or distortion of competition within the internal market, unless they meet the conditions of the exception provided by Article 101(3) TFEU.
- (254) Article 53(1) of the EEA Agreement prohibits as incompatible with the functioning of the EEA Agreement all agreements between undertakings, decisions by associations of undertakings and concerted practices that (i) may affect trade between Contracting Parties to the EEA Agreement and (ii) have as their object or effect the prevention, restriction or distortion of competition within the territory covered by the EEA Agreement, unless they meet the conditions of the exception provided by Article 53(3) of the EEA Agreement.
- (255) The conduct described in Section 6 concerns the territory of the Union and the EEA. Insofar as the conduct affected trade between Member States, Article 101 TFEU is applicable. Insofar as the conduct affected trade between the Union and Norway, Iceland and/or Liechtenstein, it falls within Article 53 of the EEA Agreement.
- (256) References in Section 7.3 to Article 101 TFEU, to effect on trade between Member States, or to competition within the internal market, are to be considered to include, respectively, Article 53 of the EEA Agreement, effect on trade between the Contracting Parties to the EEA Agreement, and competition within the territory covered by the EEA Agreement.

7.2. Jurisdiction

7.2.1. Principles

- (257) As the Court of Justice set out in the Wood Pulp case, an infringement of Article 101 TFEU "consists of conduct made up of two elements, the formation of the agreement, decision or concerted practice and the implementation thereof. If the applicability of the prohibitions laid down under competition law were made to depend on the place where the agreement, decision or concerted practice was formed, the result would obviously be to give undertakings an easy means of evading those prohibitions. The decisive factor is therefore the place where it is implemented"³⁸³. The Court of Justice has similarly held in Intel that the fact that an undertaking that participated in an agreement is situated in a third country does not prevent the application of Article 101 TFEU if that agreement is operative on the territory of the internal market³⁸⁴.

³⁸² Email of 2 April 2019 from Cardin's assistant ([secretary to Cardin management 1]), to Ahlers' assistant [assistant to Ahlers management 2] – ID 155-330.

³⁸³ Judgment of 27 September 1988, *Ahlström and others v Commission* ("Wood Pulp"), C-89/85, C-104/85, C-114/85, C-116/85, C-117/85, C-125/85, C-126/85, C-127/85, C-128/85 and C-129/85, EU:C:1988:447, paragraphs 16.

³⁸⁴ Judgment of 6 September 2017, *Intel v Commission*, C-413/14, EU:C:2017:632, paragraph 43.

Thus, the place of formation of the anti-competitive conduct is irrelevant for the Commission's territorial jurisdiction and the focus is on the place of its implementation.

- (258) Where the condition relating to implementation is satisfied, the Commission's jurisdiction to apply the EU competition rules to such conduct is covered by the territoriality principle as universally recognised in public international law³⁸⁵.

7.2.2. *Application to this case*

- (259) The Commission is the competent authority to apply Article 101 TFEU and, on the basis of Article 56 of the EEA Agreement, it is also competent to apply Article 53 thereof because the conduct was implemented in the EEA. The contractual clauses described in Sections 6.1.1.1, 6.1.2.1 and 6.1.3.1 were included in licence agreements concluded between (i) Cardin and its licensees (other than Ahlers), (ii) Cardin and Ahlers or (iii) Ahlers and its sub-licensee [Ahlers sublicensee], all relating to the sale of Pierre Cardin-licensed products in the EEA. The coordinated actions by Cardin and Ahlers described in Sections 6.1.1.2, 6.1.2.2 and 6.1.3.2 were also implemented to prevent all out-of-territory sales, including passive sales, of Pierre Cardin-licensed products in the EEA or prevent sales of such products to certain customers in the EEA.

7.3. **Application of Article 101 TFEU and Article 53 of the EEA Agreement**

7.3.1. *Concept of Undertaking*

7.3.1.1. Principles

- (260) Article 101 TFEU applies to undertakings and associations of undertakings³⁸⁶. The notion of "undertaking" encompasses any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed³⁸⁷.

7.3.1.2. Application to this case

- (261) As described in Section 2.1 both Cardin and Ahlers engaged in economic activities during the Relevant Period and are therefore undertakings within the meaning of Article 101(1) TFEU.

7.3.2. *Agreements and/or concerted practices between undertakings*

7.3.2.1. Principles

- (262) Article 101(1) TFEU refers to 'agreements between undertakings' and 'concerted practices'. An agreement between undertakings may be said to exist when the parties adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. For there to be an agreement for the purposes of Article 101(1) TFEU, it is sufficient that at least two undertakings have expressed their joint intention to conduct themselves on the market in a specific way³⁸⁸. The Commission

³⁸⁵ Judgment of 29 December 2021, *Nichicon Corporation v Commission*, T-342/18, EU:T:2021:635, paragraph 436.

³⁸⁶ Judgment of 3 March 2011, *AG2R Prévoyance v Beaudout Père et Fils SARL*, C-437/09, EU:C:2011:112, paragraph 40.

³⁸⁷ Judgment of 11 July 2006, *Federación Española de Empresas de Tecnología Sanitaria (FENIN) v Commission*, C-205/03 P, EU:C:2006:453, paragraph 25.

³⁸⁸ Judgment of 11 January 1990, *Sandoz Prodotti Farmaceutici v Commission*, C-277/87, EU:C:1990:6; Judgment of 26 October 2000, *Bayer v Commission*, T-41/96, EU:T:2000:242, paragraphs 67 and 173;

has found that contracts that are concluded on the basis of standard forms may also constitute agreements within the meaning of Article 101(1) TFEU³⁸⁹.

- (263) Where the Commission has adduced evidence of the existence of an agreement, it is for an undertaking which has taken part in that agreement to adduce evidence that it distanced itself from that agreement, evidence which must demonstrate a clear intention, brought to the notice of the other participating undertakings, to withdraw from that agreement³⁹⁰.
- (264) Although Article 101(1) TFEU draws a distinction between the concept of concerted practices and that of agreements between undertakings, its object is to bring within the prohibition of that Article a form of coordination between undertakings by which, even without having reached the stage where an agreement has been concluded, they knowingly substitute practical cooperation between them for the risks of competition³⁹¹. Thus, conduct may fall within Article 101(1) TFEU as a concerted practice even where the parties have not explicitly subscribed to a common plan defining their action on the market, but knowingly adopt or adhere to collusive devices which facilitate the coordination of their commercial behaviour³⁹².
- (265) Agreements and concerted practices may exist not only between actual or potential competitors, but also in the context of a vertical relationship (e.g. between a manufacturer/supplier and its distributors³⁹³).
- (266) For a conduct to be qualified as a concerted practice, it is relevant that the practical cooperation adopted by the parties in substitution for competition leads to conditions of competition that do not correspond to the normal conditions of the market, having regard to the nature of the products, the importance and number of the undertakings as well as the size and nature of the said market³⁹⁴. This is the case, for instance, when an economic operator accepts or takes into account the complaints made to it by another operator in connection with the competition to which the products manufactured by the former operator expose the latter³⁹⁵, and reacts accordingly³⁹⁶.

Judgment of 18 November 2021, *SIA „Visma Enterprise” v Konkurences padome*, C-306/20, EU:C:2021:935, paragraph 94.

³⁸⁹ See Commission Decision of 16 December 1991 relating to a proceeding under Article 85 of the EEC Treaty, IV/33.242 – *Yves Saint Laurent Parfums*, page 5, paragraph 2; Commission Decision of 2 December 1988 relating to a proceeding under Article 85 of the EEC Treaty, IV/31.697 – *Charles Jourdan*, paragraph 25.

³⁹⁰ Judgment of 3 March 2011, *Siemens v Commission*, T-110/07, EU:T:2011:68, paragraph 176 and case-law cited therein, confirmed on appeal by the judgment of 19 December 2013, C-239/11 P, EU:C:2013:866.

³⁹¹ Judgment of 14 July 1972, *ICI v Commission*, C-48/69, EU:C:1972:70, paragraph 64; Judgment of 4 June 2009, *T-Mobile Netherlands and Others*, C-8/08, EU:C:2009:343, paragraph 26.

³⁹² Judgment of 17 December 1991, *Hercules Chemicals v Commission*, T-7/89, EU:T:1991:75, paragraph 242.

³⁹³ Judgment of 7 June 1983, *SA Musique Diffusion française and others v Commission*, Joined Cases 100 to 103/80, EU:C:1983:158, paragraph 72-80; Judgment of 21 February 1984, *Hasselblad (GB) Limited v Commission*, C 86/82, EU:C:1984:65, paragraphs 24-29.

³⁹⁴ Judgment of 16 December 1975, *Coöperatieve Vereniging "Suiker Unie" UA and others v Commission*, Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114-73, EU:C:1975:174, paragraph 26.

³⁹⁵ Judgment of 29 June 2012, *GDF Suez SA v Commission*, Case T-370/09, EU:T:2012:333, paragraph 357; judgment of 16 December 1975, *Coöperatieve Vereniging "Suiker Unie" UA and others v Commission*, Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114-73, EU:C:1975:174, paragraph 283.

³⁹⁶ Judgment of 29 June 2012, *E.ON Ruhrgas AG and E.ON AG v Commission*, T-360/09, EU:T:2012:332, paragraphs 228-230.

- (267) For the purpose of identifying a concerted practice, the criteria of coordination and cooperation must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition: that each economic operator must determine independently the policy which it intends to adopt on the single market including the choice of the persons and undertakings to which it makes offers or sells. Although the requirement of independence does not deprive economic operators of the right to adapt themselves intelligently to the existing and anticipated conduct of their competitors, it does however strictly preclude any direct or indirect contact between such operators, the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market³⁹⁷.
- (268) It follows that the qualification of a concerted practice requires, besides undertakings' concerting together, conduct on the market pursuant to those collusive practices, and a relationship of cause and effect between the two³⁹⁸. The concepts of agreement and concerted practice are fluid and may overlap. Indeed, it may not even be possible to make a distinction between them, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, even though, when considered in isolation, some of its manifestations could more accurately be described as one rather than the other³⁹⁹.

7.3.2.2. Application to the case

7.3.2.2.1. Contractual clauses as agreements

- (269) The contractual clauses described in Sections 6.1.1.1, 6.1.2.1 and 6.1.3.1 were included in (i) licence agreements between Cardin and Ahlers, (ii) licence agreements between Cardin and 11 other Cardin licensees⁴⁰⁰ or (iii) the sub-licence agreement between Ahlers and [Ahlers sublicensee].
- (270) By entering into these licence and sub-licence agreements, the parties thereto expressed their intention to conduct themselves on the market in the manner prescribed by the agreements, which included the contractual clauses described in Sections 6.1.1.1, 6.1.2.1 and 6.1.3.1. Consequently, in accordance with the case law referred to in recital (262), these licence and sub-licence agreements constituted agreements under Article 101(1) TFEU.
- (271) The arguments put forward in Ahlers' reply to the SO do not call this conclusion into question. In its reply to the SO, Ahlers claimed that (i) Cardin unilaterally imposed the licence agreements upon it, based on templates that left no room for negotiation, (ii) its sub-licence agreement with [Ahlers sublicensee] was subject to Cardin's approval, and that it had no option to depart from the terms of its main licence agreement with Cardin and (iii) that, consequently, the licence and sub-licence agreements concluded by Ahlers cannot constitute agreements or concerted practices

³⁹⁷ Judgment of 16 December 1975, *Coöperatieve Vereniging "Suiker Unie" UA and others v Commission*, Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114-73, EU:C:1975:174, paragraphs 173-174.

³⁹⁸ Judgment of 8 July 1999, *Commission v Anic Partecipazioni SpA.*, C-49/92 P, EU:C:1999:356, paragraphs 115 and 118.

³⁹⁹ Judgment of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, EU:C:1999:356, paragraph 112 and 113.

⁴⁰⁰ These licensees were [...].

under Article 101 TFEU that could be held against it⁴⁰¹. In this regard, the Commission notes the following.

- (272) First, it is irrelevant for the purposes of establishing an agreement under 101(1) TFEU whether that agreement was based on templates produced by the licensor (a common practice in licensing businesses)⁴⁰².
- (273) Second, Ahlers was a party to the licensing agreements it signed with Cardin and the sub-licence agreement it entered into with [Ahlers sublicensee] and has not adduced any evidence showing that it distanced itself from the terms of these agreements in accordance with the case law mentioned in recital (263).
- (274) Therefore, the Commission maintains its conclusion that the contractual clauses described in Sections 6.1.1.1, 6.1.2.1 and 6.1.3.1 constitute agreements within the meaning of Article 101(1) TFEU.

7.3.2.2.2. Coordinated actions as concerted practices

- (275) As described in Sections 6.1.1.2, 6.1.2.2 and 6.1.3.2, during the Relevant Period, Ahlers and Cardin took coordinated actions to ensure compliance with the contractual clauses described in Sections 6.1.1.1, 6.1.2.1 and 6.1.3.1.
- (276) In particular, Ahlers provided Cardin with information and/or complained to Cardin about any type of out-of-territory sales and sales to certain customers by other Cardin licensees⁴⁰³ or their customers⁴⁰⁴ in Ahlers' exclusive territories. In reaction to Ahlers' complaints, Cardin intervened by (i) contacting the licensees or customers concerned and urging them to stop the sales in question⁴⁰⁵; (ii) amending a licence agreement to prohibit the licensee from selling to specific customers⁴⁰⁶; and (iii) terminating its agreements with those licensees that were involved in sales in Ahlers' territories⁴⁰⁷. In some cases, the correspondence sent by Cardin to these operators even explicitly mentioned that Cardin's interventions were based on information provided by Ahlers about sales in its exclusive territories by other Cardin licensees⁴⁰⁸. Cardin kept Ahlers regularly informed of its (future and past) actions to

⁴⁰¹ See Ahlers' reply to the SO, paragraphs 40 and 207-212.

⁴⁰² Even standard-form contracts may constitute agreements within the meaning of Article 101(1) TFEU. See recital (262) *in fine* and footnote 389.

⁴⁰³ For Ahlers' sharing information and or/complaining to Cardin regarding all out-of-territory sales or sales to specific customers by other Cardin licensees, see recitals (85), (89) and (90) ([Cardin licensee 11]); recital (93) ([Cardin licensee 13]); recitals (96) to (98) (Cardin licensee 5); recitals (188), (191), (192) and (194) ([Cardin licensee 7]); recitals (205) and (206) ([Cardin licensee 9]).

⁴⁰⁴ For examples of Ahlers' sharing information and or/complaining to Cardin regarding all out-of-territory sales or sales to specific customers, see recitals (85), (88), (89) and (90) ([Cardin licensee 11]); recitals (120), (125) to (128), (131), (134) and (137) ([Cardin licensee's customer 1]); recitals (142), (144) and (145) (...). As for [Cardin licensee 6], please see recital (282). With regard to Ahlers' complaints against specific customers selling Pierre Cardin-licensed products, see recital (173) (...); recital (174) (...); recitals (175), (177), (179), (180) and (185) (various retailers) and recital (213) ([Cardin licensee's customer 3]).

⁴⁰⁵ See recital (94) ([Cardin licensee 13]); recitals (129) and (138) ([Cardin licensee's customer 1]; recitals (207) to (210) ([Cardin licensee 9]); and recitals (213) to (218) ([Cardin licensee's customer 3]).

⁴⁰⁶ See recitals (188) to (193) and (195) ([Cardin licensee 7]).

⁴⁰⁷ See recitals (85) and (115) ([Cardin licensee 11]); and recital (111) and footnote 404 ([Cardin licensee 6]).

⁴⁰⁸ For such correspondence regarding the action against [Cardin licensee 11], see recital (85) and regarding the action against [Cardin licensee 13], see recital (94).

ensure Ahlers' absolute territorial exclusivity⁴⁰⁹. Ahlers also informed Cardin about its direct contacts with another Cardin licensee to urge the latter to stop (low-priced) out-of-territory sales into Ahlers' territories⁴¹⁰.

- (277) This conduct whereby Ahlers would complain/inform Pierre Cardin about out-of-territory sales and sales to certain customers by other Cardin licensees or their customers in Ahlers' exclusive territories and Pierre Cardin would react to these complaints constitute concerted practices within the meaning of Article 101(1) TFEU in line with the caselaw referred to in recital (266). By engaging in these practices, the Parties sought to alter the normal conditions of the market, in that they sought to influence the conduct of Ahlers' competitors (i.e. they sought to influence where and to whom those other Cardin licensees and their customers could sell), and thereby restrict competition in the markets where Ahlers operated.
- (278) For the reasons outlined below, the arguments put forward by the Respondents in their replies to the SO do not call this conclusion into question.

7.3.2.2.2.1. The Respondents' arguments that their actions did not constitute concerted practices

- (279) In their replies to the SO, both Respondents objected to the Commission's preliminary finding that a number of actions identified in the SO qualified as concerted practices.

Arguments on the conduct regarding licensees

- (280) In their replies to the SO, the Respondents claimed that the practices regarding [five Cardin licensees] were unilateral acts by either Cardin or Ahlers and therefore did not constitute concerted practices.
- (281) With regard to [Cardin licensee 11], Ahlers claimed that any action against this licensee was taken unilaterally by Cardin and that Ahlers had no visibility over it⁴¹¹. The Commission dismisses this argument as there are several elements on file that allow it to conclude that (i) Cardin's termination of [Cardin licensee 11]'s sportswear agreement for Italy⁴¹² and (ii) Cardin's subsequent control over all out-of-territory sales by [Cardin licensee 11] and customers of the latter⁴¹³ were reactions to complaints or information provided by Ahlers. Firstly, these events against [Cardin licensee 11] took place in 2014, a time where Ahlers was the licensee for sportswear in other Member States⁴¹⁴. Secondly, [Cardin licensee 11]'s termination letter, explicitly stated that the documentation showing that Pierre Cardin-licensed products originating from [Cardin licensee 11] had been sold outside of [Cardin licensee 11]'s licensed territory was provided by Ahlers to Cardin⁴¹⁵. This is further supported by

⁴⁰⁹ For examples of Cardin sharing information about its actions against (i) all out-of-territory sales by other Cardin licensees, see recitals (87) and (91) ([Cardin licensee 11]); (ii) all out-of-territory sales by customers of Cardin licensees, see recitals (112) and (114) ([Cardin licensee 6]), recitals (129) and (138) [Cardin licensee's customer 1] and recital (148) ([Cardin licensee's customer 2]); (iii) other Cardin licensees for sales to specific customers, see recital (201) ([Cardin licensee 1]) and recitals (208) to (210) ([Cardin licensee 9]); and (iv) Cardin licensees' customers for sales to specific customers, see recital (217) ([Cardin licensee's customer 3]).

⁴¹⁰ See recital (98) ([Cardin licensee 5]).

⁴¹¹ See Ahlers' reply to the SO, paragraph 139.

⁴¹² See recitals (85) and (86).

⁴¹³ See recitals (91) and (115).

⁴¹⁴ See footnote 173.

⁴¹⁵ See recitals (85) and (86).

the fact that Cardin had informed Ahlers about the termination of [Cardin licensee 11]’s licence agreement before this took place⁴¹⁶. Thirdly, the Commission recalls that (i) there is evidence from March and August 2014 that shows Ahlers complaining to Cardin about [Cardin licensee 11]’s out-of-territory sales after the termination⁴¹⁷ and (ii) there is subsequent correspondence from September 2014 that shows Cardin keeping Ahlers informed about its regular checks to prevent any out-of-territory sales by [Cardin licensee 11] and customers of the latter⁴¹⁸. The wording of this correspondence of September 2014 reveals that Ahlers had previously contacted Cardin about [Cardin licensee 11] as, in it, Cardin thanked Ahlers for a previous email and referred to the (terminated) licence agreement with [Cardin licensee 11] (and that with [Cardin licensee 6]⁴¹⁹) while apologizing that the “*situation*” with those licensees had “*been going on for so many years, despite all the accounting checks [carried out] with the [...] licensees every six months*”⁴²⁰.

- (282) With regard to [Cardin licensee 6], Cardin claimed that it had unilaterally decided to terminate the agreement with this licensee, i.e. that the decision did not result from any request on the part of Ahlers⁴²¹. In this respect, the Commission notes that several elements on file allow it to presume that Cardin’s termination of [Cardin licensee 6]’s men’s knitwear agreement for Italy⁴²² was a reaction to complaints made by Ahlers (or information provided by the latter) and, as such, part of a concerted practice. In this respect, the Commission firstly notes that in 2014 (when the events against [Cardin licensee 6] took place⁴²³), Ahlers had the licence for [...] in other Member States⁴²⁴. Secondly, the Commission recalls that (i) the termination letter itself explicitly stated that the termination was due to products found in Ahlers’ territory and that (ii) Cardin had informed Ahlers of the termination of [Cardin licensee 6]’s agreement before this took place⁴²⁵. Thirdly, in its reply to the SO, Cardin did not submit any evidence or arguments relating to the source of the information upon which the termination of [Cardin licensee 6]’s agreement was based⁴²⁶. Finally, after the termination, Cardin continued to inform Ahlers of the actions taken to check that Pierre Cardin-licensed products originating from [Cardin licensee 6] did not reach Ahlers’ territories⁴²⁷. In particular, as mentioned in recital (282) with regard to [Cardin licensee 11], the wording of the email of September 2014 reveals that Ahlers had previously contacted Cardin about [Cardin licensee 6] as, in this email, Cardin thanked Ahlers for a previous email and referred to the (terminated) licence agreement with [Cardin licensee 6] (and that with [Cardin licensee 11]) while apologizing that the “*situation*” with those licensees had “*been going on for so many years, despite all the accounting checks [carried out] with the Italian licensees every six months*”⁴²⁸.

⁴¹⁶ See recital (87).

⁴¹⁷ See recitals (89) and (90).

⁴¹⁸ See recital (91) and (115).

⁴¹⁹ See recital (114).

⁴²⁰ See recital (91).

⁴²¹ See Cardin’s reply to the SO, paragraph 133.

⁴²² See recital (111).

⁴²³ See recitals (111) to (114).

⁴²⁴ See footnote 206.

⁴²⁵ See recital (112).

⁴²⁶ See Cardin’s reply to the SO, paragraph 133.

⁴²⁷ See recital (114).

⁴²⁸ See recital (114).

- (283) With regard to [Cardin licensee 9], Cardin argued that (i) the decision to terminate the licence agreements with this licensee (following sales by the latter to low price retailers) had been taken unilaterally by Cardin and (ii) the fact that Cardin had informed Ahlers of the actions taken against this licensee was not specifically linked to a complaint or a request by Ahlers⁴²⁹. In response to this, the Commission notes that, contrary to what Cardin claims, there are several pieces of evidence on file that, when read together, lead to the conclusion that Cardin's termination of [Cardin licensee 9]'s agreements in April 2015⁴³⁰ was (at least in part) a reaction to Ahlers' complaints or information. First, evidence from March and October 2014⁴³¹ shows that Ahlers had complained to Cardin about [Cardin licensee 9]'s relationship with low price retailers. Second, after Cardin had received those complaints from Ahlers, in January 2015⁴³², it announced to [Cardin licensee 9] that it was launching an audit against the company *inter alia* because it had sold to low price retailers located in Germany (i.e. Ahlers' exclusive territory). Third, evidence from January, February and April 2015⁴³³ shows that Cardin forwarded to Ahlers its correspondence with [Cardin licensee 9] (including the letter of January 2015, in which the audit was announced) and kept Ahlers informed about its actions against this licensee (including its upcoming termination). In particular, in the email of 18 February 2015, Cardin explicitly said that it was informing Ahlers about its actions regarding [Cardin licensee 9] because the sales by the latter in Germany were "*a big injure*" to Ahlers' work and said that, if Ahlers needed any further information, it could contact Cardin or Ahlers' and Cardin's common lawyer, [Ahlers and Cardin common lawyer]⁴³⁴. The Commission notes that although Cardin denied that the fact that it had informed Ahlers about its actions against [Cardin licensee 9] was linked to a specific complaint or request by Ahlers, it did not provide any explanation or evidence to substantiate this claim. Finally, after all the exchanges referred to in this recital, in April 2015, Cardin announced to [Cardin licensee 9] the termination of two of its licence agreements.
- (284) With regard to [Cardin licensee 1], Cardin argued that (i) its decision to terminate [Cardin licensee 1]'s licence agreement for socks in Spain was also not linked to any requests by Ahlers but was rather unilaterally taken by Cardin⁴³⁵ and that (ii) the emails it had sent to Ahlers with information on the actions taken against [Cardin licensee 1] were not specifically linked to a complaint or a request made by Ahlers⁴³⁶. Ahlers also denied any involvement in Cardin's actions against [Cardin licensee 1]⁴³⁷. The Commission has assessed the Respondents' claims and maintains that there are several elements on file that justify the finding that the actions reported in Section 6.1.3.2.2.2 are part of the concerted practices of the Parties. First, the said actions regarding [Cardin licensee 1] took place between May 2014 and October 2015⁴³⁸. In this respect, the Commission firstly notes that there is ample evidence showing that, prior to that, Ahlers had complained to Cardin against sales of Pierre

⁴²⁹ See Cardin's reply to the SO, paragraph 160.

⁴³⁰ See recital (211).

⁴³¹ See recitals (205) and (206).

⁴³² See recital (207).

⁴³³ See recitals (208) to (210).

⁴³⁴ See recital (209).

⁴³⁵ See Cardin's reply to the SO, paragraphs 136 and 160.

⁴³⁶ See Cardin's reply to the SO, paragraph 136.

⁴³⁷ See Ahlers' reply to the SO, paragraph 156.

⁴³⁸ See recitals (198) to (201).

Cardin-licensed products by other licensees (or their customers) to retailers selling at low prices⁴³⁹. Secondly, in 2014 and 2015 (the period during which the events concerning [Cardin licensee 1] took place⁴⁴⁰), Ahlers held the licence for the same product category as [Cardin licensee 1] (socks) in other Member States, including Germany⁴⁴¹. Thirdly, the email that Cardin sent to [Cardin licensee 1] on 7 May 2014⁴⁴² was clearly to Ahlers' benefit, in that it requested [Cardin licensee 1] to stop sales to certain customers located in Germany (i.e. the territory for which Ahlers had a licence for socks) that Cardin (allegedly) deemed to be incompatible with the prestige of the Pierre Cardin brand. Fourthly, a few days after Cardin's email to [Cardin licensee 1], on 12 May 2014, Ahlers sent Cardin a report on [Cardin licensee 1]'s commercial activities. On 14 May 2014, Cardin replied by thanking Ahlers and stating that (i) its lawyer had sent a request to [Cardin licensee 1] asking the latter not to sell to customers that did not guarantee compliance with the contract and that (ii) Cardin was monitoring [Cardin licensee 1] very closely⁴⁴³. Finally, in August 2014, Cardin terminated [Cardin licensee 1]'s agreement. All this evidence taken together enables the Commission to presume that Cardin's actions were in response to Ahlers repeated complaints against sales of Pierre Cardin-licensed products to low price retailers.

- (285) With regard to [Cardin licensee 5], Cardin noted that it had never intervened against this licensee, but that it was rather Ahlers that had contacted this company⁴⁴⁴. The Commission finds that there are sufficient elements on file to presume that Ahlers' action against any out-of-territory sales by [Cardin licensee 5] in May 2016⁴⁴⁵ was part of the Parties' concerted practices. First, prior to Ahlers' contact with [Cardin licensee 5] in May 2016⁴⁴⁶, Cardin's licence templates and a number of Cardin's licence agreements included clauses restricting out-of-territory passive sales by its licensees and their customers⁴⁴⁷. Second, Ahlers complained in at least two occasions (in August 2014, during a meeting between Ahlers and Cardin, and in January 2016⁴⁴⁸) to Cardin about [Cardin licensee 5]'s products being sold into Ahlers' licensed territories, before it directly contacted [Cardin licensee 5] in May 2016. Third, in its reply to the SO, Cardin did not submit any evidence showing that, when Ahlers informed it about its direct contact with [Cardin licensee 5], Cardin objected to Ahlers' behaviour. Fourth, in 2017, Cardin concluded several agreements with [Cardin licensee 5] that contained restrictions on out-of-territory passive sales by [Cardin licensee 5] and its customers⁴⁴⁹. Finally, in March 2018, following royalty deductions made by Ahlers for *inter alia* sales by [Cardin licensee 5] in Germany, Cardin asked Ahlers to provide more evidence of the sales made by [Cardin licensee

⁴³⁹ See recitals (173) to (183) (blacklist), recitals (188), (191), (192), (193) and (194) ([Cardin licensee 7]), recital (205) ([Cardin licensee 9]) and recital (246) (Reduction of royalties).

⁴⁴⁰ See recitals (198) to (201).

⁴⁴¹ See footnote 323.

⁴⁴² See recital (198).

⁴⁴³ See recital (199).

⁴⁴⁴ See Cardin's reply to the SO, paragraphs 131 and 132.

⁴⁴⁵ See recital (98).

⁴⁴⁶ See recital (98).

⁴⁴⁷ See recitals (65), (67), (68), (69), (70), (103) and (104).

⁴⁴⁸ See recitals (96) and (97).

⁴⁴⁹ See recitals (65), (70) and (103).

5] in Germany and suggested a meeting between Cardin and Ahlers to discuss, among other things, the “[Cardin licensee 5] issue”⁴⁵⁰.

- (286) The Commission therefore concludes that the arguments put forward by the Parties regarding the abovementioned licensees do not call into question the Commission’s finding that the conduct of Parties described in Sections 6.1.1.2.1, 6.1.1.2.3, 6.1.2.2.1.1, 6.1.2.2.1.2, 6.1.3.2.2.2 and 6.1.3.2.2.3 amounted to concerted practices within the meaning of Article 101 TFEU.

Arguments on the conduct regarding customers of licensees and customers of the latter

- (287) In its reply to the SO, Cardin contested the objection advanced by the Commission in the SO that Cardin’s actions regarding [Cardin licensee’s customer 1] and [...] could constitute concerted practices.
- (288) With regard to [Cardin licensee’s customer 1], Cardin claimed in its reply to the SO that it had not taken any action against [Cardin licensee’s customer 1] in reaction to Ahlers’ complaints⁴⁵¹.
- (289) The Commission disagrees with this claim and notes that several elements on file allow it to conclude that the actions taken by Cardin *vis-à-vis* [Cardin licensee’s customer 1] were a reaction to complaints made by Ahlers (or information provided by the latter) and, as such, are part of a concerted practice in line with case law referred to in recital (266). Firstly, Cardin’s lawyers sent letters to [Cardin licensee’s customer 1] in September, October and November 2015⁴⁵² after Ahlers had complained on several occasions that same year⁴⁵³ (as well as in 2014⁴⁵⁴) about sales by [Cardin licensee’s customer 1] in its exclusive territories. Secondly, Cardin’s lawyer’s letters from September and October 2015 specifically stated that [Cardin licensee’s customer 1] had not acquired the products concerned from the Spanish licensee⁴⁵⁵. At that time, Ahlers was the licensee for sportswear in Spain, and therefore Cardin could not have known that the products targeted by its letters had not been acquired from Ahlers unless Ahlers had provided such information. In its

⁴⁵⁰ See recital (100), footnote 378 and recital (250).

⁴⁵¹ See Cardin’s reply to the SO, paragraph 141.

⁴⁵² See recitals (129) and (130).

⁴⁵³ See evidence from March, May and September 2015 described in recitals (125) to (128). With regard to Cardin’s claim that it was not clear whether certain letters dating from 2014 and 2015 were actually sent (see Cardin’s reply to the SO, paragraph 137), the Commission (i) refers to ID 155-30 (p.11) for a signed version (in Ahlers’ letterhead paper) of Ahlers’ letter of March 2015 referred to in recital (125); and (ii) notes that Ahlers’ letter of May 2015 referred to in recital (126) is in Ahlers’ letterhead paper. This, together with the fact that Ahlers’ minutes of an internal meeting that took place a few months later (namely in September 2015, see recital (128)) mentioned that Ahlers had sent information on [Cardin licensee’s customer 1]’s sales and requested action by Cardin, allow the Commission to presume that the two letters were sent. Finally, the Commission notes that the correspondence set out in recital (127) from September 2015 is an email sent by [Ahlers management], via [assistant to Ahlers management 1], to Cardin’s assistant ([assistant to Cardin management]).

⁴⁵⁴ See recitals (120) and (121). With regard to Cardin’s claim that it was not clear whether certain letters dating from 2014 and 2015 were actually sent (see Cardin’s reply to the SO, paragraph 137), the Commission notes that (i) the correspondence referred to in recital (120) is an email that was sent by [Ahlers management], via [assistant to Ahlers management 1], to [Cardin licensing director 1], via Cardin’s assistant ([assistant to Cardin management]) and (ii) the correspondence referred to in recital (121) is a letter signed by [Ahlers management] and in Ahlers’ letterhead paper so it can be presumed that it was sent.

⁴⁵⁵ See recital (129) and (130).

reply to the SO, Cardin did not submit any evidence showing that the information about the sales targeted by Cardin's lawyers' letters had come from a source different to Ahlers. Thirdly, all the letters exchanged between Cardin's lawyer and [Cardin licensee's customer 1] were forwarded to Ahlers by Cardin⁴⁵⁶. Finally, as to the correspondence of 2021 set out in recitals (137) to (139), the Commission notes that Cardin replied to Ahlers' complaints about [Cardin licensee's customer 1]'s sales in Spain and expressed willingness to take action against such sales.

- (290) With regard to [...], Cardin claimed that the emails exchanged between Ahlers and Cardin in March 2014, August 2016 and March 2021⁴⁵⁷ were scattered and did not constitute coordinated actions between the Parties⁴⁵⁸. In this respect, the Commission firstly notes that, contrary to what Cardin seems to claim, the Commission has reached the conclusion that the actions reported in Section 6.1.2.2.2.2 are concerted practices based on several elements. Firstly, as to Cardin's email of 10 March 2014 to [...], the Commission notes that (i) Cardin forwarded this email to Ahlers⁴⁵⁹ and that, in its reply to the SO, Cardin did not explain the reason why this information was shared with Ahlers. Secondly, one day after Cardin's email to [...], on 11 March 2014, Ahlers' shared with Cardin its concerns about [...] selling Pierre-Cardin licensed products into Ahlers' licensed territory. Thirdly, two months after this email from Ahlers to Cardin, in May 2014⁴⁶⁰, Cardin sent another email to [...] urging it to cease all out-of-territory sales of Pierre Cardin-licensed products. Fourthly, both the email Cardin sent to [...] in March 2014 and that of May 2014 were intended to benefit Ahlers, in that Cardin's purpose in sending them was to stop [...] sales into Ahlers' exclusive territories (in this case, the Netherlands and Germany). Fourthly, the two emails sent by Cardin to [...] (in March and May 2015) were aimed at addressing the same type of concerns (i.e. against all forms of out-of-territory sales by [...], as a customer of other licensees or customers of the latter) that Ahlers' kept sharing with Cardin in its subsequent complaints against [...] in 2016 and 2021⁴⁶¹. Finally, as to the email of March 2021 sent by Ahlers to Cardin (in which the former informed the latter about Pierre Cardin-licensed products originating from [...] found in Ahlers' territories), Cardin replied to it by requesting pictures and indicating that Cardin would also reach out to their common lawyer ([Ahlers and Cardin common lawyer])⁴⁶².
- (291) The Commission therefore finds that the above arguments do not call into question the Commission's findings that the conduct of the Parties against [Cardin licensee's customer 1] and [...] described in Section 6.1.2.2.2.1 and 6.1.2.2.2.2 amounted to concerted practices within the meaning of Article 101 TFEU.

Ahlers' general argument

- (292) In its reply to the SO⁴⁶³, Ahlers made the general argument that the Parties had opposing interests, i.e. Cardin being interested in collecting "maximum royalty payments" while not living "up to its obligations as trademark owner and grantor of

⁴⁵⁶ See recitals (129) and (130).

⁴⁵⁷ See recital (142) to (145) and recital (205).

⁴⁵⁸ See Cardin's reply to the SO, paragraphs 142-147.

⁴⁵⁹ See recital (141).

⁴⁶⁰ See recital (143).

⁴⁶¹ See recitals (144) and (145).

⁴⁶² See recital (146).

⁴⁶³ See Ahlers' reply to the SO, paragraphs 43 to 45 and 214 to 221.

exclusive licenses”, and Ahlers “opposing Cardin and asserting contractual rights aimed at adapting the contractual situation to economic reality”. Ahlers argued that in this light, the Commission was misguided in finding a concurrence of wills and coordination between the Parties.

- (293) The Commission also does not accept that this claim by Ahlers prevents the Commission from establishing that the Parties engaged in concerted practices. In particular, the Commission notes that the fact that the interests of a licensor and a licensee differ on certain matters is inherent to their different business models (e.g. they may not agree on the percentage of royalties that the licensee should pay to the licensor). However, this does not call into question the fact that (i) Ahlers communicated to Cardin its opposition to any type of out-of-territory sales of Pierre Cardin-licensed products by other licensees and their customers into its exclusive territories and to sales of such products to low-price retailers and (ii) Cardin acted in many instances against such sales. Therefore, the lack of concurrence of wills regarding, for example, the level of royalties due to Cardin does not exclude a concurrence of wills regarding the actions taken by the Parties against any type of out-of-territory sales and sales to certain customers mentioned in Sections 6.1.1.2, 6.1.2.2 and 6.1.3.2 and does not affect the Commission’s finding that the actions described in these sections were concerted practices.

7.3.2.2.2. Conclusion on the coordinated actions as concerted practices

- (294) In light of the above, the Commission maintains its conclusion that the coordinated actions described in Sections 6.1.1.2, 6.1.2.2 and 6.1.3.2 are concerted practices between undertakings within the meaning of Article 101(1) TFEU.

7.3.2.3. Conclusion

- (295) The conduct described in Sections 6.1.1, 6.1.2 and 6.1.3, which occurred over a considerable period, namely from 1 January 2008 to 31 March 2021, constitutes agreements and/or concerted practices within the meaning of Article 101(1) TFEU.

7.3.3. *Restrictions of competition by object*

7.3.3.1. Principles under Article 101 TFEU

- (296) Article 101 TFEU prohibits agreements and concerted practices which have as their object or effect the prevention, restriction or distortion of competition. It expressly includes as being restrictive of competition agreements or concerted practices, which: [...] (b) limit or control [...] markets.
- (297) The anti-competitive object or effects of a practice are not cumulative but are rather alternative conditions for finding that the practice falls within the scope of the prohibition laid down in Article 101(1) TFEU⁴⁶⁴. Once a certain practice has been demonstrated to have an anticompetitive object, it is not necessary to investigate its effects nor *a fortiori* to demonstrate its effects on competition in order to categorise it as a restriction of competition within the meaning of Article 101(1) TFEU⁴⁶⁵. To have an anti-competitive object, it is sufficient that an agreement be capable of

⁴⁶⁴ Judgment of 4 June 2009, *T-Mobile Netherlands and Others*, C-8/08, EU:C:2009:343, paragraph 28.

⁴⁶⁵ Judgment of the Court of 21 December 2023, *European Superleague Company, SL v Fédération internationale de football association (FIFA) and Union of European Football Associations (UEFA)*, Case C-333/21, EU:C:2023:101, paragraph 166; judgment of 27 September 2023, *Valve Corporation*, T-172/21, EU:T:2023:587, paragraph 168; judgment of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 64 and the case-law cited.

resulting in the prevention, restriction or distortion of competition within the internal market⁴⁶⁶.

- (298) The Union courts have also stated that certain types of coordination between undertakings reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects⁴⁶⁷. This derives from the fact that those types of coordination can be regarded, by their very nature, as being harmful to the proper functioning of normal competition⁴⁶⁸. To establish whether an agreement or concerted practice involves a restriction of competition ‘by object’, it is necessary to determine whether it reveals in itself a sufficient degree of harm to competition for it to be considered that it is not necessary to assess its effects⁴⁶⁹. To this end, regard must be had to:
- (a) The content of its provisions;
 - (b) The objectives it seeks to attain; and
 - (c) The economic and legal context of which it forms a part⁴⁷⁰.
- (299) When determining that context, it is also necessary to take into consideration the nature of the goods or services affected, as well as the real conditions of the functioning and structure of the market or markets in question⁴⁷¹. However, for the purposes of applying Article 101(1) TFEU, it is not necessary to define the relevant market where the agreement at issue has in itself an anti-competitive object: that is to say, where the Commission is able to conclude correctly, without first defining the market, that the agreement at issue distorted competition and was liable to have an appreciable effect on trade between Member States. This applies, in particular, to the

⁴⁶⁶ Judgment of 14 March 2013, *Allianz Hungária Biztosító and Others*, C-32/11, EU:C:2013:160, paragraph 38.

⁴⁶⁷ Judgment of 11 September 2014, *CB v Commission*, C-67/13 P, EU:C:2014:2204, paragraph 49; Judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, EU:C:2015:184, paragraph 113.

⁴⁶⁸ Judgment of 29 July 2024, *Banco BPN/BIC Português, SA and Others v Autoridade da Concorrência*, C-298/22, EU:C:2024:638, paragraph 43; judgment of 21 December 2023, *International Skating Union*, C-124/21 P, EU:C:2023:1012, paragraphs 101 and 102; judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraphs 161 and 162; and judgment of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraphs 88 and 89; judgment of 11 September 2014, *CB v Commission*, C-67/13 P, EU:C:2014:2204, paragraph 50; Judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, EU:C:2015:184, paragraph 114.

⁴⁶⁹ Judgment of 21 December 2023, *International Skating Union*, Case C-124/21 P, EU:C:2023:1012, paragraph 105; judgment of 21 December 2023, *UL and SA Royal Antwerp Football Club v Union royale belge des sociétés de football association ASBL*, Case C-680/21, EU:C:2023:1010, paragraph 92; judgment of 21 December 2023, *European Superleague Company*, Case C-333/21, EU:C:2023:101, paragraph 162; judgment of 29 June 2023, *Super Bock Bebidas SA and Others v Autoridade da Concorrência*, Case C-211/22, EU:C:2023:529, paragraph 32; judgment of 2 April 2020, *Budapest Bank and Others*, C-228/18, EU:C:2020:265, paragraph 37.

⁴⁷⁰ Judgment of 29 July 2024, *Banco BPN/BIC Português, SA and Others v Autoridade da Concorrência*, EU:C:2024:638, paragraph 44; judgment of 21 December 2023, *European Superleague Company*, Case C-333/21, EU:C:2023:101, paragraph 165; judgment of 29 June 2023, *Super Bock Bebidas SA and Others v Autoridade da Concorrência*, Case C-211/22, EU:C:2023:529, paragraph 35.

⁴⁷¹ Judgment of 12 January 2023, *HSBC Holdings and Others v Commission*, C-883/19 P, EU:C:2023:11, paragraphs 106 and 107.

most serious restrictions, including those that are expressly prohibited by Article 101(1)(a) to (e) TFEU⁴⁷².

- (300) Vertical agreements may also comprise restrictions of competition by object. While such agreements are, by their nature, often less damaging to competition than horizontal agreements, they can also, in some cases, have a particularly significant restrictive potential⁴⁷³.
- (301) Finally, according to settled case-law, an agreement can be considered to restrict competition by object even if it also pursues legitimate objectives⁴⁷⁴. Thus, once it is established on the basis of the content, objectives and the context of an agreement that it has an anticompetitive object, the fact that it may also pursue legitimate objectives does not affect this qualification.

7.3.3.1.1. Territorial and customer restrictions

- (302) Conduct which partitions markets by limiting parallel trade or by allocating customers⁴⁷⁵ may be considered as being so likely to have negative effects on the market, in particular on the price, choice, quantity or quality of the goods or services in question, that it may be considered redundant, for the purposes of applying Article 101(1) TFEU, to prove that they have actual effects on the market⁴⁷⁶.
- (303) The Union courts have held that agreements aimed at partitioning national markets along national borders or making the interpenetration of national markets more difficult must be regarded, in principle, as agreements whose object is to restrict competition within the meaning of Article 101(1) TFEU⁴⁷⁷. Therefore, where a licence agreement is designed to prohibit or limit the cross-border supply of a product, it is deemed to have as its object the restriction of competition⁴⁷⁸.

⁴⁷² Judgment of 28 June 2016, *Telefónica, SA v Commission*, T-216/13, EU:T:2016:369, paragraph 214.

⁴⁷³ Judgment of 29 June 2023, *Super Bock Bebidas SA and Others v Autoridade da Concorrência*, Case C-211/22, EU:C:2023:529, paragraph 33 and the case law cited therein.

⁴⁷⁴ Judgment of 29 July 2024, *Banco BPN/BIC Português, SA and Others v Autoridade da Concorrência*, EU:C:2024:638, paragraph 49; judgment of 21 December 2023, *International Skating Union v Commission*, C-124/21 P, EU:C:2023:1012, paragraph 107; of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 167; and of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 94; judgment of 20 November 2008, *Competition Authority v Beef Industry Development Society Ltd and Barry Brothers (Carrigmore) Meats Ltd.*, C-209/07, EU:C:2008:643, paragraph 21.

⁴⁷⁵ Judgment of 4 October 2011, *Football Association Premier League Ltd and Others v QC Leisure and Others and Karen Murphy v Media Protection Services*, Joined Cases C-403/08 and C-429/08, EU:C:2011-631, paragraphs 139 and 140; judgment of 9 December 2020, *Groupe Canal + v Commission*, C-132/19 P, EU:T:2020:1007, paragraph 54.

⁴⁷⁶ Judgment of 11 September 2014, *CB v Commission*, C-67/13 P, EU:C:2014:2204, paragraph 51; Judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, EU:C:2015:184, paragraph 115.

⁴⁷⁷ Judgment of 4 October 2011, *Football Association Premier League Ltd and Others v QC Leisure and Others, and Karen Murphy v Media Protection Services Ltd*, Joined Cases C-403/08 and C-429/08, EU:C:2011:631, paragraph 139-140; judgment of 12 July 2018, *Hitachi Metals Ltd v European Commission*, T-448/14, EU:T:2018:442, paragraph 67; judgment of 9 December 2020, *Groupe Canal + v Commission*, C-132/19 P, EU:T:2020:1007, paragraph 54.

⁴⁷⁸ Judgment of 4 October 2011, *Football Association Premier League Ltd and Others v QC Leisure and Others, C-403/08, and Karen Murphy v Media Protection Services Ltd*, Joined Cases C-429/08, EU:C:2011-631, paragraph 140; judgment of 16 September 2008, *Sot. Lélos kai Sia EE and Others v GlaxoSmithKline AEVE Farmakeftikon Proïonton, formerly Glaxowellcome AEVE*, Joined Cases C-468/06 to C-478/06, EU:C:2008:504, paragraph 65; judgment of 8 November 1983, *NV IAZ International Belgium and others v Commission*, Joined Cases 96-102, 104, 105, 108 and 110/82,

- (304) To assess sales restrictions, the Commission and Union courts distinguish between restrictions of active and passive sales⁴⁷⁹. Restrictions of active sales may be necessary to protect investments in a territory or user group that has been allocated exclusively to a distributor or reserved by a supplier to itself. Restrictions of passive sales however are designed to prevent any cross-border sales, thereby conferring absolute territorial exclusivity⁴⁸⁰. Restrictions of passive sales therefore have the object of partitioning markets within the meaning of the case-law referred to above⁴⁸¹.
- (305) The Court has held that agreements restricting out-of-territory active and passive sales make it possible for undertakings to charge for the products in question prices which are sheltered from all effective competition by artificially maintaining separate markets within the EEA⁴⁸².
- (306) As regards restrictions of online sales, the Union courts have held that a contractual provision which *de facto* prohibits the internet as a method of marketing amounts to a restriction of competition by object within the meaning of Article 101(1) TFEU, as it has at the very least as its object the restriction of passive sales to end users wishing to purchase online and located outside the trader's territory⁴⁸³.
- (307) In *Miller*, the Court of Justice held that a clause contained in an exclusive dealing agreement prohibiting exports constitutes a restriction of competition “*by its very nature*”, irrespective of “*whether it is adopted at the instigation of the supplier or of the customer, since the agreed purpose of the contracting parties is the endeavour to isolate a part of the market.*” The Court continued by stating that “*the fact that the supplier is not strict in enforcing such prohibitions cannot establish that they had no effect since their very existence may create a 'visual and psychological' background*

EU:C:1983:310, paragraphs 23 to 27; judgment of 28 April 1998, *Javico International and Javico AG v Yves Saint Laurent Parfums SA (YSLP)*, C-306/96, EU:C:1998:173, paragraphs 13 and 14; judgment of 6 April 2006, *General Motors BV v Commission*, C-551/03 P, EU:C:2006:229, paragraphs 67 to 69.

⁴⁷⁹ Active sales refers to actively approaching customers in a specific territory or customer group in a targeted manner. Passive sales refers to responding to unsolicited requests from customers. For further details on these concepts, see Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (the “2022 Vertical Block Exemption Regulation”), OJ L 134, 11.5.2022, p. 4-13, Article 1(1), points (l) and (m); the Guidelines on Vertical Restraints, OJ C 130, 19.5.2010, p. 1-46 (the “2010 Guidelines on Vertical Restraints”), paragraph (51) and the Commission Notice - Guidelines on Vertical Restraints, OJ C 291, 13.10.2000, p. 1-44 (the “2000 Guidelines on Vertical Restraints”), paragraph (50). For the distinction between active and passive sales, see also judgment of 12 December 2018, *Groupe Canal + v Commission*, T-873/16, EU:T:2018:904, paragraphs 44 and 45, confirmed on appeal by the judgment of 9 December 2020, *Groupe Canal + v Commission*, C-132/19 P, EU:T:2020:1007, paragraphs 51-54.

⁴⁸⁰ Judgment of 12 December 2018, *Groupe Canal + v Commission*, T-873/16, EU:T:2018:904, paragraph 45, confirmed on this point on appeal by the judgment of 9 December 2020, *Groupe Canal + v Commission*, C-132/19 P, EU:T:2020:1007, paragraphs 51-54.

⁴⁸¹ See the judgment of 13 January 2004, *JCB Service v Commission*, T-67/01, EU:T:2004:3, paragraph 85; judgment of 21 February 1984, *Hasselblad (GB) Limited v Commission*, C-86/82, EU:C:1984:65, paragraph 46.

⁴⁸² Judgment of 13 July 1966, *Consten and Grundig v Commission*, Joined Cases 56 and 58-64, EU:C:1966:41, p.343.

⁴⁸³ Judgment of 13 October 2011, *Pierre Fabre Dermo-Cosmétique*, C-439/09, EU:C:2011:649, paragraphs 47 and 58.

*which satisfies customers and contributes to a more or less rigorous division of the markets”.*⁴⁸⁴

- (308) Additionally, the Union courts and the Commission in its decisional practice have found that certain types of conduct falling short of an outright prohibition of out-of-territory sales or the conferral of absolute territorial protection may also constitute infringements of Article 101(1) TFEU by object. These include *inter alia* situations where export is permitted only if the consent of the producer is obtained⁴⁸⁵; where the producer must be contacted before exporting via the internet⁴⁸⁶; where an agreement requires a distributor to pass on to the producer any customer enquiries coming from outside the licensed territory⁴⁸⁷; where discounts are reduced or additional fees charged in the event of sales outside the destination territory⁴⁸⁸; or where a producer threatens to terminate or actually terminates contractual arrangements with distributors or dealers which sell outside their allocated territory⁴⁸⁹. As regards monitoring systems, while these are not anti-competitive as such, the Commission has condemned their use as part of a system of market partitioning⁴⁹⁰.
- (309) The Court of Justice has also held that agreements restricting the customers to which products can be resold with a view to restricting parallel trade are an infringement of Article 101 TFEU by object. This was the case in *BMW Belgium*, where car dealers in Belgium were prohibited from selling cars outside Belgium or “*to firms who propose to export them*”⁴⁹¹. The Court of Justice stated that, based on the tenor of the circulars that had been issued to the Belgian dealers, their legal and factual context and the conduct of the parties, there was an intention to put an end to all exports outside of Belgium⁴⁹². The Court of Justice further elaborated upon this in *Javico*, explaining that “*an agreement intended to deprive a reseller of his commercial freedom to choose his customers by requiring him to sell only to customers*

⁴⁸⁴ Judgment of 1 February 1978, *Miller International Schallplatten GmbH v Commission*, Case 19/77, EU:C:1978:19, paragraph 7.

⁴⁸⁵ Judgment of 14 July 1994, *Parker Pen Ltd v. Commission*, T-77/92, EU:T:1994:85, paragraphs 4 and 37, and judgment of 14 December 1983, *Société de Vente de Ciments et Bétons de l'Est SA v Kerpen & Kerpen GmbH und Co. KG*, C-319/82, EU:C:1983:374, paragraph 6.

⁴⁸⁶ Commission Decision of 25 March 2019 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement in Case AT.40436 – *Ancillary sports merchandise*, paragraph 107.

⁴⁸⁷ Judgment of 19 May 1999, *BASF Lacke + Farben AG v Commission*, T-175/95, EU:T:1999:99, paragraphs 87 and 88.

⁴⁸⁸ Judgment of 9 July 2009, *Automobiles Peugeot SA, Peugeot Nederland NV v Commission*, T-450/05, EU:T:2009:262, paragraphs 47 to 49.

⁴⁸⁹ Commission Decision of 25.03.2019 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement in Case AT.40436 – *Ancillary sports merchandise*, paragraphs 65 to 68 and 108 to 112, and Commission Decision of 30.01.2020 relating to proceedings under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement in Case AT.40433 – *Film Merchandise*, paragraphs 67 and 96 to 99.

⁴⁹⁰ Case IV/32.290 - *Newitt/Dunlop Slazenger International and Others*, paragraphs 59 to 60; Case IV/25.757 — *Hasselblad*, paragraph 48.

⁴⁹¹ Judgment of 12 July 1979, *BMW Belgium v Commission*, 32/78, 36/78 to 82/78, EU:C:1979:191, paragraph 22.

⁴⁹² Judgment of 12 July 1979, *BMW Belgium v Commission*, 32/78, 36/78 to 82/78, EU:C:1979:191, paragraph 28.

established in the contractual territory is restrictive of competition within the meaning of Article [101(1) TFEU]”⁴⁹³.

- (310) Finally, as explained in detail in Section 7.3.6.2.1, the restriction of the territory into which an exclusive distributor or its customers may passively sell the contract goods is considered to be a hardcore restriction of competition⁴⁹⁴. Where a selective distribution system has not been put in place by the supplier, restricting the ability of an exclusive distributor to sell to specific customers where these have neither been exclusively allocated to other distributors, nor have exclusively been reserved for the supplier, is also a hardcore restriction⁴⁹⁵. Hardcore restrictions are generally restrictions of competition by object within the meaning of Article 101(1) TFEU, for which it is presumed that they generally result in a net harm to competition⁴⁹⁶.

7.3.3.1.2. Intellectual property rights and the assessment of restrictions of out-of-territory sales under Article 101 TFEU

- (311) As regards intellectual property licence agreements containing restrictions of competition, in previous decisions the Commission has concluded that such restrictions fall under Union competition law⁴⁹⁷, irrespective of whether the IPRs in question are exhausted⁴⁹⁸. Moreover, the Union courts have held that the misuse of IPRs may amount to an infringement of competition rules⁴⁹⁹.
- (312) In *Consten and Grundig*, in the context of an agreement for the assignment of a trademark aimed at partitioning the internal market, the Court established a distinction between the existence of IPRs and the exercise of those rights. The Court held that rights conferred by national trademark law, such as the right to assign a

⁴⁹³ Judgment of 28 April 1998, *Javico v Yves Saint Laurent Parfums*, C-306/96, EU:C:1998:173, paragraph 13.

⁴⁹⁴ See Article 4(b) of the 2022 Vertical Block Exemption Regulation; Article 4(b) of Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ L 102, 23.4.2010, p. 1-7, (the “2010 Vertical Block Exemption Regulation”); and Article 4(b) of Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices, OJ L 336, 29.12.1999, p. 21–25, (the “2000 Vertical Block Exemption Regulation”).

⁴⁹⁵ *Ibid.*

⁴⁹⁶ See paragraph 23 of the Communication from the Commission - Commission Notice - Guidelines on Vertical Restraints of 10 May 2022 (the “2022 Guidelines on Vertical Restraints”), OJ C 248, 30.6.2022, p.1-85. See also paragraph 23 of the 2010 Guidelines on Vertical Restraints and paragraph 7 of the 2000 Guidelines on Vertical Restraints.

⁴⁹⁷ See also Commission Decision of 25.03.2019 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement in Case AT.40436 – *Ancillary sports merchandise*; Commission Decision of 09.07.2019 relating to proceedings under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement in Case AT.40432 – *Character merchandise* and Commission Decision of 30.01.2020 relating to proceedings under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement in Case AT.40433 – *Film Merchandise*.

⁴⁹⁸ It is a well established principle of Union law that once products incorporating IPRs have been placed on the market in the EEA by or with the consent of the rightholder, the rightholder cannot rely on its IPRs to prevent the further distribution of those products within the EEA. See, for example, the judgment of 16 July 1998, *Silhouette International Schmied GmbH & Co. KG v Hartlauer Handelsgesellschaft mbH*, C-355/96, EU:C:1998:374 and the judgment of 3 July 2012, *UsedSoft GmbH v Oracle International Corp*, C-128/11, EU:C:2012:407.

⁴⁹⁹ Judgment of 23 May 1978, *Hoffman-La Roche v Centrafarm*, Case 102/77, EU:C:1978:108, paragraphs 15 and 16.

trademark, could not be exercised so as “to frustrate the Community’s law on cartels”⁵⁰⁰.

- (313) In *Nungesser*⁵⁰¹, the Court held that the exercise of an IPR was prohibited by Article 101(1) TFEU in cases where an exclusive licence over that IPR granted to a licensee absolute territorial protection that eliminated all competition from third parties, such as parallel importers or licensees for other territories in respect of the products and the territory in question, and resulted in the artificial maintenance of separate national markets, which is contrary to the TFEU⁵⁰². This type of exclusive relationship that places limitations on the other licensees of the IPR owner, such that they are prevented from making any type of sales into the exclusive licensee’s territory, was therefore deemed to be incompatible with Article 101 TFEU on the basis of the principles established in *Consten and Grundig*⁵⁰³ and described in recital (312).
- (314) Similarly, the Union courts have held (in the context of broadcasting services) that restrictions of passive sales are capable of partitioning national markets, leading to absolute territorial protection, on the basis that they enable “each [licensee] to be granted absolute territorial exclusivity in the area covered by its licence” and, thus, allow “all competition between [licensees] in the field of those services to be eliminated”.⁵⁰⁴
- (315) In this respect, the Union Courts have held that, while the grant of a licence, including an exclusive licence, is not contrary to Article 101 TFEU, additional measures designed to ensure compliance with territorial limits placed on the exploitation of the licence that are contained in the licence agreements fall within Article 101 TFEU⁵⁰⁵.
- (316) Finally, the Union Courts have also established that restrictions on passive sales and, in particular, additional measures to ensure compliance with the territorial limitations contained in exclusive licensing agreements may be regarded as having as their object the restriction of competition⁵⁰⁶.

⁵⁰⁰ Judgment of 13 July 1966, *Consten and Grundig v Commission*, Joined Cases 56 and 58-64, EU:C:1966:41, p.346.

⁵⁰¹ Judgment of 8 June 1982, *C. Nungesser KG and Kurt Eisele v Commission*, C-258/78, EU:C:1982:211, paragraph 29.

⁵⁰² Judgment of 8 June 1982, *C. Nungesser KG and Kurt Eisele v Commission*, C-258/78, EU:C:1982:211, paragraphs 53 and 61.

⁵⁰³ Judgment of 13 July 1966, *Consten and Grundig v Commission*, Joined Cases 56 and 58-64, EU:C:1966:41, page 343; judgment of 8 June 1982, *C. Nungesser KG and Kurt Eisele v Commission*, C-258/78, EU:C:1982:211, paragraph 61.

⁵⁰⁴ Judgment of 4 October 2011, *Football Association Premier League Ltd and Others v QC Leisure and Others and Karen Murphy v Media Protection Services*, Joined Cases C-403/08 and C-429/08, EU: C:2011-631, paragraphs 139 to 142; judgment of 9 December 2020, *Groupe Canal + v Commission*, C-132/19 P, EU:T:2020:1007, paragraph 54.

⁵⁰⁵ Judgment of 4 October 2011, *Football Association Premier League Ltd and Others v QC Leisure and Others and Karen Murphy v Media Protection Services*, Joined Cases C-403/08 and C-429/08, EU: C:2011-631, paragraphs 139 to 142.

⁵⁰⁶ Judgment of 27 September 2023, *Valve Corporation*, T-172/21, EU:T:2023:587, paragraph 176; judgment of 9 December 2020, *Groupe Canal + v Commission*, C-132/19 P, EU:C:2020:1007, paragraphs 51 to 54 and the case-law cited therein.

7.3.3.2. Application to this case

- (317) The agreements and concerted practices concluded by Cardin and Ahlers restricted out-of-territory passive sales by Cardin licensees and their customers as well as the customers to whom Cardin licensees and their customers could sell Pierre Cardin-licensed products within the EEA. They were part of an overall plan put in place by the Parties to ensure the compartmentalisation of the internal market with regard to the sale of Pierre Cardin-licensed products, with a focus on ensuring absolute territorial exclusivity for Ahlers and protecting it from competition from retailers offering Pierre Cardin-licensed products at lower prices in its EEA licensed territories⁵⁰⁷.

7.3.3.2.1. Content of the agreements and concerted practices

7.3.3.2.1.1. Restrictions of out-of-territory passive sales

Contractual clauses

- (318) As described in Sections 5.1 and 6.1.1.1, Cardin enters into licence agreements by which it grants licensees the right to use certain IPRs to manufacture and distribute certain products in a particular territory. These licences are granted on an exclusive basis for a specific territory⁵⁰⁸.
- (319) All licence agreements between (i) Cardin and 10 licensees (other than Ahlers)⁵⁰⁹ mentioned in Sections 6.1.1.1.1 and 6.1.2.1.1 and (ii) between Cardin and Ahlers mentioned in Sections 6.1.1.1.2 and 6.1.2.1.2 contained provisions that granted exclusivity to the licensees. The sub-licence agreement between Ahlers and [Ahlers sublicensee] also granted exclusive rights to [Ahlers sublicensee] with regard to a number of EEA territories⁵¹⁰.
- (320) As regards the agreements between Cardin and the 10 licensees (other than Ahlers)⁵¹¹:
- Cardin's licence agreements with [eight Cardin licensees], contained clauses that **restricted out-of-territory passive sales by these licensees**⁵¹². In particular, these agreements included (i) clauses that limited the rights granted by the agreement in question (including the right to sell the licensed products) only to the licensed territory, without distinguishing between active and passive sales⁵¹³; (ii) clauses that banned *all* out-of-territory sales⁵¹⁴; and/or (iii) clauses that restricted online sales in various ways, including total bans on online sales⁵¹⁵, limitations of such sales to the licensed territory⁵¹⁶ and/or clauses making such sales conditional upon Cardin's prior authorisation⁵¹⁷.

⁵⁰⁷ See also Section 7.3.4.2.

⁵⁰⁸ According to the list submitted by Cardin on 27 October 2021 – ID 353-20, only one of its licensees in the EEA is non-exclusive, namely [...], which has held the licence for [...] in the [...] since [...].

⁵⁰⁹ [...].

⁵¹⁰ [...]. See also footnote 138.

⁵¹¹ For further details on the objective of the contractual clauses, see recitals (349) to (352).

⁵¹² Cardin's licensing templates also included this type of restrictions. See recitals (65) and (68) to (70).

⁵¹³ See recital (65).

⁵¹⁴ See recital (67).

⁵¹⁵ See recital (68).

⁵¹⁶ See recital (70).

⁵¹⁷ See recital (69).

- In addition to the territorial sales restrictions referred to above, Cardin’s licence agreements with [nine Cardin licensees], contained a clause which **prevented out-of-territory passive sales by the customers of Cardin’s licensees**⁵¹⁸. In agreements concluded by Cardin with [[seven Cardin licensees] this clause prohibited the licensees from selling to customers who could not guarantee that Pierre Cardin-licensed products would not be exported out of the licensed territory, without distinguishing between active and passive exports⁵¹⁹. Moreover, Cardin’s licence agreements with [Cardin licensee 12] and [Cardin licensee 10] included clauses⁵²⁰ providing that these licensees could only sell to customers who guaranteed that the licensed products would not be exported out of the European Union, with the result that these agreements effectively prohibited all exports (including passive sales) into the non-EU countries of the EEA⁵²¹;
- (321) As regards the licence agreements between Cardin and Ahlers⁵²², these contained:
- Clauses that **restricted out-of-territory passive sales by Ahlers** by: (i) limiting the scope of the licence (which included the right to sell the licensed products) to the licensed territories, without distinguishing between active and passive sales⁵²³; (ii) restricting the right to make online sales to the licensed territory, which in some agreements was reinforced by a clause that allowed Cardin to terminate the agreement in the event of non-compliance with this restriction⁵²⁴; and/or (iii) making online sales conditional upon to Cardin’s express authorisation⁵²⁵.
 - Clauses **preventing out-of-territory passive sales by Ahlers’ customers**⁵²⁶.
- (322) Finally, the sub-licence agreement between Ahlers and [Ahlers sublicensee]:
- prohibited online sales unless authorised by Ahlers, thereby **restricting** [Ahlers sublicensee]’s **out-of-territory passive sales**⁵²⁷; and
 - restricted **out-of-territory passive sales by** [Ahlers sublicensee]’s **customers**, by obliging [Ahlers sublicensee] to ensure that its customers also observed the obligation not to make online sales, and by including a financial penalty if it could not prove that its customers had complied⁵²⁸.

Coordinated actions

- (323) As described in Section 6.1.1.2 and Section 6.1.2.2, in addition to concluding licence agreements which included clauses restricting the territories into which Pierre Cardin-licensed products could be sold within the EEA (contractual clauses), Cardin

⁵¹⁸ Cardin’s licensing templates also included this type of restriction. See recital (103).

⁵¹⁹ See recital (103).

⁵²⁰ See recital (104).

⁵²¹ i.e. Iceland, Liechtenstein and Norway.

⁵²² For further details on the objective of the contractual clauses, see recitals (349) to (352).

⁵²³ See recital (73).

⁵²⁴ See recital (76). The clause that allowed Cardin to terminate the licence agreement in the event of non-compliance with the clause that limited online sales to the licensed territory was also contained in Cardin’s French licensing templates from 2017, see recital (78).

⁵²⁵ See recital (73).

⁵²⁶ See recitals (105) and (106).

⁵²⁷ See recital (81).

⁵²⁸ See recital (108).

and Ahlers engaged in coordinated actions to ensure that Ahlers enjoyed absolute territorial exclusivity in the territories covered by its licence agreements with Cardin.

- (324) In its reply to the SO, Ahlers claimed that the Commission had not explained in the SO whether the sales concerned by it had been active or passive⁵²⁹. In this regard, the Commission notes that in the SO it was made clear that the Parties' coordinated actions related to *all* out-of-territory sales⁵³⁰. In the following recitals, the Commission will explain in further detail the reasons why the coordinated actions against, first, licensees and, second, customers of licensees described in this Decision targeted any type of out-of-territory sales.
- (325) First, to prevent all out-of-territory sales within the EEA **by Cardin's licensees** [three Cardin licensees], including **passive out-of-territory sales**, the Parties cooperated and coordinated their actions as follows:
- (326) Firstly, Ahlers provided information and/or complained to Cardin about any type of out-of-territory sales (i.e. including passive sales) by [three Cardin licensees] into Ahlers' licensed territories⁵³¹.
- (327) In this respect, the Commission observes that the language of Ahlers' (see recital (328)) and Cardin's (see recital (329)) correspondence regarding these licensees does not show that Ahlers and Cardin were only concerned about active out-of-territory sales by these licensees but rather that they aimed at halting any type of out-of-territory sales into Ahlers' licensed territories to ultimately ensure the latter's absolute territorial exclusivity.
- (328) As far as Ahlers' correspondence is concerned, as regards [Cardin licensee 11], this is attested to by (i) the email quoted in recital (89), which shows Ahlers reporting to Cardin about products found in a retailer in Germany and saying that "[s]omething urgently needs to be done about this" and (ii) the letter quoted in recital (90), where Ahlers points out to Cardin that (translation from French, emphasis added) "*goods originating from Italy continue to arrive in Germany. After several deliveries in spring, these continue still today. These concern [...] sportswear shirts and jackets ([Cardin licensee 11]) [...]. As you know, we hold exclusive licences for these products in the German territory. [...] I therefore urge you to stop these illegal exports into Germany*"⁵³². Regarding [Cardin licensee 13], this is shown by the letter quoted in recital (93), in which Ahlers asserts that (emphasis added) "[t]his is proof that [Cardin licensee 13] delivers to Germany in breach of contract, at extremely ruinous prices". Regarding [Cardin licensee 5], in the emails quoted in recitals (96) and (97) Ahlers refers to "*goods originating [f]rom [...]*", "*deliveries*" and "*continuous imports*". The language of this correspondence, which was also included in the SO⁵³³, shows that Ahlers wanted to put an end to any type of imports into its territory. In its reply to the SO, Ahlers did not submit any evidence that would call

⁵²⁹ See Ahlers' reply to the SO, paragraphs 138 (regarding [Cardin licensee 11]); 147 and 154 (regarding [Cardin licensee 6]); 157 (regarding [Cardin licensee's customer 1]); 161 (regarding [...]); 164 and 165 (general statements); and 166 (regarding [Cardin licensee 5]).

⁵³⁰ See paragraphs 315, 317, 320 and 335 of the SO.

⁵³¹ For Ahlers' information/complaints regarding [Cardin licensee 11], see recitals (85), (89) and (90); regarding [Cardin licensee 13], see recitals (93) and (94), and regarding [Cardin licensee 5], see recitals (96) to (98).

⁵³² For further details on the Commission's view that the actions against [Cardin licensee 11] were not limited to fighting active out-of-territory sales, see recitals (329), (337) and (354).

⁵³³ See paragraphs 86, 87, 107, 110 and 112 of the SO.

into question this conclusion (e.g. showing that Ahlers' complaints to Cardin only concerned active sales).

- (329) Secondly, Cardin responded with regard to [Cardin licensee 11], by terminating its sportswear licence agreement for failure to comply with the out-of-territory passive sales restrictions therein⁵³⁴ and, after the licence agreement had been terminated, checking whether it was engaging in any out-of-territory sales during the sell-off period allowed for under that agreement⁵³⁵. In this regard, the Commission notes that in its termination letter to [Cardin licensee 11] (i) Cardin did not accuse [Cardin licensee 11] of making *active* out-of-territory sales; it simply referred to the fact that this licensee had "*exported and/or sold for export*"⁵³⁶ into a territory not covered by the agreement, with the term "export" not being linked to active sales, but instead to all sales for export; and (ii) the termination letter referred to a breach of Article 6 of the license agreement with [Cardin licensee 11], which as indicated in recital (86) restricted out-of-territory passive sales⁵³⁷. With regard to [Cardin licensee 13], Cardin contacted this licensee based on the complaint by Ahlers against *any* deliveries made by [Cardin licensee 13] into Ahlers' exclusive territories⁵³⁸. In its Reply to the SO, Cardin did not submit any evidence that would call into question that Cardin's and Ahlers' actions against [Cardin licensee 13]⁵³⁹ were targeting *any* out-of-territory sales by [Cardin licensee 13] into Ahlers territory (i.e. that they only acted against out-of-territory *active* sales). Finally, as regards the intervention against [Cardin licensee 5] described in recitals (96) to (98), it was Ahlers who directly contacted [Cardin licensee 5] to urge it to stop any out-of-territory sales into Ahlers' licensed territories, without limiting its request to active sales. As Cardin was informed by Ahlers about this intervention, it was not necessary for Cardin to intervene on this occasion⁵⁴⁰. Cardin did however include out-of-territory passive sales restrictions in the licence agreements it signed with [Cardin licensee 5] in 2017⁵⁴¹ and sought information about out-of-territory sales by [Cardin licensee 5] into Ahlers' licenced territories, after Ahlers had complained about such sales⁵⁴².
- (330) Finally, the Parties kept each other informed of their respective actions⁵⁴³.
- (331) Second, to further restrict **out-of-territory passive sales within the EEA**, the Parties cooperated and coordinated their actions not only against licensees but also against **customers of licensees** as follows.

⁵³⁴ See recital (85). For (i) the qualification of these actions as part of the Parties' concerted practices and (ii) the objective of Cardin's termination of [Cardin licensee 11] agreement, see recitals (281) and (354)

⁵³⁵ See recital (91). See also recitals (281) and (354), which rebut (i) Ahlers' argument that the actions against [Cardin licensee 11] were not part of the Parties' concerted practices and (ii) Cardin's argument that its actions against [Cardin licensee 11] did not have the objective

⁵³⁶ The term "export" could refer to any out-of-territory sales, active or passive.

⁵³⁷ For further details on the Commission's view that the actions against [Cardin licensee 11] were not limited to fighting active out-of-territory sales, see recitals (328), (337) and (354).

⁵³⁸ See recital (94).

⁵³⁹ See recitals (93) and (94).

⁵⁴⁰ For the qualification of the Parties' actions against [Cardin licensee 5] as concerted practices, see recital (285).

⁵⁴¹ See recital (99).

⁵⁴² See recital (100).

⁵⁴³ For Cardin informing Ahlers about its actions against [Cardin licensee 11], see recitals (87) and (91); for Ahlers informing Cardin about its actions against [Cardin licensee 13], see recital (94); and for Ahlers informing Cardin about its actions against [Cardin licensee 5], see recital (98).

- (332) Firstly, Ahlers provided information and/or complained to Cardin about out-of-territory sales into its licensed territories by customers of [Cardin licensee 6]⁵⁴⁴, [Cardin licensee 11]⁵⁴⁵, [Cardin licensee 8] ([Cardin licensee's customer 1]⁵⁴⁶ and [...]⁵⁴⁷), and by a customer of other licensees ([Cardin licensee's customer 2]⁵⁴⁸), which had bought Pierre Cardin-licensed products from a licensee that did not have the licence for the territory in which [Cardin licensee's customer 2] was situated but rather for a different one (i.e. a licensee that had engaged in out-of-territory sales).
- (333) In this respect, the Commission observes that the language of Ahlers' (see recital (334)) and Cardin's (see recitals (336) and (337)) correspondence regarding customers of licensees does not show that Ahlers and Cardin were only concerned about active out-of-territory sales but rather that they aimed at halting any type of out-of-territory sales into Ahlers licensed territories to ultimately ensure the latter's absolute territorial exclusivity.
- (334) As far as Ahlers' correspondence is concerned, the Commission refers to Ahlers' language in the following emails to Cardin regarding [Cardin licensee's customer 1]⁵⁴⁹ and [...]⁵⁵⁰, which were also included in the SO⁵⁵¹ (emphasis added):
- “*It's not acceptable at all that [Cardin licensee's customer 1] is selling shirts, pullover, Jeans, Polo shirts etc. within our licensed area [...] I urge you to prohibit [Cardin licensee's customer 1] from selling pullovers, polo shirts, sweatshirts, shirts and jeans in the Czech Republic, but also in the other countries*” (see recital (120));
 - “*we ask you to intervene to stop these deliveries to [Cardin licensee's customer 1]*” (see recital (121));
 - “[Cardin licensee 8/ Cardin licensee's customer 1] *are selling Pierre Cardin products outside their licensed territories [...] We kindly request you to ask [Cardin licensee 8/ Cardin licensee's customer 1] to stop the distribution of Pierre Cardin products in our licensed territories immediately*” (see recital (125));
 - “*the distribution activities of the Italian companies and [Cardin licensee 8/ Cardin licensee's customer 1] must be stopped as a matter of urgency*” (see recital (126));

⁵⁴⁴ As explained in recital (112), Cardin informed Ahlers about the forthcoming termination of [Cardin licensee 6]'s agreement. For (i) the qualification of the Parties' actions against [Cardin licensee 6] as concerted practices and (ii) the objective of such actions, see recitals (282) and (355).

⁵⁴⁵ See recitals (85), (89), (90) and (115). For (i) the qualification of the Parties' actions against [Cardin licensee 11] as concerted practices and (ii) the objective of such actions, see recitals (281) and (354).

⁵⁴⁶ See recitals (120) to (122), (125) to (128), (131) to (137), and (139). For (i) the qualification of the Parties' actions against [Cardin licensee's customer 1] as concerted practices and (ii) the objective of such actions, see recitals (288), (357) to (359).

⁵⁴⁷ See recitals (142), (144) and (145). For the qualification of the Parties' actions against [...] as concerted practices, see recital (290).

⁵⁴⁸ See recital (147).

⁵⁴⁹ For further details on the Commission's view that the actions against [Cardin licensee's customer 1] had as an objective the restriction of out-of-territory passive sales, see recitals (336), (357) to (360).

⁵⁵⁰ For further details on the Commission's view that the actions against [...] had as an objective the restriction of out-of-territory passive sales, see recitals (336) and (356).

⁵⁵¹ See paragraphs 99, 167, 168, 173, 187 and 188 of the SO.

- “[...] *admitted that he already once broke the rules by buying poloshirts from [Cardin licensee’s customer 1] and reselling them into a territory where he has no distribution [] rights*” (recital (142));
 - “*It is completely unacceptable for us that [...] keeps on distributing their cheap merchandise in our exclusive licensed territories*” (see recital (144)).
- (335) Secondly, Cardin reacted as follows: (i) it expressed sympathy with Ahlers’ concerns⁵⁵² and showed willingness to intervene⁵⁵³ ([Cardin licensee’s customer 1]), (ii) it urged customers of licensees to stop such sales ([...] ⁵⁵⁴) and threatened to take legal action⁵⁵⁵ ([Cardin licensee’s customer 1] ⁵⁵⁶, [Cardin licensee’s customer 2] ⁵⁵⁷), and (iii) it terminated its licence agreements with the relevant licensees ([two Cardin licensees]), using any out-of-territory sales by the licensees’ customers as one of the grounds for termination⁵⁵⁸.
- (336) More specifically, in Cardin’s correspondence with [Cardin licensee’s customer 1] ⁵⁵⁹, [...] ⁵⁶⁰ and [Cardin licensee’s customer 2] ⁵⁶¹ (which was also reflected in the SO⁵⁶²) it asked them to stop selling Pierre Cardin-licensed products that had not been bought from the exclusive licensee for the territories in which they were based, i.e. Ahlers (emphasis added):
- “*you are selling, to Spanish customers, products bearing the trademark "Pierre Cardin" without the corresponding license and without having purchased the products to an authorized licensee in Spain. Correspondingly we shall request you to stop selling those products*” (email from Cardin’s lawyers to [Cardin licensee’s customer 1], see recital (129));
 - “*why you operate in Holland with “*tricot Pierre Cardin*” if you don’t have the licence? Please, explain me because it’s a clear forbidden action*” (email from Cardin to [...], see recital (141));
 - “*Take a step back, [...], regarding your sales in Germany and others*” (email from Cardin to [...], recital (143));
 - “*According to our information, the “[Cardin licensee’s customer 2]” shop is selling various products of the Pierre Cardin brand in Spain without holding a corresponding licence or acquiring them from the exclusive licensee for Spain.*

⁵⁵² See recital (133).

⁵⁵³ See recital (138).

⁵⁵⁴ See recital (141).

⁵⁵⁵ See Cardin’s Reply to the SO, paragraphs 139 and 150, and recitals (360) and (361), which rebut Cardin’s argument that its actions against [two Cardin licensee’s customers] did not have the objective to restrict out-of-territory passive sales.

⁵⁵⁶ See recitals (129) and (130).

⁵⁵⁷ See recital (147). See also recital (361), which rebuts Cardin’s argument that its actions against [Cardin licensee’s customer 2] did not have the objective to restrict out-of-territory passive sales.

⁵⁵⁸ See recital (111) and (112) for the termination of [Cardin licensee 6]’s licence agreement and recitals (115) and (85) for the termination of [Cardin licensee 11]’s licence agreement.

⁵⁵⁹ For further details on the Commission’s view that the actions against [Cardin licensee’s customer 1] had as an objective the restriction of out-of-territory passive sales, see recitals (333), (357) to (360).

⁵⁶⁰ For further details on the Commission’s view that the actions against [...] had as an objective the restriction of out-of-territory passive sales, see recitals (333), (336) and (356).

⁵⁶¹ For further details on the Commission’s view that the actions against [Cardin licensee’s customer 2] had as an objective the restriction of out-of-territory passive sales, see recital (361).

⁵⁶² Paragraphs 176, 186, 70 and 193 of the SO.

[...] *Hereby, we expressly ask you to stop the sale of Pierre Cardin products and we reserve our right to take further action*” (email from Cardin to [Cardin licensee’s customer 2], see recital (147)).

- (337) Regarding [Cardin licensee 6]⁵⁶³ and [Cardin licensee 11]⁵⁶⁴, the language of the exchanges below (which were also included in the SO⁵⁶⁵) also shows that the concern was to prevent any out-of-territory sales originating from these licensees or their customers from reaching Ahlers’ exclusive territories (emphasis added):
- “*your company had committed not to sell the products subject to the agreement to exporters [...] you sold [...] to the company [...] exempt of VAT [...], which proves that the goods were known to be intended for export and therefore outside the territory licensed to you.*” (letter from Cardin to [Cardin licensee 6], see recital (111));
 - “*no products must be sold outside of Italy*” (letter from Cardin to [Cardin licensee 6], see recital (113));
 - “*the companies in question have not directly exported, there is no billing for Germany, but we control whether there is a bridge company to evade direct sales. Believe me I am really sorry that this situation has been going on for so many years, despite all the accounting checks I carry out with the Italian licensees every six months, there are always leaks*” (email from Cardin to Ahlers, see recitals (91), (114) and (115));
 - “*I am writing to notify you of our intention to immediately and rightfully terminate the licence agreement referred to in this letter. Such agreement foresees the Licensing of the Trademark “Pierre Cardin” to be affixed on the products “Sportswear for men” for sales to be done only in the Italian territory. (Art.6). We understand [...] that you have exported and/or sold for export men’s ‘Sportswear’ items to a territory not covered by your licence contract signed on 20/02/2013, which provided for production and marketing only in the Italian territory. Your conduct is contrary to the provisions of the contract.”* (letter from Cardin to [Cardin licensee 11], see recitals (91) and (115)).
- (338) Finally, Cardin kept Ahlers informed of its actions against out-of-territory sales by customers of its other licensees⁵⁶⁶.

7.3.3.2.1.2. Restrictions of the customers to whom licensees (and their customers) might sell

Contractual clauses

- (339) As described in Section 6.1.3.1, the licence agreements concluded during the Relevant Period between Cardin and 10 of its licensees, including Ahlers, contained

⁵⁶³ For further details on the Commission’s view that the actions against [Cardin licensee 6] had as an objective the restriction of out-of-territory passive sales, see recital (355).

⁵⁶⁴ For further details on the Commission’s view that the actions against [Cardin licensee 11] had as an objective the restriction of out-of-territory passive sales, see recitals (328), (329) and (354).

⁵⁶⁵ Paragraphs 84, 88, 152, 154 and 155 of the SO.

⁵⁶⁶ See recital (138) ([Cardin licensee’s customer 1]); recital (141) ([...]); recital (148) ([Cardin licensee’s customer 2]); recitals (112) and (114) [Cardin licensee 6]); recitals (87) and (91) ([Cardin licensee 11]).

contractual clauses restricting the customers to whom Pierre Cardin-licensed products could be sold within the EEA⁵⁶⁷:

- (a) Cardin's licence agreements with [nine Cardin licensees] included one or more of the following customer restrictions⁵⁶⁸: (i) clauses preventing the licensee from selling to certain types of customers, such as duty-free shops, discounters and supermarkets⁵⁶⁹; (ii) clauses making sales to certain customers (i.e. duty-free shops) conditional on approval by the licensor⁵⁷⁰; (iii) clauses allowing Cardin to prohibit or directly prohibiting the licensee from selling to customers deemed incompatible with the prestige of the Pierre Cardin brand, without defining what would be deemed compatible with that brand⁵⁷¹; (iv) clauses identifying a number of retailers that were considered incompatible with the standing of the Pierre Cardin brand (and that therefore ought not to be supplied with Pierre Cardin-licensed products)⁵⁷²; and/or (v) clauses allowing Cardin to impose economic penalties in the event of non-compliance with the clause prohibiting sales to customers deemed to be incompatible with the prestige of the Pierre Cardin brand⁵⁷³.
- (b) As regards the agreements between Cardin and Ahlers, these contained (i) clauses preventing sales to certain types of customers, such as duty-free stores or discounters⁵⁷⁴; (ii) clauses prohibiting or restricting sales to categories of customers deemed incompatible with the standing or prestige of the Pierre Cardin brand⁵⁷⁵; and/or (iii) clauses allowing Cardin to terminate the agreement or to impose an economic penalty in the event of non-compliance with the clause prohibiting sales to customers deemed to be incompatible with the standing or prestige of the brand, without defining what qualities would or would not be deemed compatible with the standing or prestige of the brand⁵⁷⁶.
- (c) Finally, the sub-licence agreement between Ahlers and [Ahlers sublicensee] imposed customer restrictions by explicitly excluding discounters from the types of customers to which [Ahlers sublicensee] could sell Pierre Cardin-licensed products⁵⁷⁷.

Coordinated actions

- (340) As described in Section 6.1.3.2, in addition to concluding licence agreements which included clauses restricting the customers to whom Pierre Cardin-licensed products could be sold within the EEA (contractual clauses), Cardin and Ahlers coordinated their conduct to protect Ahlers from price competition from certain retailers offering Pierre Cardin-licensed products at lower prices. To this end, the Parties cooperated as follows:

⁵⁶⁷ For further details on the objective of these contractual clauses, see recitals (363) to (368).

⁵⁶⁸ Cardin's licensing templates also included this type of restrictions. See recitals (153), (156) and (159).

⁵⁶⁹ See recitals (152), (154) and (155).

⁵⁷⁰ See recital (153).

⁵⁷¹ See recitals (156) and (157).

⁵⁷² See recital (158).

⁵⁷³ See recital (159).

⁵⁷⁴ See recitals (161) and (163).

⁵⁷⁵ See recital (164).

⁵⁷⁶ See recitals (165) and (166).

⁵⁷⁷ See recital (169).

- (a) First, Ahlers provided information and/or complained to Cardin about sales by other Cardin licensees ([Cardin licensee 7]⁵⁷⁸, [Cardin licensee 9]⁵⁷⁹), customers of Cardin's licensees or customers of Cardin's licensees' customers to a low-price retailer ([Cardin licensee's customer 3]⁵⁸⁰) in Ahlers' licensed territories. It also asked Cardin to prohibit sales to certain retailers in agreements with other licensees⁵⁸¹ and created and shared with Cardin a blacklist of retailers to which Pierre Cardin-licensed products could not be sold⁵⁸².
- (b) Second, Cardin reacted by (i) opening an internal investigation against a licensee ([Cardin licensee 9]⁵⁸³) that had sold to low-price retailers in Ahlers' territories; (ii) urging another licensee ([Cardin licensee 1]⁵⁸⁴) to stop sales to customers that had sold the licensed products to such retailers in Ahlers' territories and eventually terminating [Cardin licensee 1]'s licence agreement; (iii) adding to the licence agreement with [Cardin licensee 7]⁵⁸⁵ (a licensee operating in Ahlers' territories) a list of retailers to which the licensed products could not be sold, and showing willingness to include similar lists in other licence agreements⁵⁸⁶; and (iv) requesting a retailer offering lower prices ([Cardin licensee's customer 3]⁵⁸⁷) that had been supplied with Pierre Cardin-licensed products to stop sales of such products in Ahlers' territory and threatening to take the matter to court.
- (c) Finally, Cardin kept Ahlers informed of its actions⁵⁸⁸.
- (341) Based on their content as described in recitals (323) to (340), the Commission concludes that, by their very nature, the Parties' agreements and concerted practices had the object of restricting competition, as set out in further detail in Section 7.3.3.2.2.
- 7.3.3.2.2. Objective of the agreements and/or concerted practices
- (342) The **contractual clauses** included in the agreements (i) between Cardin and Ahlers, (ii) Cardin and other licensees, and (iii) Ahlers and its sublicensee [Ahlers sublicensee], as well as the **coordinated actions** implemented by Cardin and Ahlers, pursued the same objective, namely to reduce intra-brand competition within the EEA between licensees of Pierre-Cardin-licensed products and between Ahlers and those licensees' customers, thereby compartmentalising the internal market. To achieve this objective, the Parties prevented out-of-territory passive sales of Pierre

⁵⁷⁸ See recitals (188) and (191) to (194).

⁵⁷⁹ See recitals (205) and (206). For (i) the qualification of the Parties' actions against [Cardin licensee 9] as concerted practices and (ii) the objectives of such actions, see recitals (283) and (369).

⁵⁸⁰ See recital (213) and (214).

⁵⁸¹ See recital (179).

⁵⁸² See recitals (181) to (184).

⁵⁸³ See recital (207). For more details on why the actions against [Cardin licensee 1] are part of the Parties' concerted practices, see recital (284).

⁵⁸⁴ See recitals (198) and (200). For (i) the qualification of the Parties' actions against [Cardin licensee 1] as concerted practices and (ii) the objectives of such actions, see recitals (284) and (369).

⁵⁸⁵ See recital (189).

⁵⁸⁶ See recitals (184) and (201).

⁵⁸⁷ See recitals (215) and (218). For further details on the objectives of the actions against [Cardin licensee's customer], see recital (370).

⁵⁸⁸ See recital (201) ([Cardin licensee 1]), recitals (208) to (210) ([Cardin licensee 9]), recitals (216) and (219) ([Cardin licensee's customer 3]).

Cardin-licensed products by Cardin's licensees and their customers, and restricted the customers to whom such products could be sold in the EEA. In accordance with the case law set out in recitals (302) to (310), such conduct generally constitutes a restriction of competition by object.

- (343) As to the objective of preventing out-of-territory passive sales by Cardin's licensees and their customers, none of the contractual clauses adopted in this respect distinguished between active and passive sales. The wording of the clauses reported in Sections 6.1.1.1 and 6.1.2.1 reveals that they were intended to ban or restrict either all out-of-territory sales (thereby including passive sales) or, at least, all out-of-territory sales conducted online. The same is true of the coordinated actions by Cardin and Ahlers described in Sections 6.1.1.2 and 6.1.2.2, as the evidence on the Commission's file does not reveal any indication that Cardin and/or Ahlers limited their coordinated actions to out-of-territory *active* sales. Instead, as explained in recitals (325) to (337) and (353) to (361), the language of the evidence quoted in Sections 6.1.1.2 and 6.1.2.2 reveals that the Parties were concerned about *any* type of out-of-territory sales (including passive sales) by other licensees or their customers into Ahlers' territories.
- (344) As to the objective of restricting sales of Pierre Cardin-licensed products to specific customers, the contractual clauses and coordinated actions described in Section 6.1.3 were aimed at excluding low-price retailers from the customer base of Cardin licensees, Ahlers' sub-licensee and their respective customers.
- (345) The focus of the Parties' conduct was to ensure absolute territorial exclusivity for Ahlers in the territories covered by its licence agreements and to protect it from competition from retailers offering Pierre Cardin-licensed products in these territories at lower prices.
- (346) The anticompetitive object of the contractual clauses and coordinated actions is further confirmed by the context in which they took place (i.e. the monitoring system and withholding of royalties, which concerned all types of out-of-territory sales and sales to low-price retailers), as illustrated in Section 7.3.3.2.3.
- (347) As will be shown in the following sections, the arguments put forward by the Respondents in their replies to the SO do not call this conclusion into question.
- 7.3.3.2.2.1. The Respondents' arguments that their conduct did not have as an objective the restriction of out-of-territory passive sales by Cardin's licensees and/or their customers
- (348) With regard to the **contractual clauses** described in Sections 6.1.1.1 and 6.1.2.1, in their replies to the SO, the Respondents raised the following arguments against Commission's preliminary finding that the objective of such clauses was to restrict out-of-territory passive sales.
- (349) First, Cardin claimed that its licence agreements signed prior to 2018 did not expressly and systematically prohibit out-of-territory passive sales and that these agreements did not systematically put in place absolute territorial protection⁵⁸⁹. With regard to the online sales restriction, Cardin argued that its policy did not prohibit online sales in a systematic and absolute way, and referred to (i) certain agreements

⁵⁸⁹ See Cardin's reply to the SO, paragraph 40.

where online sales could be authorised upon previous approval by the licensor and (ii) examples where Cardin had actually authorised such sales⁵⁹⁰.

- (350) The Commission does not find these arguments convincing. Firstly, the Commission notes that even though not all of Cardin's licence agreements and templates may have included restrictions on out-of-territory sales, those cited in Sections 6.1.1.1 and 6.1.2.1 did so. Secondly, for a restriction on out-of-territory sales to exist, it is not necessary that the contractual clauses in question explicitly provide for a prohibition on out-of-territory passive sales or explicitly state that absolute territorial protection will be granted to the licensee. As explained in recital (308), clauses falling short of an outright prohibition on out-of-territory sales can also qualify as restrictions of competition by object. In the present case, Cardin entered into licence agreements containing either explicit bans on all out-of-territory sales by its licensees or customers of the latter⁵⁹¹ (which, necessarily means that passive sales are included in that prohibition) or other provisions that also restricted out-of-territory passive sales⁵⁹². Thirdly, concerning Cardin's argument that there were instances in which Cardin authorised some licensees (namely, [...] and Ahlers) to conduct online sales, the Commission underlines that (i) the licence agreements with [...] ⁵⁹³ are not targeted by the objections set out in the SO or in this Decision, (ii) in the two examples mentioned by Cardin where it authorised [Cardin licensee 12] to sell online, the clauses in question only allowed such sales within the contractual territories (i.e. they prohibited out-of-territory online sales)⁵⁹⁴ and (iii) as regards the examples in which Cardin allowed Ahlers to conduct online sales⁵⁹⁵, such authorisation was granted - through an addendum of 30 March 2015 - only in respect of the licence agreements that were in force at that time, and therefore came to an end when each of these agreements expired. After March 2015, Cardin still concluded agreements with Ahlers that either prohibited online sales or restricted such sales to the contractual territories⁵⁹⁶. Fourthly, the Commission notes that the observation that some of Cardin's licence agreements contained clauses authorising certain online sales does not detract from the fact that restrictions on such sales were in place in the agreements mentioned in recitals (67) to (70) and recitals (75) to (78). Finally, the Commission recalls that clauses providing that the licensee must obtain the licensor's authorisation before selling online have also been considered as restrictions of competition (by object)⁵⁹⁷.
- (351) Second, Ahlers claimed that (at the business-to-business level) "*passive sales are generally not expected to happen in the fashion industry*" and that the absence of a reference to passive sales in the licence agreements does not exclude that the licence agreements should be understood to restrict only active out-of-territory sales⁵⁹⁸.
- (352) The Commission does not accept this claim by Ahlers. In this regard, the Commission firstly notes that Ahlers did not substantiate it with evidence. Secondly, the restrictions contained in the licence agreements concerned all out-of-territory

⁵⁹⁰ See Cardin's reply to the SO, paragraphs 48-51 and Annex 15.

⁵⁹¹ See recitals (67), (103), (104) and (106).

⁵⁹² See recitals (65), (68), (69), (70) and (73) to (78).

⁵⁹³ See Cardin's reply to the SO, paragraph 50.

⁵⁹⁴ See Cardin's reply to the SO, paragraph 50, and IDs 195 and 228.

⁵⁹⁵ See Cardin's reply to the SO, paragraph 50 and Annex 15.

⁵⁹⁶ See recital (77).

⁵⁹⁷ See recital (308).

⁵⁹⁸ See Ahlers' reply to the SO, paragraphs 124 to 129 and paragraph 245.

sales⁵⁹⁹, all online sales⁶⁰⁰ or all out-of-territory online sales⁶⁰¹, which necessarily means that passive sales were also covered by the restrictions. Therefore, the absence of an explicit reference to passive sales does not undermine the conclusion that restrictive clauses were aimed at restricting all out-of-territory sales (offline and/or online) by licenses and their customers including passive sales. Thirdly, Ahlers' claim is further called into question by the fact that, as of 2018, Cardin saw the need to amend its licence agreements to expressly authorise out-of-territory passive sales⁶⁰². Finally, statements made by Cardin in its reply to the SO contradict Ahlers' claim. For example, Cardin argued that the volume of sales made by [Cardin licensee 11] suggested that these could not have been passive sales, thereby implying that passive sales do occur in this industry⁶⁰³.

- (353) With regard to the **coordinated actions** described in Sections 6.1.1.2 and 6.1.2.2, in their replies to the SO, the Respondents contested that the objective of such actions was to restrict out-of-territory passive sales by raising the following arguments.
- (354) First, regarding [Cardin licensee 11], Cardin noted that, prior to the termination of this licensee's agreement, Cardin had detected (translation from French) "*massive sales of products manufactured by [Cardin licensee 11] outside Italy, the volume of which was incompatible with simple passive sales*"⁶⁰⁴ and that [Cardin licensee 11] had (translation from French) "*sold to companies whose purpose was to sell the licensed products outside Italy, i.e. to engage in active sales*"⁶⁰⁵. According to Cardin, this indicates that its actions against [Cardin licensee 11] targeted out-of-territory active sales (instead of passive sales). The Commission disagrees with this assertion. Firstly, the Commission notes that, in its reply to the SO, Cardin did not provide evidence to support its claims. Secondly, the Commission recalls that in its termination letter to [Cardin licensee 11] mentioned in recital (85), Cardin did not accuse [Cardin licensee 11] of making *active* out-of-territory sales; it simply referred to the fact that this licensee had "*exported and/or sold for export*"⁶⁰⁶ into a territory not covered by the agreement. The term "export" does not exclusively relate to active sales but can also refer to passive sales. Thirdly, as described in recital (86), the termination letter referred to a breach of Article 6 of [Cardin licensee 11]'s license agreement, which provided for restrictions on out-of-territory passive sales, including provisions that (i) the licence was only granted for Italy and that an extension to other territories would only be possible if Cardin had first sent a derogation letter to the licensee; (ii) the licensee could not engage in online sales and (iii) the licensee committed to sell the licensed products only to customers that would not engage in exports. Nothing in the wording of the termination letter suggested that Cardin had taken action to establish whether the products found in Ahlers' territories had been sold actively, or rather, passively. Finally, the Commission refers to the language of

⁵⁹⁹ See recitals (65), (67), (73), (103), (104) and (106).

⁶⁰⁰ See recitals (67), (68), (69), (75), (81) and (108).

⁶⁰¹ See recitals (70), (76) and (78).

⁶⁰² See recitals (66) and (74).

⁶⁰³ Cardin's reply to the SO, paragraph 118.

⁶⁰⁴ Original text reads: « [...] *des ventes massives de produits fabriqués par la société [Cardin licensee 11] hors territoire, dont le volume était incompatible avec de simples ventes passives.* ». Cardin's reply to the SO, paragraph 118.

⁶⁰⁵ Original text reads: « [...] *ce licencié vendait à des sociétés ayant pour objet de vendre hors d'Italie les produits sous licence c'est-à-dire de procéder à des ventes actives [...]* ». Cardin's reply to the SO, paragraph 118.

⁶⁰⁶ The term "export" could refer to any out-of-territory sales, active or passive.

the correspondence about [Cardin licensee 11], which, as mentioned in recitals (326) to (329) and (337), reveals that the coordinated actions against this licensee aimed at halting any type of out-of-territory sale of Pierre Cardin-licensed products originating from [Cardin licensee 11].

- (355) Second, regarding [Cardin licensee 6], Cardin argued that the termination of its agreement with this licensee was triggered by the fact that (translation from French) “[Cardin licensee 6] *sold to export customers, i.e. customers whose business was to sell outside Italy and therefore to make active sales outside the country*”⁶⁰⁷. Therefore, according to Cardin, the objective of this termination was not to restrict passive but rather active sales by [Cardin licensee 6]’s customers outside of the contractual territory. For several reasons, the Commission cannot accept these arguments. Firstly, the Commission notes that Cardin terminated⁶⁰⁸ [Cardin licensee 6]’s licence agreement on the basis that it had sold VAT-free to exporters (i.e. to firms whose primary activity was exporting). This in itself demonstrates that Cardin’s action was intended to restrict exports. As mentioned in recital (354), the term “export” refers to all out-of-territory sales and cannot be only equated to active sales. Secondly, the formal ground given by Cardin in its termination letter to [Cardin licensee 6] was that the latter had breached Article 6 of the agreement, which restricted out-of-territory passive sales by providing *inter alia* that (i) the licence was valid for Italy, an extension to other countries only being possible if the licensee obtained a derogation letter from Cardin; (ii) the licensee should not sell the licensed products to exporters; and (iii) the licensee should not sell such products online. Thirdly, the language of the email of March 2015 quoted in recital (113) sent by Cardin to [Cardin licensee 6] following termination of the latter’s agreement (“*no products must be sold outside of Italy*”) clearly shows that Cardin’s aim was to prevent any products originating from [Cardin licensee 6] from being sold outside the latter’s contractual territory. This is further attested by the email that Cardin sent to Ahlers in September 2016 quoted in recital (114), where it acknowledged it was regularly auditing [Cardin licensee 6] while regretting that despite all the checks, there were always “*leaks*”. The term “leaks” cannot be read as only amounting to active sales but must relate to *any* out-of-territory sales⁶⁰⁹.
- (356) Third, regarding [...], Cardin argued that, in some instances, it had intervened against this group because (i) [...] had bought products from [Cardin licensee 9] (the licence’s holder) and sold them in territories outside [Cardin licensee 9]’s territory⁶¹⁰; and (ii)[Cardin licensee 9] had manufactured products for which it did not have a licence⁶¹¹. In this context, Cardin’s actions against [...] would not have had the objective of preventing out-of-territory passive sales. In this respect, the Commission observes that these arguments are not linked to the actions described in Section 6.1.2.2.2.2 as the actions in question did not concern sales by [...] of products that it had bought from or had been manufactured by [Cardin licensee 9]. Instead, the actions described in in Section 6.1.2.2.2.2 targeted any out-of-territory sales of Pierre Cardin-licensed products that [...] had procured from other Cardin

⁶⁰⁷ See Cardin’s reply to the SO, paragraphs 133 to 134.

⁶⁰⁸ See termination letter described in recital (111).

⁶⁰⁹ See also recital (337).

⁶¹⁰ See Cardin’s reply to the SO, paragraphs 112 to 116.

⁶¹¹ See Cardin’s reply to the SO, paragraphs 108 and 109.

licensees ([Cardin licensee 8]) or customers of the latter ([Cardin licensee's customer 1])⁶¹².

- (357) Fourth, regarding [Cardin licensee's customer 1], Ahlers claimed that its actions against this retailer were aimed at preventing active sales and/or unauthorised sales⁶¹³ by this company⁶¹⁴. For its part, Cardin (i) claimed that its lawyers' letters to [Cardin licensee's customer 1] were legitimate in that they had aimed at establishing which licensee had supplied the products in question, with a view to verifying whether its trademark rights had been exhausted⁶¹⁵ and (ii) emphasised that it had not taken any "judicial action" to stop the sales by this operator⁶¹⁶. Therefore, in the Respondents' view, their actions against [Cardin licensee's customer 1] did not aim at preventing out-of-territory passive sales.
- (358) In addition to the points made in recitals (333) and (336), the Commission rejects the Respondents' arguments for the following reasons.
- (359) As to Ahlers' claims, the Commission notes that Ahlers' complaints and internal documents about sales by [Cardin licensee's customer 1] in its licensed territories⁶¹⁷ clearly show that its objective was to restrict all out-of-territory sales into its licensed territories, irrespective of whether these were active or passive in nature, with a view to ensuring its absolute territorial exclusivity. There is no evidence that Ahlers referred to [Cardin licensee's customer 1] having made active sales or to other licensees having sold actively to [Cardin licensee's customer 1]. Rather, Ahlers (i) referred to "*deliveries*" to [Cardin licensee's customer 1]⁶¹⁸, which occur whether sales are active or passive, (ii) urged Cardin to "*prohibit* [Cardin licensee's customer 1] *from selling*" in a number of territories⁶¹⁹, (iii) mentioned to Cardin that Ahlers had been promised that products originating from [Cardin licensee 8] (i.e. [Cardin licensee's customer 1]'s supplier) would not be sold outside [Cardin licensee 8] licensed territories⁶²⁰, and (iv) emphasised its concern with [Cardin licensee's customer 1]'s low prices⁶²¹. The Commission further finds that there is no indication that the Parties' motives for taking action against [Cardin licensee's customer 1] were based on suspicions that the company was making so-called unauthorised sales⁶²² as Ahlers' correspondence shows that the latter was aware that products sold by [Cardin licensee's customer 1] had been supplied by Cardin's licensees [two Cardin licensees]⁶²³.
- (360) As to Cardin's claims, the Commission firstly points out that in the complaints that preceded Cardin's interventions against [Cardin licensee's customer 1]⁶²⁴, Ahlers did

⁶¹² See recitals (141), (142), (144) and (145). See also recitals (333) and (336).

⁶¹³ "Unauthorised" here refers to Cardin's claim that [Cardin licensee's customer 1], did not source its products from an authorised Cardin licensee.

⁶¹⁴ See Ahlers' reply to the SO, paragraphs 157 *et seq.* and paragraph 176.

⁶¹⁵ See Cardin's reply to the SO paragraph 125 and 138 *et seq.*

⁶¹⁶ Original text reads "*action judiciaire*". See Cardin's reply to the SO paragraph 125, 138 and 139.

⁶¹⁷ See recital (120) to (122), (125) to (128), (131) to (137).

⁶¹⁸ See recital (121).

⁶¹⁹ See recital (120).

⁶²⁰ See recital (125).

⁶²¹ See recitals (120), (125), (126) and (128).

⁶²² "Unauthorised" here refers to Cardin's claim that [Cardin licensee's customer 1], did not source its products from a company appointed as a licensee by Cardin.

⁶²³ See recitals (121), (122), (125) to (127), (131) to (133).

⁶²⁴ See recitals (120), (121), (125), (126) and (127).

not claim that [Cardin licensee's customer 1] was buying from a source other than a Cardin licensee. Instead, as mentioned in recital (359), Ahlers referred to the fact that [Cardin licensee's customer 1] was being supplied by Cardin's licensees for Ireland and the UK ([...]). Therefore, Cardin was aware that [Cardin licensee's customer 1] had most likely been supplied by one of its authorised licensees. Secondly, although asking for a mere confirmation from [Cardin licensee's customer 1] could have been legitimate, Cardin's lawyers' letters from September and October 2015 did not contain any such question. Instead, they included an immediate request to stop the sales concerned and threatened to bring the matter to court⁶²⁵. In addition, after [Cardin licensee's customer 1] replied by explaining that it had sourced the products in question from Cardin's licensee for Ireland and the UK⁶²⁶ (i.e. confirming the information that Ahlers had provided to Cardin), in November 2015 Cardin's lawyers sent another letter to [Cardin licensee's customer 1] urging it to reveal the identity of the specific licensee, while reiterating their request to stop the sales in question⁶²⁷. Finally, the fact that Cardin did not ultimately take court action against [Cardin licensee's customer 1] does not affect the finding that the actions taken against this company were aimed at preventing any kind of out-of-territory sales.

- (361) Finally, regarding [Cardin licensee's customer 2], Cardin claimed that its letter to this retailer was legitimate, as it aimed at ensuring that the products in question were not counterfeits. Cardin also highlighted that it had not taken any (judicial) action against this retailer⁶²⁸. The Commission firstly notes that Cardin has not submitted any evidence to support that it had suspicions that this retailer was dealing in counterfeit products. Secondly, Cardin's letter to [Cardin licensee's customer 2]⁶²⁹ did not make any reference to counterfeits but simply claimed that the products concerned had not been acquired from the exclusive Spanish licensee (which, in this case, was Ahlers)⁶³⁰. Finally, the Commission observes that the fact that Cardin did not ultimately take this retailer to court does not demonstrate that Cardin's letter to it did not aim at preventing out-of-territory passive sales, especially given that the letter threatened to take further action if the request to stop sales was not followed⁶³¹.

7.3.3.2.2.2. The Respondents' arguments that their conduct did not have as an objective to restrict the customers to whom Cardin's licensees and their customer could sell

- (362) With regard to the contractual clauses and coordinated actions described in Sections 6.1.3.1 and 6.1.3.2, which the Commission finds to have as their objective the restriction of the customers to whom Pierre Cardin-licensed products could be sold, the Respondents generally claimed that their measures had the legitimate aim of preserving the quality and image of the Pierre Cardin brand.
- (363) First, Cardin made the general remark that even though it had not implemented a selective distribution system, it had designed its licensing system in such a way as to preserve a high-quality image for its brand⁶³². Regarding some of the contractual

⁶²⁵ See recitals (129) and (130).

⁶²⁶ See recital (129).

⁶²⁷ See recital (130).

⁶²⁸ See Cardin's reply to the SO, paragraph 150.

⁶²⁹ See recital (147).

⁶³⁰ See recital (147).

⁶³¹ See also recital (336).

⁶³² See Cardin's reply to the SO, paragraphs 16 to 21.

clauses restricting the customers to whom Cardin licensees could sell⁶³³, Cardin underlined, in particular, that (i) these were included in licence agreements of a reputed designer and “*haute couture*” brand, together with other provisions aimed at protecting the quality of the licenced products; and (ii) that the contractual clauses restricting sales to discounters and outlets had the aim of protecting the luxury look-and-feel of the brand as sales to such retailer could harm it, which would be legitimate even in the absence of a selective distribution policy⁶³⁴.

- (364) In this respect, the Commission firstly observes that Ahlers pointed out in its reply to the SO that the Cardin brand was not known in the fashion industry for having any particular prestige or standing. Indeed, commentators considered that Cardin had significantly eroded its own brand image⁶³⁵.
- (365) Secondly, Cardin’s licensing system was not set up or maintained in such a way as to enhance or maintain the image or value of the Pierre Cardin brand. In particular, during the Relevant Period, Cardin did not apply a policy of selective distribution, which is generally considered to be an important means of protecting brand image⁶³⁶. As regards its licensees, although, despite the absence of a selective distribution system, Cardin claimed that these were (translation from French) “*chosen for their ability to manufacture products using processes, designs and materials compatible with the image of the PIERRE CARDIN brand*”⁶³⁷, it did not specify the criteria that they needed to meet⁶³⁸. As to licensees’ customers, while Cardin included in its licence agreements restrictions on sales to customers deemed not compatible with the “prestige” of the brand, these clauses did not stipulate the conditions that customers were required to fulfil in order to be considered compatible with the brand image that Cardin supposedly wished to project⁶³⁹. Moreover, Cardin has acknowledged that in practice the clauses in question were not actually consistently enforced: “[e]xamination of the facts shows that PIERRE CARDIN licensees and their customers were selling [...] to stores with an image that was not very compatible with the high-end image of PIERRE CARDIN”⁶⁴⁰.
- (366) Thirdly, the Commission observes that the notion that Cardin did in fact not protect the image of its brand is supported by Ahlers’ reply to the SO, which stated that (emphasis added) “*Cardin has failed to properly organise its licensing system, undermining the image of the brand [...] As a result, the Pierre Cardin brand has become an oft-cited example of detrimental licensing practices. [...]*”⁶⁴¹

⁶³³ See recitals (154) to (159) and (163) to (166).

⁶³⁴ See Cardin’s reply to the SO, paragraph 71 to 76.

⁶³⁵ See Ahlers’ reply to the SO, paragraphs 46 *et seq.* and the “The Economist” articles quoted therein: The Economist, *Business sense*, March 2004; The Economist, *Every cloud has a satin lining*, March 2002; The Economist, *Brand extension, with jacuzzi*, February 2004.

⁶³⁶ See recital (56).

⁶³⁷ Original text reads: « [...] les licenciés sont choisis notamment pour leur capacité à assurer une fabrication des produits fondée sur des procédés, des designs et des matières compatibles avec l’image des marques PIERRE CARDIN. » Cardin’s reply to the SO, paragraph 17.

⁶³⁸ See Article 1(1) (g) of the 2022 Vertical Block Exemption Regulation.

⁶³⁹ See Section 6.1.3.1.

⁶⁴⁰ Original text reads: « L’examen des faits montre que les licenciés de PIERRE CARDIN et leurs clients vendaient [...] à des magasins ayant une image peu compatible avec celle, hautde-gamme, des magasins PIERRE CARDIN. » Cardin’s reply to the SO, paragraph 77.

⁶⁴¹ Ahlers’ reply to the SO, paragraphs 46 *et seq.*

- (367) Finally, as regards the quality of the products, although Cardin’s licence agreements generally contained an “artistic creation” clause stipulating that Cardin itself should determine the design and material of the licensed products⁶⁴², it appears that this clause was not systematically implemented in practice. In particular, evidence provided by Cardin in its reply to the SO in an attempt to demonstrate that it had monitored the quality of Pierre Cardin-licensed products in accordance with the “artistic creation” clause⁶⁴³ in fact shows precisely the opposite. The correspondence in question either relates solely to the affixing of the Pierre Cardin label to the products (and not to any quality criteria) or demonstrates that any quality control occurred only very sporadically⁶⁴⁴. The evidence provided by Cardin shows that it only visited the premises of a single licensee⁶⁴⁵. These indications of Cardin’s failure to implement effective quality control measures are in line with statements made by Ahlers and [...] that Cardin did not implement the “artistic creation” clause in practice⁶⁴⁶.
- (368) Second, concerning the contractual clauses prohibiting or restricting sales to duty free stores, Cardin claimed that duty free stores were not low-price retailers and that such clauses were simply intended to indicate that tax-free areas were not part of the territorial scope of the licences, without prejudice to the possibility for licensees to sell passively to shops located in those areas⁶⁴⁷. In this regard, the Commission firstly notes that Cardin has not adduced any evidence to prove its allegation that duty free stores⁶⁴⁸ are not “low price retailers”. Secondly, even if these retailers were not actually selling at lower prices compared to stores located outside airports or maritime terminals, it does not follow that restricting sales to such retailers was not a form of restriction on the customers to whom licensees could sell. Thirdly, as to Cardin’s claim that it was still possible for its licensees to sell passively to duty-free stores, the Commission notes that Cardin has not explained the factual basis for such a claim, in that it has not identified any contractual provisions in the agreements that would allow licensees to conduct passive sales to duty-free stores. Finally, the Commission notes that the restriction on sales to duty free stores was not the only customer restriction contained in the licence agreements entered into between Cardin and its licensees. As set out in recitals (154) to (159) and (163) to (165), these agreements contained many other types of restrictions on the customers to whom Pierre Cardin-licensed products could be sold.

⁶⁴² See recital (57)(c).

⁶⁴³ See Cardin’s reply to the SO, paragraphs 18 *et seq.*

⁶⁴⁴ Very limited correspondence with less than 10 of Cardin’s licensees, all but one of which date back to 2016 and 2017. See ID 27-183.

⁶⁴⁵ [Cardin licensee 8]. See Cardin’s reply to the SO, paragraph 20.

⁶⁴⁶ See Ahlers’ reply to the SO, paragraphs 46 *et seq.* and ID 27-189 (emphasis added): “[...] **in practice, Pierre Cardin has never provided designs or additional details on how to manufacture the items.** Despite the fact that such reference is indeed stated in all the agreements, [...], under the “Artistic Creation” clause, no model or sketch was ever provided by the licensor. This clause, which is indeed included in all license agreements, was **in practice never executed or performed** by Pierre Cardin and S.A.S. de Gestion Pierre Cardin. In practice, Pierre Cardin has never provided any guidance or additional details with respect to designs, packaging, labelling or the quality of the manufactured products.”

⁶⁴⁷ See Cardin’s reply to the SO, paragraphs 68 to 70.

⁶⁴⁸ See recitals (152), (153) and (162).

- (369) Third, concerning the coordinated actions against [two Cardin licensees]⁶⁴⁹, Cardin claimed that the terminations of the agreements with these licensees were primarily based on other grounds and that the fact that these licensees had sold to customers deemed incompatible with the brand was an ancillary reason for the terminations⁶⁵⁰. The Commission notes that it follows from the Cardin's and Ahlers' correspondence against [Cardin licensee 1] and [Cardin licensee 9] and from Cardin's own statements in its reply to the SO⁶⁵¹, that the sales of Pierre Cardin-licensed products by those licensees to establishments that allegedly damaged the Pierre Cardin brand (without mentioning which criteria should have been respected by those establishments to be compatible with the brand) was nevertheless one of the grounds to take action. With respect to [Cardin licensee 1], Cardin, for example, requested this company to stop selling Pierre Cardin-licensed socks to [...], as the latter had been selling to (translation from Spanish) "*establishments located in Germany that damage significantly the image of the brand*", without explaining which criteria should have been respected to be aligned with the brand (see recital (200)). With regard to [Cardin licensee 9], Cardin launched an internal audit against this licensee for, among other things, "[s]ale[s] to an establishment for marketing which does not respect the brand image" (see recital (208)). This is sufficient to find that Cardin's actions against these licensees pursued restricting the customers to whom those licensees could sell.
- (370) Fourth, with regard to the coordinated actions against [Cardin licensee's customer 3]⁶⁵², Cardin underlined that, it had not started legal proceedings against this retailer, and that if it had acted against it, this was due to counterfeiting suspicions⁶⁵³. In this regard, the Commission firstly observes that it does not follow from the fact that Cardin did not ultimately take [Cardin licensee's customer 3] to Court that the objective of the actions described in Section 6.1.3.2.3 was not to prevent sales of Pierre Cardin-licensed products to specific customers (in this case, [Cardin licensee's customer 3]). Secondly, Cardin's argument that its actions against this retailer were motivated by suspicions of counterfeiting cannot be accepted, as the email from Ahlers from September 2016⁶⁵⁴, which preceded Cardin's letters to [Cardin licensee's customer 3], did not mention any such suspicion; on the contrary, it suggested that [Cardin licensee's customer 3]'s products originated from the licensee for Ireland and the UK. This was then confirmed by [Cardin licensee's customer 3] itself⁶⁵⁵ but this confirmation did not stop Cardin from sending an additional letter to the retailer to reiterate its request to stop the sales in question⁶⁵⁶.
- (371) Fifth, while Ahlers acknowledged that Cardin had not applied any significant control mechanisms to preserve the quality of the licensed products or the brand image⁶⁵⁷, it claimed that its own actions were intended to remind Cardin of its duty to preserve those⁶⁵⁸. In this respect, the Commission firstly observes that the correspondence

⁶⁴⁹ See Sections 6.1.3.2.2.2 and 6.1.3.2.2.3.

⁶⁵⁰ See Cardin's reply to the SO, paragraphs 158 to 160.

⁶⁵¹ Cardin's reply to the SO, paragraph 159.

⁶⁵² See Section 6.1.3.2.3.

⁶⁵³ See Cardin's reply to the SO, paragraph 163.

⁶⁵⁴ See recital (214).

⁶⁵⁵ See recital (216).

⁶⁵⁶ See recital (218).

⁶⁵⁷ See Ahlers' reply to the SO, paragraphs 46 *et seq.*

⁶⁵⁸ See Ahlers' reply to the SO, paragraph 271.

between Ahlers and Cardin cited in this Decision does not support the notion that this was Ahlers' primary aim. Rather, it shows that the great majority of Ahlers' complaints to Cardin about sales in its exclusive territory by or to certain retailers referred *only* to the low-price level of these sales, with a minority of these complaints referring to both price and (low) quality of the products sold⁶⁵⁹. Likewise, Ahlers' monitoring system appears to have primarily targeted low-price products rather than low-quality products. In particular, it appears from the photographs taken by Ahlers of Pierre Cardin-licensed products sold in Ahlers' territories⁶⁶⁰ that the purpose of the photographs was, in general, not to show that the products were of poor quality, which might have been the case if the photographs had shown, for example, faulty seams or poor quality fabric, but rather to record which Pierre Cardin-licensed products had been imported into Ahlers' exclusive territories. Secondly, the notion that Ahlers' real concern was the low prices offered by certain retailers selling in its exclusive territories (rather than the quality of such products) is consistent with [Cardin licensee 5]'s observation included in its reply to a RFI of May 2022, that (translation from [...]): “[...] Ahlers’ expressed will was to safeguard a repositioning project for the Pierre Cardin Brand into a medium - high price range.”⁶⁶¹. Finally, the Commission notes that in the instances in which Ahlers expressed concerns about the allegedly poor quality of products imported into its licensed territory, in addition to concerns about their price, it never asked Cardin to implement effective quality control mechanisms, for example, pursuant to the “artistic creation” clause in Cardin’s licence agreements. Instead, Ahlers generally put pressure on Cardin to stop all sales into its licensed territory by certain other licensees or customers or to terminate their licence agreements⁶⁶².

- (372) Finally, with regard to the Commission’s preliminary finding that the customer restrictions aimed at protecting Ahlers from price competition in its licensed territories, Ahlers claimed that “*discounters selling cheap and low-quality Pierre*

⁶⁵⁹ Two thirds of the items of correspondence containing complaints by Ahlers relating to the sale of Pierre-Cardin licensed products by retailers relied on in this Decision related to the low-price only and no indication that Ahlers was concerned about the quality of the products. For Ahlers’ correspondence referring to the low-price level only, see: ID 155-499; ID 155-204; ID 155-8556; ID 155-196; ID 155-118; ID 155-149; ID 155-32; ID 155-8339; ID 155-208; ID 155-24; ID 155-459; ID 155-458; ID 155-150; ID 155-8135; ID 155-330; ID 155-405; ID 155-401; ID 155-597; ID 155-93; ID 155-253; ID 155-527; ID 155-8523; ID 155-333; ID 155-195; ID 155-607; ID 155-8510; ID 155-579; ID 155-558; ID 155-8521; ID 155-8103; ID 155-8559; ID 155-540; ID 155-8451; ID 155-8182, ID 155-38. For correspondence mentioning both price and quality of the products, see: ID 155-494; ID 155-106; ID 155-38 (pg. 4); ID 155-213; ID 155-500; ID 155-470; ID 155-394; ID 155-462; ID 155-472; ID 155-8113; ID 155-8555; ID 155-207; ID 155-8119; ID 155-325; ID 155-212; ID 155-8; ID 155-7; ID 155-594; ID 155-491; ID 155-468; ID 155-8113. For examples of quotes by Ahlers referring to the low price level of parallel imports, see recitals (93), (173), (174), (175), (180), (239), (249) and (251).

⁶⁶⁰ See recital (227).

⁶⁶¹ Original text reads: “[...]” [Cardin licensee 5]’s Reply to RFI of 3 May 2022 – ID 844. The following quote from [Ahlers sublicensee] in an email sent to Ahlers further supports this notion of Ahlers’ aim regarding the Pierre Cardin brand [translation from German, emphasis added]: “[...] [W]e currently have information [...] about 2 new campaigns with Pierre Cardin socks in the food market. [T]hese ongoing campaigns [...] also massively damage our activities in the direction of “trading up”.” Original text reads: “[U]ns liegen aktuell [...] Informationen von 2 neuen Aktionen mit Pierre Cardin Socken im Lebensmittelmarkt vor. [...] [D]iese ständigen Aktivitäten [...] schädigen auch in massiver Weise unsere Aktivitäten in Richtung „trading up“.” See email of 27 May 2015 from [Ahlers sublicensee] to Ahlers – ID 155-8440.

⁶⁶² For Ahlers’ request to Cardin to terminate [Cardin licensee 13]’s agreement due to its “low-cost offers”, see recital (93).

*Cardin-licensed products have likely not exerted any significant intra-brand pricing pressure on high-quality players such as Ahlers and its customers” and thus the restriction of sales to such discounters was incapable of reducing the price competition faced by Ahlers⁶⁶³. In this respect, the Commission firstly notes that this argument contradicts Ahlers’ own statements in its correspondence with Cardin mentioned in this Decision. As described in Section 6.1.3.2, Ahlers repeatedly complained to Cardin about sales by certain retailers, in particular discounters, because of the lower price level of these sales⁶⁶⁴. In that correspondence, Ahlers complained that its sales to high-quality specialist shops were affected by sales in retailers offering lower prices, as the “high-quality” customers of Ahlers “*would not understand [the availability of Pierre Cardin-licensed products in such retailers] and would react with further buy back or order cancellation.*”⁶⁶⁵. Subsequently, Ahlers informed Cardin that it had “*received a number of cancellations from [its] customers due to the widespread availability of non-Ahlers products in [its] territories at very low prices*”. Based on these sales by retailers offering lower prices, Ahlers demanded several times that Cardin reduce the contractually-agreed royalties⁶⁶⁶. This correspondence indicates that retailers selling at lower prices did indeed exert competitive pressure on Ahlers. The Commission therefore rejects Ahlers’ claim that the restrictions of the customers to whom Pierre Cardin-licensed products could be sold were incapable of reducing the price competition faced by Ahlers.*

7.3.3.2.2.3. Conclusion on the objective of the agreements and/or concerted practices

- (373) In light of the above, the Commission maintains its conclusion that the Parties’ contractual clauses and coordinated actions had as their objective to restrict (i) out-of-territory passive sales, including passive sales, by Cardin licensees and their customers and (ii) sales of Pierre Cardin-licensed products to specific customers within the EEA.⁶⁶⁷ The main objective of the Parties’ conduct was to reduce intra-brand competition within the EEA between licensees of Pierre Cardin-licensed products and between Ahlers and those licensees’ customers, thereby creating a compartmentalisation of the internal market. To achieve this objective, the Parties prevented all out-of-territory sales, including passive sales, of Pierre Cardin-licensed products by Cardin’s licensees and their customers, and restricted the customers to which such products could be sold in the EEA. The focus of the Parties’ conduct was to ensure absolute territorial exclusivity for Ahlers while protecting it from competition from retailers offering Pierre Cardin-licensed products in Ahlers’ territories at lower prices.

7.3.3.2.3. Economic and legal context

- (374) The contractual clauses and the coordinated actions described in Sections 6.1.1, 6.1.2 and 6.1.3 were put in place in the context of an exclusive system for licensing Cardin’s trademark. In this context, Ahlers put in place a monitoring system⁶⁶⁸ and

⁶⁶³ See paragraph 268 of Ahlers’ reply to the SO,

⁶⁶⁴ For Ahlers’ complaints regarding sales by specific low-price retailers, see recital (173) ([...]), recital (174) ([...]) and footnote 294 ([...]). For Ahlers’ general complaints about sales in low-price retailers, see recitals (175), (179) and (180).

⁶⁶⁵ See recital (174).

⁶⁶⁶ See Section 6.2.2.2.

⁶⁶⁷ See paragraphs 306 and 369 of the SO.

⁶⁶⁸ See Section 6.2.1.

withheld royalties from Cardin⁶⁶⁹ to ensure the effectiveness of the Parties' conduct. Cardin, for its part, not only accepted Ahlers' withholding of royalties, but also promised to address Ahlers' concerns.

- (375) As will be shown in the following sections, the arguments put forward by the Respondents in their replies to the SO with regard to these elements are not such as to cause the Commission to reconsider its finding that the Parties' conduct constituted a restriction of competition by object.

The exclusive licensing system

- (376) First, Cardin claimed that the contractual clauses governing out-of-territory sales merely defined the licenses' territorial scope⁶⁷⁰, which, in the context of exclusive licensing, would be legitimate. The Commission rejects this claim for several reasons. Firstly, although as a general rule EU competition law enables a licensor to grant an exclusive licence for a particular territory and to incentivise its licensee to invest in customer development in that territory by restricting active sales by other licensees into the territory, it does not permit the licensor to restrict licensees from fulfilling unsolicited orders from customers located within the EEA but outside their exclusively-allocated territories (passive sales). If licensees were contractually protected against passive sales, this would give them absolute territorial protection, thereby partitioning the internal market in a manner contrary to the objectives of the TFEU⁶⁷¹. Secondly, as explained in Section 7.3.3.2.1.1, it is clear from the content of the contractual clauses and coordinated actions referred to in this Decision that these were not limited to the allocation of exclusive territories and the restriction of active sales into those territories but that they went further, by restricting all out-of-territory sales, all online sales and/or all out-of-territory online sales, including passive sales, by Cardin licensees, Ahlers' sublicensee and/or their respective customers⁶⁷².
- (377) Second, both Respondents argued in their replies to the SO that their measures with regard to the customers to whom Pierre Cardin-licensed products could be sold had the aim of preserving the quality and image of the Pierre Cardin brand⁶⁷³, and that sales which did not correspond to that quality and image precluded the exhaustion of the Cardin trademark and therefore entitled the Parties to act⁶⁷⁴. In this regard, the Commission firstly refers to its assessment of the Respondents' arguments with regard to their measures being aimed at preserving the brand's quality⁶⁷⁵. Secondly, it recalls the principle set out in recital (311), according to which IPR licence agreements containing restrictions of competition fall under Union competition law, irrespective of whether the IPRs in question are exhausted. Thirdly, while in a system of selective distribution with predetermined criteria for the selection of licensees and customers of a certain quality, the owner of the trademark may enforce the rights under the trademark against a licensee who infringes the terms of a licence

⁶⁶⁹ See Section 6.2.2.

⁶⁷⁰ Cardin's reply to the SO, paragraphs 42 and 43.

⁶⁷¹ See paragraph 222 of the 2022 Guidelines on Vertical Restraints.

⁶⁷² See Section 7.3.3.2.1.1.

⁶⁷³ See (i) Cardin's reply to the SO, paragraphs 16 to 21 and 71 to 76, and (ii) Ahlers' reply to the SO, paragraph 271.

⁶⁷⁴ For the argument of non-exhaustion, see Cardin's reply to the SO, paragraphs 71 *et seq.* and Ahlers' reply to the SO, paragraphs 67 *et seq.*

⁶⁷⁵ See recitals (363) to (367), (371) and (372).

agreement prohibiting sales to customers contrary to the prestige of the trademark⁶⁷⁶, the Commission recalls that Cardin did not set up a selective distribution system, which is generally considered to be an important means of protecting brand image/prestige⁶⁷⁷. As observed in recitals (365) to (367), nor did Cardin ensure by other means that its licensing system enhanced or maintained the image or value of the Pierre Cardin brand.

- (378) Finally, Ahlers emphasised that the granting of exclusive licenses by Cardin had induced it to significantly invest in Cardin's brand and, as Cardin had not lived up to its obligations as trademark owner and grantor of exclusive licenses, Ahlers had had to remind Cardin to take appropriate action against illegitimate sales, in particular other licensees' active out-of-territory sales and sales that allegedly damaged the image of the Pierre Cardin brand⁶⁷⁸. The Commission also rejects these claims by Ahlers as (i) as observed in recital (371), those complaints did not call on Cardin to introduce effective quality control mechanisms, but primarily focused on the low price level of sales by other licensees in its territory and (ii) as explained in detail in recitals (328), (333) and (359), the language used by Ahlers in its complaints to Cardin clearly signalled that Ahlers was concerned about all forms of out-of-territory sales into its territories.

The monitoring system and the withholding of royalties

- (379) First, concerning the monitoring system, Ahlers claimed that it made legitimate use of instruments available under trademark law to protect the brand image; it therefore collected "*evidence of illegitimate sales in order to make itself heard by Cardin when complaining about the latter's failures to protect the brand image and the exclusivity of the licenses granted*"⁶⁷⁹.
- (380) In this respect, the Commission notes that the evidence set out in Section 6.2.1 confirms that the monitoring system was not designed in a way that would allow Ahlers to specifically identify illegitimate sales (e.g. counterfeit products or active out-of-territory sales by other licensees into its exclusive territories). Instead, it was aimed at capturing all sales by other Cardin licensees or their customers in Ahlers' licensed territories⁶⁸⁰. Firstly, the correspondence referred to in Section 6.2.1 shows, in particular, that Ahlers' monitoring activities paid special attention to online sales, including sales by online discounters. Secondly, of the letters in the Commission's file which Ahlers sent to companies that it had identified as having imported into its territories, none asked whether the sale had been initiated by the supplier or the customer, indicating that Ahlers was objecting to the sale in itself, irrespective of whether it was passive or active in nature⁶⁸¹. Thirdly, when its monitoring system detected out-of-territory sales into its territory, Ahlers informed and complained to

⁶⁷⁶ Judgment of 23 April 2009, *Copad SA v Christian Dior couture SA, Vincent Gladel and Société industrielle lingerie (SIL)*, C-59/08, EU:C:2009:260 paragraphs 23 to 30 and 37; Judgment 6 December 2017, *Coty Germany GmbH v Parfümerie Akzente GmbH*, C-230/16, EU:C:2017:941, paragraphs 36 and 58.

⁶⁷⁷ See recital (56).

⁶⁷⁸ See Ahlers' reply to the SO, paragraphs 44 and 67 to 203. In general, in its reply to the SO, Ahlers emphasised its investments into the Pierre Cardin brand, see 20 *et seq.* of the reply.

⁶⁷⁹ See Ahlers' reply to the SO, paragraph 182.

⁶⁸⁰ See e.g. the correspondence referred to in recitals (223) and (229) to (233), which shows that Ahlers focused its monitoring on any "parallel imports" or "cheap imports" into its territory.

⁶⁸¹ See recital (225). In their replies to the SO, the Parties did not claim or submit any evidence suggesting that they had in fact tried to establish the nature of the sales in question.

Cardin, again without identifying the passive or active nature of the sales or whether the products in question were (unlawful) counterfeits⁶⁸². The Commission therefore finds that Ahlers' monitoring system was ultimately designed to help ensure that it could benefit from absolute territorial exclusivity and would thereby be protected from competition from retailers offering Pierre Cardin-licensed products at lower prices.

- (381) Second, as regards the withholding of royalties due to Cardin, Ahlers claimed that this was a way of manifesting its disagreement with Cardin and its failures as a contracting party and licensor, thus inducing Cardin to properly perform its obligations⁶⁸³. According to Ahlers, Cardin's failure in protecting brand image and leaving Ahlers without protection against active sales led Ahlers to legitimately apply proportional reductions to payments made in light of unrealistic expectations informing sales targets which proved to be impossible to achieve⁶⁸⁴.
- (382) In this regard, the Commission firstly recalls that Ahlers relied on out-of-territory sales by other licensees and their customers and sales to low-price retailers as the basis for making deductions from the royalties that it was due to pay to Cardin, thereby putting financial pressure on Cardin to act against such sales⁶⁸⁵. The impact of Ahlers' financial pressure on Cardin was reinforced by the fact that Ahlers was not only a much larger undertaking than Cardin, but was also Cardin's largest licensee in the EEA⁶⁸⁶. Secondly, Ahlers withheld royalties from Cardin without differentiating between active and passive out-of-territory sales by other licensees and their customers but by simply referring to any out-of-territory sales⁶⁸⁷. Finally, in several instances Cardin accepted Ahlers' deductions and sympathised with Ahlers' concerns⁶⁸⁸, indicating that Cardin shared Ahlers' understanding that Ahlers was entitled to absolute territorial exclusivity and that it should be protected against low-priced sales into its territory.
- (383) Therefore, the Commission maintains its position that Ahlers' monitoring system and withholding of royalties helped ensure the effectiveness of the Parties' conduct.

7.3.3.3. Conclusion on the conduct as a restriction of competition by object

- (384) In accordance with the rules and case law set out in recitals (296) to (316), and based on the content, objective and legal and economic context of the Parties' agreements and concerted practices examined in Sections 7.3.3.2.1, 7.3.3.2.2 and 7.3.3.2.3, the Commission concludes that, by their nature, such agreements and concerted practices restricted competition in the sale of Pierre Cardin-licensed products in the EEA. Those agreements and concerted practices are therefore a restriction of competition by object within the meaning of Article 101(1)(b) TFEU.

⁶⁸² See recitals (226), (229) and (231) to (234).

⁶⁸³ See Ahlers' reply to the SO, paragraph 191.

⁶⁸⁴ See Ahlers' reply to the SO, paragraph 192.

⁶⁸⁵ For royalty deductions based on out-of-territory sales by other Cardin licensees or their customers in Ahlers' territories, see Section 6.2.2.1. For royalty deductions based on sales to retailers offering lower prices for Pierre Cardin-licensed products, see Section 6.2.2.2.

⁶⁸⁶ In 2021, Ahlers accounted for [...] % of the royalties that Cardin collected in the EEA, see recital (59).

⁶⁸⁷ Ahlers referred to, for example, products "*distributed*" in its licensed territories without specifying the nature of distribution (see recital (237)) or to "*parallel imports*" in general (see recital (243)). Ahlers even mentioned that such sales must be prevented to achieve its "*true exclusivity*" (see recital (243)).

⁶⁸⁸ See recitals (238), (241), (245), (248), (250) and (252).

- (385) According to the settled case law referred to in recital (298), when applying Article 101(1) TFEU in a case such as the present one, where the Commission demonstrates that an agreement or concerted practice restricts competition by its very object, it is not necessary to assess the effects of that agreement and/or concerted practice. The Commission therefore does not have to show that the Parties' agreements and/or concerted practices actually prevented Cardin licensees from making passive sales into other licensees' exclusive territories, or that they prevented sales to certain customers. The Commission therefore rejects the claim made by Ahlers in its reply to the SO, that the Commission must prove that the agreements and concerted practices actually led to passive sales being restricted⁶⁸⁹.

7.3.4. *Single and continuous infringement*

7.3.4.1. Principles

- (386) An infringement of Article 101 TFEU can result not only from an isolated act, but also from a series of acts or from continuous conduct, even if one or more aspects of that series of acts or continuous conduct could also, in themselves and taken in isolation, constitute an infringement of that provision. When the different actions form part of an 'overall plan', because their identical object distorts competition in the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole⁶⁹⁰.
- (387) An undertaking which participates in such a single and continuous infringement through its own conduct, which falls within the definition of an 'agreement' or a 'concerted practice' having an anticompetitive object for the purposes of Article 101(1) TFEU, and is intended to help bring about the infringement as a whole, may accordingly be also liable in respect of the conduct of other undertakings in the context of the same infringement throughout the period of its participation in the infringement. That is the position where it is shown that the undertaking intended, through its own conduct, to contribute to the common objectives pursued by all the participants and that it was aware of the offending conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and was prepared to take the risk⁶⁹¹.
- (388) An undertaking may thus have participated directly in all the forms of anti-competitive conduct comprising the single and continuous infringement. Should this be the case, the Commission may attribute liability to that undertaking in relation to all that conduct and therefore, in relation to the infringement as a whole. Alternatively, the undertaking may have participated directly in only some of the forms of anti-competitive conduct comprising the single and continuous infringement, but may nonetheless have been aware of all the other unlawful conduct

⁶⁸⁹ See paragraphs 130 *et seq.* and paragraph 247 of Ahlers' reply to the SO.

⁶⁹⁰ Judgment of 1 February 2024, *Scania*, Case C-251/22 P, EU:C:2024:103, judgment of 16 June 2022, *Sony Optiarc*, C-698/19 P, EU:C:2022:480, paragraph 60, judgment of 16 June 2022, *Toshiba Samsung Storage Technology Corp. and Toshiba Samsung Storage Technology Korea Corp. v Commission*, C-700/19 P, ECLI:EU:C:2022:484, paragraph 72 and the case-law cited; judgment of 26 January 2017, *Villeroy & Boch SAS v Commission*, C-644/13 P, EU:C:2017:59, paragraph 47; judgment of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, EU:C:1999:356, paragraph 81.

⁶⁹¹ Judgment of 24 June 2015, *Fresh Del Monte Produce v Commission and Commission v Fresh Del Monte Produce*, C-293/13 P and C-294/13 P, EU:C:2015:416, paragraph 157; judgment of 26 January 2017, *Villeroy & Boch SAS v Commission*, C-644/13 P, EU:C:2017:59, paragraph 47 and the case-law cited.

planned or put into effect by the other participants in the infringement in pursuit of the same objectives, or could reasonably have foreseen that conduct and have been prepared to take the risk. In such cases, the Commission is also entitled to attribute liability to that undertaking in relation to all the forms of anti-competitive conduct comprising the infringement and, accordingly, in relation to the infringement as a whole⁶⁹². In this regard, the finding of the existence of a single and continuous infringement is separate from the question of whether liability for that (single and continuous) infringement is imputable to an undertaking in its entirety⁶⁹³.

- (389) According to the case law, the co-perpetrators of a conduct that infringes Article 101 TFEU may participate in the infringement in “*different forms according, in particular, to the characteristics of the market concerned and the position of each undertaking on that market, the aims pursued and the means of implementation chosen or envisaged*”.⁶⁹⁴ Finally, the Court of Justice has confirmed that the concept of a single and continuous infringement also applies to vertical agreements and concerted practices⁶⁹⁵.

7.3.4.2. Application to this case

7.3.4.2.1. The existence of a single and continuous infringement

- (390) The Commission finds that the conduct described in Sections 6.1.1, 6.1.2 and 6.1.3 of this Decision constitutes a single and continuous infringement of Article 101(1) TFEU and Article 53(1) of the EEA Agreement, implemented throughout the EEA.
- (391) With regard to this conclusion, in its reply to the SO, Ahlers⁶⁹⁶ called into question the existence of such a single and continuous infringement and claimed that the Commission had not shown any overall common plan by the Parties “*to restrict legitimate sales or competition on the merits*”⁶⁹⁷. The Commission disagrees with these claims and confirms its findings that the Parties’ conduct pursued a common objective and were part of the same overall plan⁶⁹⁸ as explained in the following recitals.
- (392) First, as set out in Section 7.3.3, the contractual clauses included in the agreements between (i) Cardin and Ahlers⁶⁹⁹, (ii) Cardin and the other 11 licensees⁷⁰⁰, and (iii) Ahlers and its sublicensee [Ahlers sublicensee]⁷⁰¹, as well as the coordinated actions implemented by Cardin and Ahlers⁷⁰² pursued the **common objective** of restricting competition within the meaning of Article 101 TFEU by preventing out-of-territory passive sales of Pierre Cardin-licensed products and/or limiting the customers to

⁶⁹² Judgment of 6 December 2012, *Commission v Verhuizingen Coppens*, C-441/11 P, EU:C:2012:778, paragraph 43.

⁶⁹³ Judgment of 15 December 2016, *Infineon Technologies AG v Commission*, T-758/14, EU:T:2016:737, paragraph 226.

⁶⁹⁴ Judgment of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, EU:C:1999:356, paragraph 79.

⁶⁹⁵ Judgment of 30 April 2009, *Nintendo Co., Ltd and Nintendo of Europe GmbH v Commission*, T-13/03, EU:T:2009:131, paragraphs 45 and 50.

⁶⁹⁶ In its reply to the SO, Cardin did not contest the existence of a single and continuous infringement.

⁶⁹⁷ Ahlers’ reply to the SO, paragraphs 273 and 279.

⁶⁹⁸ See paragraphs 334 to 338 of the SO.

⁶⁹⁹ See Sections 6.1.1.1.2, 6.1.2.1.2 and 6.1.3.1.2.

⁷⁰⁰ See Sections 6.1.1.1.1, 6.1.2.1.1 and 6.1.3.1.1.

⁷⁰¹ See recitals (80) to (82), (108) and (168) to (170).

⁷⁰² See Sections 6.1.1.2, 6.1.2.2 and 6.1.3.2.

whom such products could be sold in the EEA, thereby creating a compartmentalisation of the market for the sale of Pierre Cardin-licensed products.

- (393) Second, in the present case, the single and continuous infringement consisted of two complementary types of measures (i.e. the contractual clauses and coordinated actions) concluded by the Parties, which amounted to agreements and/or concerted practices within the meaning of Article 101 TFEU. These agreements and concerted practices formed part of an **overall plan** pursuing the common objective mentioned in recital (392), with a focus on ensuring absolute territorial exclusivity for Ahlers and protecting it from competition in its licensed territories.
- (394) Third, the contractual clauses⁷⁰³ and the coordinated actions⁷⁰⁴ were implemented without distinguishing between the types of licensed product or between the territories covered by the licence.
- (a) The contractual clauses were included in the licence agreements between Cardin and the 12 licensees (including Ahlers) described in Sections 6.1.1.1, 6.1.2.1 and 6.1.3.1. During the Relevant Period, these clauses were used irrespective of the specific products or the EEA territory covered by the relevant licence agreement. This is further supported by the fact that, irrespective of the products or territory concerned, these agreements were signed by the same individuals on behalf of Cardin and Ahlers⁷⁰⁵. In addition, the contractual clauses mirrored those present in Cardin's licensing templates⁷⁰⁶, which were not tailored to specific products or territories⁷⁰⁷.
- (b) As to the coordinated actions, these also targeted the sale of various Pierre Cardin-licensed products in different EEA territories. For example, the Parties took action against [Cardin licensee 11], which held a licence for sportswear in Italy;⁷⁰⁸ [Cardin licensee 13], which held a licence for shirts, sportswear, ready-to-wear and knitwear for men in Greece and Cyprus;⁷⁰⁹ [Cardin licensee 6], which held a licence for knitwear for men in Italy,⁷¹⁰ and, as regards customers of Cardin's licensees, against [Cardin licensee's customer 1], active throughout the EEA⁷¹¹ and [Cardin licensee's customer 3], active in Spain⁷¹².

⁷⁰³ See Sections 6.1.1.1, 6.1.2.1 and 6.1.3.1.

⁷⁰⁴ See Sections 6.1.1.2, 6.1.2.2 and 6.1.3.2.

⁷⁰⁵ As far as Cardin is concerned, all the licence agreements in the Commission's file were signed by Mr Pierre Cardin or Mr Rodrigo Basilicati-Cardin. As for the agreements concluded by Ahlers, they were signed by Mr Jan A. Ahlers or Ms Stella Ahlers.

⁷⁰⁶ See recitals (64), (65), (68), (69), (70), (78), (103), (153) and (156).

⁷⁰⁷ The content of the licensing templates used by Cardin throughout the Relevant Period was not tailored to specific products or countries (see IDs 178 - 225). The content of the signed agreements in the Commission's file indicates that, as a general rule, the same template was used as a basis for all the licence agreements entered into by Cardin during specific periods of time, regardless of the product or geographic scope of the agreements in question. The main difference between the agreements signed with different licensees was the language: while the majority of these agreements were signed in French, a limited number were translated from French and concluded in English, Spanish or Italian.

⁷⁰⁸ See recitals (84) to (91).

⁷⁰⁹ See recitals (92) to (94).

⁷¹⁰ See recitals (110) to (114).

⁷¹¹ See recitals (116) to (139).

⁷¹² See recital (212) to (219).

All the coordinated actions were organised by a stable group of individuals within Cardin and Ahlers⁷¹³.

7.3.4.2.2. The Parties' participation in and contribution to the single and continuous infringement

- (395) In its reply to the SO, Ahlers⁷¹⁴ observed that in order to impute on undertakings liability for a single and continuous infringement, the Commission must show i) an overall common plan to restrict competition and ii) “*each undertaking's specific contribution to the common objectives, being aware of or having reasonably foreseen the offending conduct*”⁷¹⁵. With regard to the latter, it claimed that the Parties' conduct could not be considered as a contribution to any common overall plan⁷¹⁶. In particular, Ahlers noted that the fact that Cardin imposed similar contractual conditions on its licensees could not be imputed to Ahlers, as the latter had no say in the design of Cardin's contractual conditions, especially in those imposed on other licensees⁷¹⁷.
- (396) The Commission disagrees with Ahlers' claims for the following reasons.
- (397) First, concerning the attribution of liability for the single and continuous infringement, both Cardin and Ahlers participated in, were party to or were aware of all of the components of the single and continuous infringement (i.e. the contractual clauses and the coordinated actions).
- (398) Cardin **was party to** the agreements that it signed with the 12 licensees mentioned in Sections 6.1.1.1, 6.1.2.1 and 6.1.3.1 (including Ahlers) and it **participated** with Ahlers in the coordinated actions⁷¹⁸ described in Sections 6.1.1.2, 6.1.2.2 and 6.1.3.2.
- (399) Cardin **was aware** that the contractual clauses that were included in the licence agreements that it concluded with Ahlers would be passed on to any parties that entered into sub-license agreements with Ahlers.
- (400) The licence agreement between Cardin and Ahlers for the manufacture and sale of socks, which covered the period during which the sub-licence agreement between Ahlers and [Ahlers sublicensee] was in force, included a provision by which Cardin authorised Ahlers to sub-licence to [Ahlers sublicensee] on condition that the terms of the licence agreement between Cardin and Ahlers applied to the sub-licence (translation from French): “*I confirm my agreement to grant during the validity period of your licence or until its early termination a sub-licence to the company [...] . It is understood that you are keen to obtain a written commitment from [...] to scrupulously comply with all the terms of our licence agreement applicable to a sub-licencee and that you will remain the full guarantor of the contractual obligations related to the licence agreement [...]*”⁷¹⁹. This agreement between Cardin and Ahlers

⁷¹³ The individuals behind the coordinated actions taken by Cardin and Ahlers reported in Sections 6.1.1.2, 6.1.2.2 and 6.1.3.2 were the ones listed on the tables included in recitals (12) and (22).

⁷¹⁴ In its reply to the SO, Cardin did not contest the contribution of the Parties to the single and continuous infringement.

⁷¹⁵ See Ahlers' reply to the SO, paragraph 278.

⁷¹⁶ See Ahlers' reply to the SO, paragraph 280.

⁷¹⁷ See Ahlers' reply to the SO, paragraph 280.

⁷¹⁸ As to the action taken by Ahlers against [Cardin licensee 5] (see Section 6.1.1.2.3, as explained in recital (285), Cardin was aware of it.

⁷¹⁹ Original text reads: « *Je vous confirme mon accord pour concéder pour la durée de validité de votre contrat de licence ou jusqu'à sa résiliation anticipée une sous-licence a la société [...]. Il est entendu*

included restrictions on out-of-territory sales, including online sales, by Ahlers and its customers, as well as restrictions on the customers to whom Ahlers could sell⁷²⁰. In accordance with this provision, Ahlers included in the sub-licence agreement with [Ahlers sublicensee] the prohibition on online sales, as well as restrictions on the customers to whom [Ahlers sublicensee] could sell⁷²¹.

- (401) The substance of the authorisation to sub-license quoted in recital (400) is further reflected in the sub-licence agreement between Ahlers and [Ahlers sublicensee], which established *inter alia*, that (translation from German): “*the licensor [i.e. Ahlers] is entitled, under the above-mentioned contract with Mr Pierre Cardin, to conclude [...] a sub-licence agreement for the abovementioned goods [i.e. socks]*” and that “*It is common ground between the parties that the licensor may grant the licensee only rights that have been granted to itself under the abovementioned licence agreement concluded with Mr Pierre Cardin*”⁷²².
- (402) The above-mentioned contractual provisions show that Cardin *i)* granted Ahlers the permission to sub-license and *ii)* that such permission was subject to the transfer of the same rights and obligations to the sub-licensee. Accordingly, the sub-licence agreement between Ahlers and [Ahlers sublicensee] included the same restrictions that Cardin used in its licence agreements. Therefore, Cardin was aware of the contractual restrictions that Ahlers imposed on [Ahlers sublicensee].
- (403) The above shows that Cardin either was party to, participated in or was aware of all the components of the single and continuous infringement.
- (404) As for Ahlers, it **was party** to the licence agreements that it signed with Cardin and to the sub-licence agreement it signed with [Ahlers sublicensee]. Moreover, Ahlers **participated in**⁷²³ the coordinated actions described in Sections 6.1.1.2, 6.1.2.2 and 6.1.3.2. As regards the restrictive clauses that were included in Cardin’s licence agreements with licensees other than Ahlers, it appears from Ahlers’ reply to the SO that Ahlers **was aware** of the nature of Cardin’s licensing system and the restrictions included therein⁷²⁴. Other evidence also shows that Ahlers was aware of the existence of specific restrictive clauses in Cardin’s licence agreements with other licensees or that it presumed that other licensees were subject to similar restrictions⁷²⁵.

que vous vous portez fort d'obtenir de la part de [...] l'engagement écrit de respecter scrupuleusement toutes les clauses de notre contrat de licence applicables à un sous-licencié et que vous demeurez intégralement garant des obligations contractuelles liées au contrat de licence [...] ». ID 155-36.

⁷²⁰ See Licence agreement between Cardin and Ahlers of 19 June 2012, ID 155-36, clauses 6 and 9, pp.41-42.

⁷²¹ See Sub-licence agreement between Ahlers and [Ahlers sublicensee] [...].

⁷²² See Sub-licence agreement between Ahlers and [Ahlers sublicensee] [...].

⁷²³ On Ahlers’ involvement in particular actions against licensees and their customers, see also recitals (281) to (291).

⁷²⁴ See Ahlers’ reply to the SO, paragraph 9: “*Cardin has granted exclusive licenses over its intellectual property rights relating to the Pierre Cardin brand to (almost all of) its various licensees, including Ahlers*”; paragraph 46: “[...] *Cardin has operated an exclusive licensing system*”; paragraph 40: “*Cardin has used templates which have barely been amended to adapt to the circumstances of any individual case. Licensees, including Ahlers, have, thus, not had any ability to meaningfully influence the contractual conditions of the licenses granted by Cardin*”.

⁷²⁵ See the letter of 21 October 2009 from [Ahlers management] to [Cardin licensing director 1], quoted at recital (93), in which Ahlers complained to Cardin about [Cardin licensee 13] out-of-territory sales into Ahlers’ territories: “[...] *This is proof that [Cardin licensee 13] delivers to Germany in breach of contract [...]*”, ID 155-38. See also the correspondence of 12 July 2010 quoted in recital (193), which

- (405) Ahlers was therefore party to, participated in and/or was aware of all of the components of the single and continuous infringement.
- (406) Second, concerning the Parties' contribution to the overall plan, the Commission finds that both Ahlers and Cardin contributed individually to it. Their contribution took different forms, as explained in the following recitals.
- (407) Cardin was a party to the licensing agreements which contained the restrictive contractual clauses, and engaged in the coordinated actions with Ahlers against Cardin's other licensees and their customers⁷²⁶.
- (408) For its part, Ahlers concluded licence agreements with Cardin containing restrictive contractual clauses affecting the sale of Pierre Cardin-licensed products⁷²⁷ and, in its capacity as sub-licensor, imposed similar restrictions on its sub-licensee, [Ahlers sublicensee]⁷²⁸. As demonstrated above, Ahlers regularly complained to Cardin about out-of-territory sales and sales to low price retailers by other licensees and their customers into its exclusive territories⁷²⁹ and, as Cardin's largest licensee in the EEA, repeatedly urged Cardin to intervene to stop such sales⁷³⁰. Ahlers exerted pressure on Cardin to intervene by withholding royalties due to Cardin⁷³¹.
- (409) Based on the evidence set out in Sections 6.1.1, 6.1.2 and 6.1.3, Cardin and Ahlers contributed by their conduct to all the aspects of the overall common plan described in recitals (392) and (393), consisting in a combination of contractual clauses and coordinated actions aimed at the compartmentalisation of the market for the sale of Pierre Cardin-licensed products with a focus on ensuring absolute territorial exclusivity for Ahlers, thereby protecting it from competition in its licensed territories.

7.3.4.3. Conclusion on the single and continuous infringement

- (410) The Commission concludes that (i) the conduct of Cardin and Ahlers described in Section 6.1 constitutes a single and continuous infringement prohibited by Article 101(1)(b) TFEU and Article 53(1)(b) of the EEA Agreement; (ii) both Cardin and Ahlers were party to, participated in and/or were aware of all its components throughout the Relevant Period and (iii) both Cardin and Ahlers contributed to it through their respective conduct.

shows that Ahlers was aware of the customer restrictions included in [Cardin licensee 7]'s licence agreements. Ahlers was also aware of the customer restrictions present in [Cardin licensee 1]'s licence agreement as shown by the email of 14 October 2015 mentioned in recital (201). Correspondence from February 2015 shows that Ahlers was also aware of the out-of-territory sales and customer restrictions present in a licence agreement with [Cardin licensee 9], as Cardin forwarded to the former a letter in which it referred to those contractual restrictions (see recitals (207) and (208)).

⁷²⁶ See recitals (320), (321), (323), (339) and (340).

⁷²⁷ See recital (321).

⁷²⁸ See recital (322).

⁷²⁹ For Ahlers' sharing information and or/complaining to Cardin regarding out-of-territory sales or sales to specific customers by other Cardin licensees, see recitals (85), (89) and (90) ([Cardin licensee 11]); recital (93) ([Cardin licensee 13]); recitals (96) to (98) ([Cardin licensee 5]); recitals (120), (121), (122) (125) to (128), (131), (133) to (137), (139) ([Cardin licensee's customer 1]); recitals (142), (144) and (145) ([...]); recitals (188), (191), (192) and (194) ([Cardin licensee 7]); recitals (204) to (206) ([Cardin licensee 9]); recitals (172) to (185) (sales to low price retailers); recitals (213) and (214) ([Cardin licensee's customer 3]).

⁷³⁰ See recitals (326) to (328), (332), (333) and (340).

⁷³¹ See Section 6.2.2.

7.3.5. *Appreciable effect upon trade between Member States*

7.3.5.1. Principles

- (411) The effect on trade criterion is an autonomous Union law criterion, which must be assessed separately in each case⁷³². It is a jurisdictional criterion which defines the scope of application of EU competition law. EU competition law is not applicable to agreements and practices that are not capable of appreciably affecting trade between Member States.
- (412) According to the case law of the Court of Justice, for an agreement to be capable of affecting trade between Member States, it must be possible to foresee with a sufficient degree of probability, based on a set of objective factors, that it may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States⁷³³.
- (413) According to the Guidelines on Effect on Trade, in the case of agreements that *by their very nature* are capable of affecting trade between Member States, for example, because they concern imports and exports or cover several Member States, there is a rebuttable positive presumption that such effects on trade are appreciable if the turnover of the parties in the products covered by the agreement calculated as indicated in points (52) and (54) of the Guidelines on Effect on Trade exceeds EUR 40 million⁷³⁴. Pursuant to point (54) of the Guidelines on Effect on Trade, the turnover for the purposes of this threshold is calculated on the basis of the total Union sales, excluding tax, by the undertakings concerned, of the products covered by the agreement, during the previous financial year. According to point (52) of the Guidelines on Effect on Trade, in the case of licence agreements, the relevant turnover should be the aggregate turnover of the licensees in the products incorporating the licensed technology and the licensor's own turnover in such products.

7.3.5.2. Application to this case

- (414) The agreements described in Sections 6.1.1.1, 6.1.2.1 and 6.1.3.1 and the concerted practices described in Sections 6.1.1.2, 6.1.2.2 and 6.1.3.2 prevented or restricted out-of-territory sales, including passive sales, of Pierre Cardin-licensed products, as well as the customers to whom such products could be sold in the EEA. Those agreements and concerted practices were therefore by their very nature capable of affecting trade between Member States⁷³⁵.
- (415) As regards the appreciability of the effect on trade, the Commission notes that the annual sales of Pierre Cardin-licensed products made by Ahlers (i.e. one of Cardin's licensees) in the EEA exceeded EUR 40 million throughout the Relevant Period⁷³⁶. The Commission therefore concludes that the agreements and concerted practices affected trade between Member States and EEA Contracting Parties appreciably.

⁷³² See Commission Guidelines on the effect on trade concept contained in Articles 81 and 82 TFEU (OJ C 101, 27.4.2004, p. 81, "Guidelines on Effect on Trade"), paragraph 12.

⁷³³ See for example Judgment of 14 December 1983, *Société de vente de ciments v Kerpen & Kerpen*, 319/82, EU:C:1983:374, paragraph 9; judgment of 29 June 2023, *Super Bock Bebidas*, C-211/22, EU:C:2023:529, paragraph 60.

⁷³⁴ Guidelines on Effect on Trade, point 53.

⁷³⁵ Guidelines on Effect on Trade, point 53.

⁷³⁶ See ID 1140. As this table shows, Ahlers' annual sales of Pierre Cardin-licensed products in the EEA always exceeded EUR 40 million in the Relevant Period.

7.3.6. Article 101(3) TFEU

7.3.6.1. Introduction

- (416) Pursuant to Article 101(3) TFEU, the prohibition set out in Article 101(1) TFEU does not apply where an agreement or concerted practice satisfies the following four cumulative criteria:
- (a) it contributes to improving the production or distribution of goods or to promoting technical or economic progress;
 - (b) it allows consumers a fair share of the resulting benefit;
 - (c) it does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives, and
 - (d) it does not afford those undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.
- (417) Even where it is established that an agreement or concerted practice has the object of restricting competition, the agreement or concerted practice is compatible with Article 101 TFEU if it satisfies the four conditions set out in Article 101(3) TFEU⁷³⁷.
- (418) The Commission is empowered to apply Article 101(3) TFEU by regulation to certain categories of agreement falling within Article 101(1) TFEU that can be regarded as normally satisfying the conditions laid down in Article 101(3) TFEU.
- (419) With regard to vertical agreements, the Commission has in particular adopted the Vertical Block Exemption Regulations⁷³⁸ and accompanying Guidelines on Vertical Restraints⁷³⁹, which provide guidance on the assessment of competition restrictions in distribution and, under certain conditions, also in licence agreements.

7.3.6.2. The Vertical Block Exemption Regulations

7.3.6.2.1. Principles

- (420) Two of the Vertical Block Exemption Regulations and their accompanying Guidelines were in force during different parts of the Relevant Period: the 2010 Vertical Block Exemption Regulation and the 2010 Guidelines on Vertical Restraints and the 2000 Vertical Block Exemption Regulation and the 2000 Guidelines on Vertical Restraints. Although the 2022 Vertical Block Exemption Regulation only entered into force after the Relevant Period (on 1 June 2022), in so far as the principles laid down therein and in the 2022 Guidelines on Vertical Restraints constitute *lex mitior* for the Parties, the Commission may rely on such principles in the present Decision.

⁷³⁷ Judgment of 15 July 1994, *Matra Hachette SA v Commission*, T-17/93, EU:T:1994:89, paragraph 104; judgment of 13 October 2011, *Pierre Fabre Dermo-Cosmétique SAS v Président de l'Autorité de la concurrence and Ministre de l'Économie, de l'Industrie et de l'Emploi*, C- 439/09, EU:C:2011:649, paragraphs 49 and 59.

⁷³⁸ The current version in place is the 2022 Vertical Block Exemption Regulation. Before its entry into force on 1 June 2022, the 2010 Vertical Block Exemption Regulation was in force between 1 June 2010 and 31 May 2022 and the 2000 Vertical Block Exemption Regulation was in force between 1 June 2000 and 31 May 2010.

⁷³⁹ The current version in place is the 2022 Guidelines on Vertical Restraints. Before the entry into force of the 2022 Vertical Block Exemption Regulation on 1 June 2022, the 2010 Guidelines on Vertical Restraints and the 2000 Guidelines on Vertical Restraints were applicable during the periods of applicability of the respective 2010 and 2000 Vertical Block Exemption Regulations.

- (421) The Vertical Block Exemption Regulations do not generally apply to trademark licence agreements, unless the provisions within these agreements which relate to the assignment or use of the IPRs to the licensee “*do not constitute the primary object of such agreements and are directly related to the use, sale or resale of goods or services by the buyer or its customers*”⁷⁴⁰. The Guidelines on Vertical Restraints further clarify that the Vertical Block Exemption Regulations do not cover “*the pure licence of a trade mark or sign for the purposes of merchandising*”⁷⁴¹ and that “*in order to be covered by the Block Exemption Regulation, the primary object of the agreement must not be the assignment or licensing of IPRs. The primary object must be the purchase, sale or resale of goods or services and the IPR provisions must serve the implementation of the vertical agreement*”⁷⁴². Where it has been established that the primary object of an agreement is related to the use, sale or resale of goods or services, the Vertical Block Exemption Regulations apply if the relevant market share threshold is not exceeded and the agreement does not contain hardcore restrictions⁷⁴³. Hardcore restrictions are serious restrictions of competition which should in most cases be prohibited because of the harm that they cause to consumers. Hardcore restrictions may result from direct obligations but also from indirect measures⁷⁴⁴. Where a vertical agreement contains one or more hardcore restrictions, the whole agreement is excluded from the scope of application of the Vertical Block Exemption Regulations⁷⁴⁵.
- (422) Under the three Vertical Block Exemption Regulations, a restriction of the distributor’s ability to conduct passive sales into other territories within the EEA qualifies as a hardcore restriction, even if those territories have been exclusively allocated to other distributors or exclusively reserved to the supplier⁷⁴⁶. Therefore, any restriction directly or indirectly imposed by the supplier on its distributor’s ability to passively sell within the EEA would automatically prevent the Vertical Block Exemption Regulations from applying to the entire agreement.
- (423) With regard to restrictions on online sales, the 2000 and 2010 Guidelines on Vertical Restraints considered these to be restrictions of passive sales, unless the use of the internet would lead to active selling into, for example, the territories exclusively allocated to other distributors or reserved for the supplier⁷⁴⁷. Therefore, an absolute ban on online sales was considered a hardcore restriction, as confirmed by the Court of Justice⁷⁴⁸. Under the 2022 Vertical Block Exemption Regulation preventing the

⁷⁴⁰ Article 2(3) of the 2010 and 2000 Vertical Block Exemption Regulation. Article 2(3) of the 2022 Vertical Block Exemption Regulation contains the same provision.

⁷⁴¹ Paragraph (32) of the 2000 Guidelines on Vertical Restraints and paragraph (32) of the 2010 Guidelines on Vertical Restraints. See also paragraph (74) of the 2022 Guidelines on Vertical Restraints.

⁷⁴² Paragraph (34) of the 2000 Guidelines on Vertical Restraints and paragraph (35) of the 2010 Guidelines on Vertical Restraints. See also paragraph (76) of the 2022 Guidelines on Vertical Restraints.

⁷⁴³ See for the hardcore restrictions Article 4 of the three Vertical Block Exemption Regulations.

⁷⁴⁴ Paragraph (49) of the 2000 Guidelines on Vertical Restraints and paragraph (50) of the 2010 Guidelines on Vertical Restraints. See also paragraph (204) of the 2022 Guidelines on Vertical Restraints.

⁷⁴⁵ Paragraph (46) of the 2000 Guidelines on Vertical Restraints and paragraph (47) of the 2010 Guidelines on Vertical Restraints. See also paragraph (177) of the 2022 Guidelines on Vertical Restraints.

⁷⁴⁶ Article 4 (b) of the three Vertical Block Exemption Regulations.

⁷⁴⁷ Paragraphs (50) and (51) of the 2000 Guidelines on Vertical Restraints and paragraphs (52) to (54) of the 2010 Guidelines on Vertical Restraints.

⁷⁴⁸ Judgment of 13 October 2011, *Pierre Fabre Dermo-Cosmétique*, C-439/09, EU:C:2011:649, paragraphs 44 to 47.

distributors or their customers from making effective use of the internet also qualifies as a hardcore restriction of competition⁷⁴⁹.

- (424) Concerning territorial restrictions on the customers of licensees, any such restriction, on either active or passive sales, was considered as a hardcore restriction under the 2000 and 2010 Vertical Block Exemption Regulations⁷⁵⁰. Under the 2022 Vertical Block Exemption Regulation, in exclusive distribution systems, suppliers may require distributors to restrict their direct customers from actively selling into territories that the supplier has exclusively allocated to other distributors or reserved to itself⁷⁵¹.
- (425) Moreover, under the three Vertical Block Exemption Regulations, where the supplier has not put a selective distribution system in place, but rather uses exclusive distributors, restricting the ability of such a distributor to sell to specific customers is considered to be a hardcore restriction, if the supplier has neither exclusively allocated the customers in question to other distributors, nor exclusively reserved them for itself⁷⁵².

7.3.6.2.2. Application to the case

- (426) If the agreements at issue in this case were found to have as their primary object the assignment of IPRs, those agreements would not fall within the scope of the Vertical Block Exemption Regulations (see recital (421)). However, even if the agreements' primary object were taken to be the sale or resale of goods or services, the exemptions provided for in the Vertical Block Exemption Regulations would not apply, because of the hardcore nature of the restrictions included in the agreements.
- (427) As explained in Section 7.3.3.2, the contractual clauses and coordinated actions applied by Cardin and Ahlers within an exclusive licensing system restricted all out-of-territory sales (by Cardin licensees and their customers) including passive sales. Those agreements also restricted the customers to whom Pierre Cardin-licensed products could be sold within the EEA. Irrespective of whether the Parties' agreements and concerted practices constitute vertical agreements within the meaning of the Vertical Block Exemption Regulations (i) the restriction of out-of-territory passive sales, including absolute bans on Internet sales by Cardin's licensees and their customers, and (ii) the restriction of the customers to whom Cardin licensees could sell are hardcore restrictions, which cause the agreements or concerted practices to fall outside the block exemptions.
- (428) Therefore, without it being necessary to determine whether the agreements in this case had as their primary object the assignment of IPRs, the agreements that are the subject of this case may not benefit from the Vertical Block Exemption Regulations.

⁷⁴⁹ Article 4(e) of the 2022 Vertical Block Exemption Regulation. See also paragraph (203) of the 2022 Guidelines on Vertical Restraints.

⁷⁵⁰ In particular, Article 4(b) of the 2000 and 2010 Vertical Block Exemption Regulations qualified as a hardcore restriction the restriction of the territory into which a buyer may sell the contract goods or services (emphasis added) "*except: [...] the restriction of active sales into the exclusive territory [...] reserved to the supplier or allocated by the supplier to another buyer, where such a restriction does not limit sales by the customers of the buyer*".

⁷⁵¹ Therefore, the supplier may not require distributors to pass on (i) active sales restrictions to customers further down the distribution chain, and/or (ii) passive sales restrictions to any of their customers, as such requirements would qualify as hardcore restrictions. See Article 4(b) of the 2022 Vertical Block Exemption Regulation and paragraphs (220) to (222) of the 2022 Guidelines on Vertical Restraints.

⁷⁵² See Article 4(b) of the three Vertical Block Exemption Regulations.

7.3.6.3. Individual exemption

7.3.6.3.1. Principles

- (429) Agreements and concerted practices which restrict competition within the meaning of Article 101 TFEU and are not covered by a block exemption regulation may nonetheless be compatible with Article 101 TFEU if they satisfy the four conditions of Article 101(3) TFEU, based on an individual assessment⁷⁵³.
- (430) Pursuant to Article 2 of Regulation (EC) No 1/2003, an undertaking claiming the benefit of Article 101(3) TFEU bears the burden of proving that the conditions of that paragraph are fulfilled.
- (431) Therefore, the examination of an agreement and/or concerted practice for the purposes of determining whether it contributes to the improvement of the production or distribution of goods or to the promotion of technical or economic progress, and whether that agreement generates appreciable objective advantages, must be undertaken in the light of the factual arguments and evidence provided by the undertaking⁷⁵⁴.
- (432) According to case law of the Union courts, absolute territorial protection goes beyond what is indispensable for the improvement of the production or distribution of goods or the promotion of technical or economic progress required by Article 101(3) TFEU and therefore constitutes sufficient reason for finding that an agreement or concerted practice does not meet the conditions of Article 101(3) TFEU⁷⁵⁵.

7.3.6.3.2. Application to the case

- (433) In its reply to the SO, Cardin claimed that the restrictions regarding the customers to whom Cardin licensees (and their customers) could sell could benefit from an individual exemption pursuant to Article 101(3) TFEU⁷⁵⁶. Cardin made no such claims in respect of the other restrictions described in the SO⁷⁵⁷. Ahlers made no claims in relation to Article 101(3) TFEU in its reply to the SO.
- (434) According to Cardin, the restrictions relating to the customers to which Pierre Cardin-licensed products could be sold satisfy the conditions for individual

⁷⁵³ Judgment of 13 October 2011, *Pierre Fabre Dermo-Cosmétique*, C-439/09, EU:C:2011:649, paragraph 59.

⁷⁵⁴ Judgment of 11 September 2014, *MasterCard Inc. and Others v Commission*, C-382/12 P, EU:C:2014:2201, paragraph 235 and Judgment of 6 October 2009, *GlaxoSmithKline Services and Others v Commission*, Joined cases C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, paragraph 102. However, in certain cases the arguments and evidence put forward by the undertaking seeking to rely on the exception provided by TFEU may be of such a kind as to require the Commission to provide an explanation or justification, failing which it is permissible to conclude that the burden of proof has been discharged. See judgment of 27 September 2006, *GlaxoSmithKline Services Unlimited v Commission*, T-168/01, EU:T:2006:265, paragraph 236; judgment of the General Court of 24 May 2012, *MasterCard, Inc. and Others v Commission*, T-111/08, EU:T:2012:260, paragraph 197, upheld by the Court in the judgment of 11 September 2014, *MasterCard Inc. and Others v Commission*, C-382/12 P, EU:C:2014:2201.

⁷⁵⁵ Judgment of the Court of 8 June 1982, *L.C. Nungesser KG and Kurt Eisele v Commission*, C-258/78, EU:C:1982:211, paragraphs 77 and 78. This was confirmed by the judgment of 12 December 2018, *Groupe Canal + v Commission*, Case T-873/16, EU:T:2018:904, paragraph 68 and, on this point, in the judgment of 9 December 2020, *Groupe Canal + v Commission*, C-132/19 P, EU:T:2020:1007.

⁷⁵⁶ Cardin's reply to the SO, paragraphs 3 and 84.

⁷⁵⁷ I.e. the restrictions described in Sections 6.1.1 and 6.1.2 of this Decision.

exemption under Article 101(3) TFEU, as they prevented sales by distributors that reduced the quality of product presentation and sales services to consumers. In Cardin’s view, these restrictions therefore contributed to improving the production and distribution of products, while allowing consumers a fair share of the resulting benefit by preserving the [translation from French] “*high-end image and prestige*”⁷⁵⁸ of the products, making them stand out from similar alternatives. Cardin explained that the restrictive clauses only applied to [translation from French] “*establishments incompatible with the standing of the Pierre Cardin brand*”⁷⁵⁹ and that they were essential to achieve the objective of improving the production and distribution of the products. Furthermore, Cardin claimed that the restrictions did not allow it to eliminate competition for a substantial proportion of the products in question⁷⁶⁰.

- (435) The Commission first notes that the conditions laid down by Article 101(3) TFEU, described in recital (416), are cumulative, i.e. all must be met for an agreement to benefit from the exemption. In this regard, the Commission observes that although Cardin claimed that the restrictions in question contributed to improving the production and distribution of products, it did not adduce any evidence to support this claim. Secondly, regarding Cardin’s claim that consumers benefitted from the restrictive clauses as these preserved the “*high-end brand image and prestige*” of the products, the Commission points out that, as shown in recitals (364) to (367), this claim is inconsistent with the evidence showing that (i) Cardin had significantly eroded its brand image over time and (ii) Cardin’s licensing system was not set up or maintained in such a way as to enhance or maintain the image or value of the Pierre Cardin brand. Thirdly, the Commission observes that, even if the nature of the Pierre Cardin-licensed products required that the goods in question should not be distributed through certain retailers, Cardin has not shown that the means chosen were indispensable to the attainment of this objective. In this regard, the Commission points out that Cardin could have adopted a less-restrictive solution in the form of a selective distribution system, based on verifiable criteria⁷⁶¹. However, Cardin never defined any such criteria for the selection of its licensees or their customers, nor did it implement any other significant control mechanisms to ensure that the alleged brand image and “prestige” of its products were truly protected⁷⁶².
- (436) The Commission therefore rejects Cardin’s claims in relation to Article 101(3) TFEU.

7.3.6.4. Conclusion on the application of Article 101(3) TFEU

- (437) In conclusion, the restrictions resulting from the contractual clauses and the coordinated actions described in Section 6.1 do not benefit from the block exemptions provided by the three Vertical Block Exemption Regulations and do not meet the conditions of the exception provided for in Article 101(3) TFEU.

⁷⁵⁸ Original text reads: « [...] *la préservation de l’image haut-de-gamme et de la sensation de prestige qui émanent des produits*, [...] ». Cardin’s reply to the SO, paragraph 84.

⁷⁵⁹ Original text reads: « *Leur application est strictement réservée et limitée aux établissements incompatibles avec le standing de la marque PIERRE CARDIN* [...] ». Cardin’s reply to the SO, paragraph 84.

⁷⁶⁰ Cardin’s reply to the SO, paragraph 84.

⁷⁶¹ See, by analogy, Judgment of 25 October 1977, *Metro v Commission*, Case 26/76, EU:C:1977:167; Judgment of 6 December 2017, *Coty Germany GmbH v Parfümerie Akzente GmbH*, Case C-230/16, EU:C:2017:941, paragraph 24. For selective distribution agreements that do not fulfil the Metro criteria, see paragraph 151 of the 2022 Guidelines on Vertical Restraints.

⁷⁶² See recitals (363) to (367).

8. ADDRESSEES

8.1. Principles

- (438) Article 101 TFEU and Article 53 of the EEA Agreement apply to undertakings and associations of undertakings.
- (439) For the purposes of finding an infringement of EU competition law, anticompetitive conduct on the part of an employee is attributable to the undertaking to which he or she belongs and that undertaking is, as a matter of principle, held liable for that conduct⁷⁶³. Where an individual employed works simultaneously by for two or more legal entities of the same group, the legal entity guilty of an infringement cannot simply raise that its employee was in reality acting in a particular instance on behalf of the other legal entity as, otherwise, it would be too easy to avoid a penalty. Such a solution could also allow the legal entities participating in anticompetitive conduct to avoid any liability by creating situations of dual employment with a legal entity not involved in the conduct, by claiming that the joint employee acted solely on behalf of that other legal entity⁷⁶⁴.
- (440) The notion of “undertaking” covers any entity engaged in an economic activity, irrespective of its legal status or the way it is financed⁷⁶⁵. This notion must also be understood as designating an economic unit, even if in law that economic unit consists of several persons, natural or legal⁷⁶⁶.
- (441) According to the principle of personal responsibility, when an economic entity infringes competition rules, it falls to that entity to answer for that infringement. However, the infringement must be imputed unequivocally to a legal person on which fines may be imposed. Where several legal persons are held liable for an infringement committed by one and the same undertaking, the Commission has the power to impose a fine, for which those persons are jointly and severally liable⁷⁶⁷.
- (442) The conduct of a subsidiary may be imputed to the parent company, even though the parent company does not participate directly in the infringement, so long as the parent company and the subsidiary form a “single economic unit” and therefore a single “undertaking” for the purposes of Union competition law. In particular, this may be the case where, despite having a separate legal personality, a subsidiary does not decide independently upon its own conduct on the market, but instead carries out, in all material respects, instructions given to it by the parent company, regard being

⁷⁶³ Judgment of 21 July 2016, *SIA ‘VM Remonts’ and Others v Konkurences padome*, C-542/14, EU:C:2016:578, paragraph 24.

⁷⁶⁴ Judgment of 12 December 2014, *H&R ChemPharm GmbH v Commission*, T-551/08, EU:T:2014:1081, paragraphs 128-135, confirmed by judgment of 16 February 2017, C-95/15 P, EU:C:2017:125, paragraph 32 to 36.

⁷⁶⁵ Judgment of 13 June 2013, *Versalis v Commission*, C-511/11 P, EU:C:2013:386, paragraph 51.

⁷⁶⁶ Judgment of 10 September 2009, *Akzo Nobel NV and Others v Commission*, C-97/08 P, EU:C:2009:536, paragraph 55 and the case-law cited.

⁷⁶⁷ Judgment of 7 June 2011, *Arkema France and Others v Commission*, T-217/06, EU:T:2011:251, paragraphs 40 to 43; judgment of 10 April 2014, *Areva and Others v Commission*, C-247/11 P, EU:C:2014:257, paragraph 120; and judgment of 10 April 2014, *Commission v Siemens Österreich and Others et Siemens Transmission & Distribution and Others / Commission*, C-231/11 P, EU:C:2014:256, paragraph 49.

had in particular to the economic, organisational and legal links between those two legal entities⁷⁶⁸.

- (443) Union courts have also held that it cannot be excluded that a holding company may be held jointly and severally liable for the infringements of EU competition law committed by a subsidiary of its group whose capital it does not hold directly, in so far as that holding company exercises decisive influence over the subsidiary, even indirectly via an interposed company. That is the case, in particular, where the subsidiary does not determine its conduct independently on the market in relation to that interposed company, which does not operate autonomously on the market either, but essentially acts in accordance with the instructions given to it by the holding company. In such a situation, the holding company, the interposed company and the subsidiary form part of the same economic unit and, therefore, constitute a single undertaking for the purposes of EU competition law⁷⁶⁹.
- (444) The Commission can generally assume that a wholly-owned, or nearly wholly-owned, subsidiary essentially follows the instructions that it receives from its parent company. In such cases, it is for the undertaking concerned to adduce sufficient evidence to reverse that presumption⁷⁷⁰.
- (445) Finally, a single economic unit may also exist between two legal entities that are not in a parent-subsidiary relationship (e.g. sister companies). In particular, the existence of an economic unit may be inferred from a body of consistent evidence, even if some of that evidence, taken in isolation, is insufficient to establish the existence of such a unit. Elements that establish that sister companies comprise an economic unit may be, *inter alia*, common ownership, overlaps in management positions, a common strategy and the fact that the infringing behaviour relates to the turnover/activities of both entities⁷⁷¹.
- (446) Once the Commission has determined that a single economic unit exists, it enjoys discretion in deciding as to whether to hold accountable for the infringement the subsidiary(ies) that carried out the infringement, only the parent of those companies, or both the subsidiaries and the parent company⁷⁷².

⁷⁶⁸ Judgment of 29 September 2011, *Elf Aquitaine v Commission*, C-521/09 P, EU:C:2011:620, paragraphs 54 and 55.

⁷⁶⁹ Judgment of 20 January 2011, *General Química and Others v Commission*, Case C-90/09 P, EU:C:2011:21, paragraph 86 to 88.

⁷⁷⁰ Regarding wholly owned subsidiaries, see the judgment of 14 May 1998, *Stora Kopparbergs Bergslags v Commission*, T-354/94, EU:T:1998:104, paragraph 80, confirmed in the judgment of 16 November 2000, *Stora Kopparbergs Bergslags v Commission*, C-286/98 P, EU:C:2000:630, paragraphs 27 to 29; judgment of 15 June 2005, *Tokai Carbon v Commission*, T-71/03, T-74/03, T-87/03 and T-91/03, EU:T:2005:220, paragraph 60; judgment of 25 October 1983, *AEG v Commission*, Case 107-82, EU:C:1983:293, paragraph 50; judgment of 10 September 2009, *Akzo Nobel and Others v Commission*, C-97/08 P, EU:C:2009:262, paragraph 60; judgment of 29 September 2011, *Elf Aquitaine v Commission*, C-521/09 P, EU:C:2011:620, paragraph 56. Regarding nearly wholly-owned subsidiaries, see judgment of 24 March 2011, *Legrís Industries v Commission*, T-376/06, EU:T:2011:107, paragraph 47, confirmed by judgment of 3 May 2012, *Legrís Industries SA v Commission*, C-289/11 P, EU:C:2012:270, paragraph 48; judgment of 11 July 2013, *Commission v Stichting Administratiekantor Portielje and Gosselin Group NV*, paragraphs 40-41.

⁷⁷¹ Judgment of 1 July 2010, *Knauf Gips KG v Commission*, C-407/08 P, EU:C:2010:389, paragraphs 65, 74, 77 and 78.

⁷⁷² Judgment of 14 December 2006, *Raiffeisen Zentralbank Österreich v Commission*, Joined cases T-259/02 to T-264/02 and T-271/02, EU:T:2006:396, paragraph 331 and the case-law referred to therein, confirmed by the Judgment of 24 September 2009, *Erste Group Bank and Others v*

- (447) The same principles hold true, *mutatis mutandis*, for the purposes of applying Article 53 of the EEA Agreement.

8.2. Application to this case

- (448) As stated in Section 7.3.4.2, all the agreements and/or concerted practices referred to in Sections 6.1.1, 6.1.2 and 6.1.3⁷⁷³ formed a single and continuous infringement of Article 101 TFEU and Article 53 of the EEA Agreement, for which both Cardin and Ahlers are liable. This section explains how the Commission has established liability for the infringement as regards the entities that made up Cardin and Ahlers.

8.2.1. Cardin

- (449) The licence agreements containing the contractual clauses described in Sections 6.1.1.1.1, 6.1.2.1.1 and 6.1.3.1.1 were entered into by Cardin SAS and, to a more limited extent, by the latter's nearly wholly owned subsidiary, Pierre Cardin UK Ltd. As to the coordinated actions described in Sections 6.1.1.2, 6.1.2.2 and 6.1.3.2, these were implemented via correspondence that that was signed and/or sent by employees or representatives of Cardin SAS or Cardin Evolution⁷⁷⁴.
- (450) Throughout the Relevant Period, Cardin SAS was a nearly wholly-owned subsidiary of Cardin Evolution⁷⁷⁵ and Pierre Cardin UK Ltd was a nearly wholly-owned subsidiary of Cardin SAS⁷⁷⁶. In accordance with the case law referred to in recital (444), the Commission therefore presumes that Cardin SAS and Pierre Cardin UK Ltd essentially followed the instructions that they received from their respective parent companies, Cardin Evolution and Cardin SAS, and that consequently the latter parent companies exercised decisive influence over their respective subsidiaries.
- (451) Moreover, in line with the case law referred to in recital (439), according to which anticompetitive conduct on the part of an employee is attributable to the undertaking to which he or she belongs, and considering that, as indicated in recital (449), Cardin Evolution's and Cardin SAS' employees engaged in the conduct described in Section 6.1, the Commission concludes that both entities participated directly in the single and continuous infringement referred to in Section 7.3.4 and should be held jointly and severally liable for that infringement.
- (452) This conclusion is not called into question by the arguments put forward by Cardin in its reply to the SO.

Commission, Joined cases C-125/07 P, C-133/07 P, C-135/07 P and C-137/07 P, EU:C:2009:576, paragraphs 81-82. See also Judgment of 17 May 2011, *Elf Aquitaine v Commission*, T-299/08, EU:T:2011:217, paragraph 60, confirmed by order of 2 February 2012, *Elf Aquitaine v Commission*, C-404/11 P, EU:C:2012:56, paragraphs 18 and 19.

⁷⁷³ See also recital (392).

⁷⁷⁴ All the individuals that signed the correspondence qualified as coordinated actions in Sections 6.1.1.2, 6.1.2.2 and 6.1.3.2 are listed in the table in recital (12). This table shows that, during the Relevant Period, all these individuals held roles in either Cardin Evolution or Cardin SAS.

⁷⁷⁵ Cardin Evolution owned between 94% and 94.5% of Cardin SAS during the Relevant Period, with the remaining shares of Cardin SAS belonging to [...]. [...] also owned [...] of Cardin Evolution's shares until [...] (this shareholding being thereafter in the hands of [...]). See ID 187, ID 190, ID 191, ID 196, ID 211, ID 215, ID 216, ID 249, ID 250, ID 256, ID 257, ID 1085, ID 1086 and ID 2389.

⁷⁷⁶ During the Relevant Period, Cardin SAS owned between 99% and 100% of Pierre Cardin UK Ltd. See ID 187, ID 190, ID 191, ID 196, ID 211, ID 215, ID 216, ID 249, ID 250, ID 256, ID 257, ID 1085 and ID 1086.

8.2.1.1. Cardin's arguments

- (453) In its reply to the SO, Cardin did not comment on the Commission's announced intention, as reflected in the SO, to impose a single fine on Cardin's entities in accordance with the Commission's practice to hold several legal entities of the same group jointly and severally liable for an infringement⁷⁷⁷. Nor did Cardin claim that Cardin Evolution had not exerted decisive influence over Cardin SAS during the Relevant Period.
- (454) However, Cardin claimed that Cardin Evolution should not be considered as having "personally" participated in the infringement for two reasons⁷⁷⁸:
- (a) First, it was Cardin SAS rather than Cardin Evolution that concluded the licence agreements at issue⁷⁷⁹ and the latter was not involved in the licensing business.
 - (b) Second, the fact that some correspondence referred to in the SO was addressed/sent to individuals who were employees of Cardin Evolution was due to some personnel of Cardin Evolution being seconded to Cardin SAS following an *ad hoc* staffing agreement. To this end, Cardin submitted the staffing agreement concluded between Cardin Evolution and Cardin SAS⁷⁸⁰, which allowed for employees of the former to be seconded to the latter during 2012⁷⁸¹. According to Cardin, the seconded personnel was subject to the supervision and instructions of Cardin SAS with respect to the management of licences for Pierre Cardin trademarks⁷⁸².

8.2.1.2. The Commission's assessment

- (455) First, the Commission notes that Cardin did not provide any evidence showing which of the individuals who sent the correspondence referred to in Sections 6.1.1.2, 6.1.2.2 and 6.1.3.2 had been seconded from Cardin Evolution to Cardin SAS, for how long, for which specific tasks, whether the secondment was on a full-time basis, or whether some of these individuals continued to also perform tasks for Cardin Evolution. Instead, Cardin simply provided the Commission with a general framework agreement for the secondment of personnel between the two legal entities within Cardin, which enabled some employees to be seconded [...] ⁷⁸³ despite the fact that the conduct concerned by this Decision ran until 2021.
- (456) Second, the Commission recalls that, in accordance with the case law cited in recital (439), (i) the Commission can attribute anticompetitive conduct by an employee to the legal entity to which he or she belongs and (ii) where an individual who works simultaneously for two or more legal entities of the same group engages in anti-competitive behaviour connected to one of them, the legal entity guilty of the

⁷⁷⁷ Original text reads: "*PIERRE CARDIN comprend de cette mention que la Commission envisage dans le présent dossier de prononcer une unique amende, conformément à sa pratique lorsque des sociétés d'un même groupe sont jugées solidairement et conjointement responsables d'un manquement. Procéder autrement ne serait pas justifié.*". See Cardin's reply to the SO, paragraph 176.

⁷⁷⁸ See Cardin's reply to the SO, paragraph 176.

⁷⁷⁹ The Commission notes that some of the licence agreements on its file (notably with licensee [...]) were not entered into by Cardin SAS, but by its subsidiary Pierre Cardin UK Ltd.

⁷⁸⁰ See Annex 29 to the Cardin's reply to the SO, p. 1.

⁷⁸¹ The staffing agreement provided that [...].

⁷⁸² See Cardin's reply to the SO, paragraph 176.

⁷⁸³ The staffing agreement provided that [...].

infringement cannot avoid liability by simply claiming that the employee was in reality acting on behalf of the other legal entity for which he/she worked.

- (457) Third, the Commission reiterates that the correspondence from Cardin referred to in Sections 6.1.1.2, 6.1.2.2 and 6.1.3.2 was sent by (or on behalf of) both individuals who worked for Cardin Evolution and individuals who worked for Cardin SAS⁷⁸⁴, including Mr Cardin and Mr Basilicati, who were also the signatories of the licence agreements mentioned in Sections 6.1.1.1, 6.1.2.1 and 6.1.3.1. Moreover, some of these licence agreements explicitly mentioned that they were entered into by Cardin SAS, “*represented by Cardin Evolution*”, which in turn was represented by Mr Cardin or Mr Basilicati⁷⁸⁵.
- (458) Fourth, the Commission notes that the same individuals (Mr Cardin or Mr Basilicati)⁷⁸⁶ held management positions in both Cardin Evolution and Cardin SAS during the entire Relevant Period and, since these were top-level managers within Cardin, it cannot be contested that they were involved in the core business of both companies.
- (459) Therefore, as employees of Cardin Evolution and Cardin SAS were behind the conduct described in Section 6.1, the Commission can attribute that conduct to their employers and find that both entities participated directly in the infringement.
- (460) Finally, the Commission recalls that it is settled case law⁷⁸⁷ that where the Commission has presumed that a parent company exercised decisive influence over its nearly wholly-owned subsidiary, it is for the undertaking(s) concerned to rebut this presumption by bringing forward sufficient evidence.
- (461) In this respect, while Cardin has not explained whether and how its arguments summarized in recital (454) would have a bearing on whether such decisive influence existed, several elements show that such influence was indeed exercised, such as the fact that correspondence was sent by individuals belonging to both companies, the cross-representation in the signature of certain license agreements and in general, Cardin’s corporate and organisational structure⁷⁸⁸, which indicates that Cardin SAS could only follow the instructions of its parent company, with which it shared its management throughout the Relevant Period and consequently could not act independently. The Commission therefore concludes that Cardin has not rebutted the presumption that Cardin Evolution exerted decisive influence over Cardin SAS.

⁷⁸⁴ All the individuals that signed the correspondence qualified as coordinated actions in Sections 6.1.1.2, 6.1.2.2 and 6.1.3.2 are listed in the table of recital (12). This table shows that, during the Relevant Period, all of these individuals held roles in either Cardin Evolution or in Cardin SAS.

⁷⁸⁵ See Agreements with Ahlers of 30 January 2018 – ID 155-21, ID 155-36, ID 1134-2, and ID 1134-4; Agreements with Ahlers of 19 September 2017 – ID 155-29; Agreement with [Cardin Licensee 5] of [...] – ID 353-1; Agreements with [Cardin Licensee 5] of [...] – ID 353-21, ID 353-31, ID 353-28.

⁷⁸⁶ See paragraph 11 of the SO. Until 2020, Cardin Evolution and Cardin SAS were [...]. Mr Cardin also held management positions simultaneously in both companies: he was the President and Administrator of Cardin Evolution until 29 October 2020 (thereafter Mr Basilicati took over the role as President) and Manager (“Gérant”) of Cardin SAS until 24 February 2016 (between this date and 27 November 2018, this role was taken over by Cardin Evolution presided by Mr Pierre Cardin. As of 28 November 2018, Mr Basilicati was General Manager of Cardin SAS; see for details recital (12)). See ID 187, ID 190, ID 191, ID 196, ID 211, ID 215, ID 216, ID 249, ID 250, ID 256, ID 257, ID 1085 and ID 1086, ID 2389.

⁷⁸⁷ See recital (444).

⁷⁸⁸ See recital (457).

(462) On this basis, the Commission concludes that (i) Cardin Evolution, for its direct participation and in its capacity as a parent company of Cardin SAS; and (ii) Cardin SAS, for its direct participation and as a parent of Pierre Cardin UK Ltd., are held liable jointly and severally for infringing Article 101 TFEU and Article 53 of the EEA Agreement from 1 January 2008 to 31 March 2021.

8.2.2. *WTW Ahlers*

(463) WTW Ahlers is the addressee of this Decision.⁷⁸⁹

(464) WTW Ahlers directly participated in the infringement. In particular, the licence agreements containing the contractual clauses described in Sections 6.1.1.1.2, 6.1.2.1.2 and 6.1.3.1.2 were signed by WTW Ahlers or by [...] on behalf of WTW Ahlers⁷⁹⁰. As to the coordinated actions described in Sections 6.1.1.2, 6.1.2.2 and 6.1.3.2, these were implemented via correspondence that was signed and/or sent by (or on behalf of) employees or representatives of WTW Ahlers, [...].

(465) As mentioned in recitals [...], throughout the Relevant Period, WTW Ahlers [...]. Moreover, as explained in Section 2.1.2, by negotiating and entering into licence agreements with Cardin, [...], WTW Ahlers provided [...], in particular [...]⁷⁹¹. Therefore, the Commission also finds that [...] did not act independently from [...].

(466) Based on these elements and in light of the case law cited in recital (443), the Commission finds that [...] form part of the same economic unit.

(467) With regard to [...], a number of elements indicate that [...] exerted decisive influence over it with regard to the Pierre Cardin licensing business and that [...] did not decide independently upon its own conduct with regard to such business.

(468) First, [...]⁷⁹², [...]⁷⁹³. [...]⁷⁹⁴. In particular, [...] was in charge of the negotiations with Cardin over the licence agreements signed by [...] and of the payment of the related royalties to Cardin. Operational tasks relating to these agreements were handled by [...]⁷⁹⁵. All these elements indicate that [...] could not have operated the licence agreements independently from [...].

(469) Second, as explained in recital (17), although [...] during the Relevant Period⁷⁹⁶.

(470) Third, the same individuals (i.e. Mr Jan A. Ahlers until 2013 and Ms Stella Ahlers thereafter) who signed the licence agreements on file between Cardin and WTW Ahlers also signed the licence agreements between Cardin and [...]⁷⁹⁷. [...]⁷⁹⁸.

(471) Fourth, [...] dated [...]⁷⁹⁹.

⁷⁸⁹ See recital (2) and paragraph 1 of the SO.

⁷⁹⁰ See recital (17) and footnotes 45 and 48.

⁷⁹¹ See recital (16).

⁷⁹² See ID 386

⁷⁹³ See ID 408.

⁷⁹⁴ See recital (17).

⁷⁹⁵ The operational tasks relating to these agreements were handled by [...]. See ID 408. See also recital (17) and footnote 48.

⁷⁹⁶ Mr Jan A. Ahlers [...] Ms Stella Ahlers [...].

⁷⁹⁷ In the period 2008 to 2013, [...] was the signatory of all the licence agreements concluded by [...] and Cardin, and all the licence agreements concluded by Ahlers and Cardin. In the period 2014 to 2018 (date on which the last agreement on file that was signed by [...] expired), Ms Stella Ahlers signed all the agreements on file between [...] and Cardin, while also signing the agreements between Ahlers and Cardin.

⁷⁹⁸ See recitals (14) and (17).

- (472) Fifth, WTW Ahlers and [...] behaved like one single undertaking *vis-à-vis* Cardin, which in turn treated WTW Ahlers and [...] as the same counterparty for the purposes of its licensing business. In particular, Cardin did not distinguish between the licence agreements signed by WTW Ahlers and those signed by [...] when accounting for royalties; instead, it reported them as a single amount⁸⁰⁰.
- (473) All these elements indicate that [...] did not enjoy autonomy in determining its course of action regarding activities relating to the Pierre Cardin business, but rather acted under the supervision and direction of [...].
- (474) In summary, the facts described above indicate that [...] did not decide independently on their own conduct with regard to the Pierre Cardin business, but carried out, in all material respects, the instructions given to them by [...]. Therefore, [...] form a single economic unit with WTW Ahlers for the purpose of applying Article 101 TFEU and Article 53 of the EEA Agreement in this case.
- (475) Consequently, the Commission concludes that, [...], WTW Ahlers must be held liable for the single and continuous infringement of Article 101 TFEU and Article 53 of the EEA Agreement committed from 1 January 2008 to 31 March 2021.

9. DURATION OF THE INFRINGEMENT

- (476) As explained in Section 7.3.4, the Commission has reached the conclusion that the conduct of the Parties described in Sections 6.1.1, 6.1.2 and 6.1.3 of this Decision constitutes a single and continuous infringement of Article 101(1) TFEU and Article 53(1) of the EEA Agreement.
- (477) The duration of the infringement is calculated from the date on which the Parties first entered into a licence agreement containing the contractual clauses described in Sections 6.1.1.1, 6.1.2.1 and 6.1.3.1 or engaged in the coordinated actions described in Sections 6.1.1.2, 6.1.2.2 and 6.1.3.2, until the last date for which there is evidence that the anticompetitive conduct was still ongoing, regardless of whether this conduct involved contractual clauses or coordinated actions.
- (478) As regards the starting date of the infringement, the earliest anticompetitive contractual clauses on file are present in two licence agreements concluded between Ahlers and Cardin that entered into force on 1 January 2008⁸⁰¹.
- (479) As regards the end date, the most recent evidence of the anticompetitive conduct on file are email exchanges between the Parties from 2021 (the most recent dating from 31 March 2021)⁸⁰². These emails show that on that date, Cardin and Ahlers were still engaging in coordinated actions to protect Ahlers from competition in its licensed territories.

⁷⁹⁹ Paragraph 1 [...]. According to paragraph 3 [...]. The same paragraph of [...] (see footnote 45). Despite this, [...] continued to sign licence agreements with Cardin on behalf of WTW Ahlers until 2018. See ID 2072, paragraphs 5 and 6 and ID 2078, paragraphs 1 and 3.

⁸⁰⁰ See ID 1197.

⁸⁰¹ Agreement with [...] of 15 January 2008 – ID 155-26; Agreement with [...] of 15 January 2008 – ID 155-29 (p. 115). [...].

⁸⁰² This concerns, firstly, the Parties' actions against [Cardin licensee's customer 1] (see recital (139) – Email of 31 March 2021 from [Ahlers management], via [assistant to Ahlers management 2], to [Cardin licensing director 3] – ID 155-173); and, secondly, against [...] (see recital (145) – Email of 31 March 2021 from [Ahlers management], via [assistant to Ahlers management 2], to [Cardin licensing director 3] – ID 155-149).

- (480) Based on the evidence referred to above, the Commission concludes that the infringement started on 1 January 2008 and ended on 31 March 2021 (4839 days).

10. REMEDIES AND FINES

10.1. Remedies under Article 7 of Regulation (EC) No 1/2003

- (481) Where the Commission finds that Article 101 TFEU and Article 53 of the EEA Agreement have been infringed, it may by decision require the undertakings concerned to bring such infringement to an end in accordance with Article 7(1) of Regulation (EC) No 1/2003⁸⁰³. For this purpose, it may also impose any behavioural or structural remedies that are proportionate to the infringement committed and necessary to bring that infringement effectively to an end.

- (482) In the present case, the infringing conduct continued until at least the date referred to in Section 9 above. Given the nature of the anti-competitive conduct at issue (in particular the coordinated actions taken by the Parties), it is not possible to declare with absolute certainty that the infringement has ceased. It is therefore appropriate for the Commission to require the undertakings to which this Decision is addressed to immediately bring the infringement to an end, if they have not already done so, and to refrain from all agreements or concerted practices which may have the same or a similar object or effect.

10.2. Article 23(2) and (3) of Regulation (EC) No 1/2003 – Fines

- (483) Pursuant to Article 23(2) of Regulation 1/2003, the Commission may by decision impose fines on undertakings where they infringe Article 101 TFEU and/or Article 53 of the EEA Agreement, either intentionally or negligently. According to the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (“Guidelines on Fines”), for each undertaking participating in the infringement, the fine shall not exceed 10% of its total turnover in the preceding business year⁸⁰⁴.
- (484) According to established case law, the Commission may make a finding of intention or negligence without needing to establish that an undertaking was aware that it was infringing competition law⁸⁰⁵. It is sufficient that the undertaking could not have been unaware that its conduct was aimed at restricting competition⁸⁰⁶.
- (485) In the present case, the Commission considers that the infringement was committed intentionally or at least negligently.
- (486) In fact, the evidence on file demonstrates that over the Relevant Period, Cardin and Ahlers consistently (i.e. not in isolated instances) adopted the contractual clauses and

⁸⁰³ OJ L1 of 4.1.2003.

⁸⁰⁴ See Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation 1/2003 (OJ C 210, 1.9.2006, p. 2), point 32.

⁸⁰⁵ Judgment of 1 February 1978, *Miller International Schallplatten GmbH v Commission*, , EU:C:1978:19; judgment of 8 November 1983, *NV IAZ International Belgium and others v Commission*, EU:C:1983:310, to judgment of 6 July 2000, *Volkswagen AG v Commission*,, EU:T:2000:180,.

⁸⁰⁶ Judgment of 5 October 2011, *Romana Tabacchi Srl v Commission*, T-11/06, EU:T:2011:560, paragraph 227; judgment of 14 May 1998, *Enso Española SA v Commission*, T-348/94, EU:T:1998:102, paragraph 277; judgment of 18 June 2013, *Bundeswettbewerbshörde and Bundeskartellanwalt v Schenker & Co. AG and Others*, C-681/11, EU:C:2013:404, paragraph 37 and the case-law cited. See also Judgment of 19 May 1999, *Accinauto SA v Commission*, T-176/95, EU:T:1999:100; paragraph 119 and case law cited therein.

the coordinated actions quoted in Section 6 above, which suggests that they acted knowingly and willingly in this regard. In particular, such measures restricted (i) out-of-territory passive sales of Pierre Cardin-licensed products by Cardin licensees; (ii) out-of-territory passive sales of such products by customers of Cardin licensees; and (iii) the customers to whom Cardin licensees and their customers could sell such products, within the EEA.

- (487) Moreover, evidence on file confirms Cardin and Ahlers could not have been unaware that their conduct was aimed at restricting competition.
- (488) More precisely, as shown in recital (143), in May 2014 Cardin urged a customer of its licensees ([...]) to stop sales of Pierre Cardin-licensed products in Germany, while admitting that its agreements were not fully in line with EU law⁸⁰⁷.
- (489) As for Ahlers, in an internal email of August 2014 quoted in recital (122), Ahlers acknowledged that prohibiting customers of licensees from selling online was not in line with antitrust rules⁸⁰⁸.
- (490) The Commission therefore concludes that it is appropriate to impose a fine on the Parties for restricting competition within the meaning of Article 101 TFEU and Article 53 of the EEA Agreement by preventing out-of-territory passive sales of Pierre Cardin-licensed products and limiting the customers to whom such products could be sold in the EEA during the Relevant Period, thereby partitioning the market for the sale of Pierre Cardin-licensed products.

10.3. Setting the fine

10.3.1. General methodology

- (491) According to the Guidelines on Fines, the Commission will first determine a basic amount for each undertaking's fine. The basic amount of the fine will be set by reference to the value of sales to which the infringement directly or indirectly relates in the relevant geographic area within the EEA⁸⁰⁹. The proportion of the value of sales taken into account for determining the basic amount may be set at a level of up to 30% of the value of sales⁸¹⁰, depending on the degree of gravity of the infringement. That proportion of the value of sales will then be multiplied by the duration of the infringement⁸¹¹. The Commission may also include in the basic

⁸⁰⁷ “In the meantime, you have to stop your illegal sales, [...]. The fact that there is a discrepancy between European law and our contracts does not mean that you have to act “stealthily”. Take a step back, [...], regarding your sales in Germany and others. It will be better for all, also for me.” (translation from French, emphasis added). Original text reads : « *Entretiens, tu dois arrêter tes ventes illégales, [...]. Le fait qu’il y ait un décalage entre la loi européenne et nos contrats ne veut pas dire que tu doives agir « furtivement ».* Fais marche arrière, [...], sur tes ventes en Allemagne et autres. Ce sera mieux pour tous, aussi pour moi. ». See Email of 19 May 2014 from [...] to [...] – ID 5-9.

⁸⁰⁸ “Even if Cardin was to prohibit [Cardin licensee 8] from trading online, [Cardin licensee’s customer 1] would still be able to sell PC merchandize online, as this can no longer be prohibited today for reasons of antitrust law” (translation from German); Original text reads: “*Auch wenn das Haus cardin den [Cardin licensee 8] den online Handel verbieten würde, könnte [Cardin licensee’s customer 1] trotzdem PC ware online vertreiben, da man das heute aus kartellrechtlichen Gründen nicht mehr verbieten kann*”. See Internal email of 28 August 2014 within Ahlers, between [Ahlers management] and [assistant to Ahlers management 2] – ID 155-470.

⁸⁰⁹ Point 13 of the Guidelines on Fines.

⁸¹⁰ Point 21 of the Guidelines on Fines.

⁸¹¹ Point 19 of the Guidelines on Fines.

amount an additional amount of up to 25% of the value of sales (an “entry fee”) to deter undertakings from entering into anticompetitive agreements⁸¹².

- (492) On 8 May 2024, a Letter on Fines was sent to each Party containing clarifications on the methodology that DG Competition intended to propose to the Commission to determine the amount of any fine to be imposed on the Parties pursuant to Article 23(2) of Regulation (EC) No 1/2003⁸¹³.

10.3.2. Determination of the basic amount of the fine

10.3.2.1. Value of sales

- (493) The Commission will normally take into account the sales made by the undertaking during the last full business year of the undertaking’s participation in the infringement⁸¹⁴. If the turnover of the undertaking during that year is not sufficiently representative of its annual turnover during the infringement, the Commission may take into account one or more other years for determining the value of sales.
- (494) When determining the value of sales made by an undertaking, the Commission will take that undertaking’s best available figures⁸¹⁵. Should the figures provided by the undertaking be incomplete or not reliable, the Commission may determine the value of its sales on the basis of the partial figures that it has obtained and/or on any other information which it regards as relevant and appropriate⁸¹⁶.

10.3.2.1.1. Cardin

- (495) The value of the undertaking’s “*sales of goods or services to which the infringement directly or indirectly relates*”⁸¹⁷ is to be considered in the light of the nature of Cardin’s business. Cardin’s main business is the licensing of the Pierre Cardin trademarks for the manufacture and sale of clothing and accessories worldwide⁸¹⁸.
- (496) Given the nature of Cardin’s main business, the basis for the value of sales should be the royalties that Cardin collects in exchange for granting the right to use the Pierre Cardin trademarks⁸¹⁹. This is consistent with the approach followed by the Commission in previous cases concerning vertical restrictions involving undertakings active in the licensing of IPRs⁸²⁰.
- (497) In the present case, the infringement relates directly or indirectly to Cardin’s licence agreements with 13 licensees⁸²¹. Based on the principles outlined in this Section and

⁸¹² Point 25 of the Guidelines on Fines.

⁸¹³ While Cardin did not make any comments on the Letter on Fines, Ahlers submitted comments on 22 May 2024. See also recital (51).

⁸¹⁴ Point 13 of the Guidelines on Fines.

⁸¹⁵ Point 15 of the Guidelines on Fines.

⁸¹⁶ Point 16 of the Guidelines on Fines.

⁸¹⁷ Point 13 of the Guidelines on Fines.

⁸¹⁸ See Cardin’s reply to the SO, paragraph 11 (translation from French) : “*The main activity of the CPMS is to negotiate, grant and manage licences, so that third parties can manufacture, have manufactured and market all goods and services under the trade marks filed in the name of Mr Pierre Cardin*”. Original text reads: « *La principale activité de la SGPC est de négocier, consentir et gérer des licences, afin que des tiers puissent fabriquer, faire fabriquer et commercialiser tous produits et services sous les marques déposées au nom de Monsieur Pierre Cardin* ».

⁸¹⁹ See the Letter on Fines of 8 May 2024 addressed to Cardin, paragraph 7.

⁸²⁰ See the Commission decisions in cases AT.40432 – *Character merchandise*; AT.40433 – *Film merchandise*; AT.40436 – *Ancillary sports merchandise*.

⁸²¹ [...], and Ahlers. See recitals (64), (72), (83), (102), (105), (109), (151), (161) and (171).

the information provided by Cardin⁸²², the value of sales should be based on the total annual revenues generated by Cardin in 2020 (the last full business year⁸²³ of Cardin's participation in the single and continuous infringement) from royalties derived from sales of Pierre Cardin-licensed products in the EEA by those licensees⁸²⁴.

(498) Accordingly, the value of sales to be taken into account for Cardin is EUR [...] ⁸²⁵.

10.3.2.1.2. WTW Ahlers

(499) During the Relevant Period, WTW Ahlers' core business was the manufacture and distribution of clothing in Europe, including Pierre-Cardin licensed products⁸²⁶. The sales to which the infringement directly or indirectly relates consist of the sale of Pierre Cardin-licensed products in the EEA in the last representative full business year of WTW Ahlers' participation in the infringement. The value of sales should therefore be based on WTW Ahlers' sales of these products in business year 2020 (i.e. from 1 December 2019 until 30 November 2020⁸²⁷), which was the last full business year of WTW Ahlers' participation in the single and continuous infringement⁸²⁸.

(500) Accordingly, the value of sales to be taken into account for WTW Ahlers is EUR [...] ⁸²⁹.

10.3.2.2. Gravity

(501) The gravity of the infringement determines the percentage of the value of sales to be taken into account in setting the fine. In assessing the gravity of the infringement, the Commission has regard to a number of factors, such as the nature of the infringement, the market share of the undertakings concerned, the geographic scope of the infringement and whether or not the infringement has been implemented⁸³⁰.

(502) By their very nature, restrictions of out-of-territory passive sales and customer restrictions restrict competition within the meaning of Article 101(1) TFEU and Article 53 of the EEA Agreement. However, vertical restraints are generally less harmful than horizontal ones. Taking into account this factor and the fact that the infringements described in Sections 6.1.1, 6.1.2 and 6.1.3 concerned the whole EEA, the percentage of the value of sales should be set at 8%.

⁸²² See Commission RFIs of 16 August, 30 September, 12 October, 10 November, 5 December 2022, 22 April 2024 and Cardin's replies of 9 and 26 September, 10 October, 20 October, 17 November, 8 December 2022 and 14 May 2024.

⁸²³ Cardin Evolution's and Cardin SAS' business years run from 1 January to 31 December. See ID 1082 and ID 1197, and the 2023 consolidated financial statements of Pierre Cardin Evolution submitted on 10 July 2024.

⁸²⁴ See the Letter on Fines of 8 May 2024 addressed to Cardin, paragraphs 10-12.

⁸²⁵ The Value of Sales is determined based on (i) the methodology illustrated in the Letter on Fines of 8 May 2024 addressed to Cardin, paragraphs 10-12 and (ii) the data collected by the Commission through the RFIs of 16 August, 30 September, 12 October, 10 November, 5 December 2022, 22 April 2024, to which Cardin replied on 9 and 26 September, 10 October, 20 October, 17 November, 8 December 2022 and 14 May 2024, respectively.

⁸²⁶ See recital (58).

⁸²⁷ WTW Ahlers, [...] have as their business year the period from 1 December of a given year to 30 November of the following year. [...].

⁸²⁸ See for this reasoning also the Letter on Fines of 8 May 2024 addressed to Ahlers.

⁸²⁹ See ID 1140.

⁸³⁰ Point 22 of the Guidelines on Fines.

10.3.2.3.Duration

- (503) As set out in Section 9, the infringement started on 1 January 2008 and ended on 31 March 2021. The duration of the infringement was therefore 4839 days (13.24 years).

10.3.3. *Setting of the basic amount of the fine*

10.3.3.1.Cardin

- (504) Considering the value of sales (see recital (498)), the gravity (see recital (502)) and the duration of the infringement (see recital (503)), the basic amount of the fine to be imposed on Cardin is EUR [...].

10.3.3.2.Ahlers

- (505) Considering the value of sales (see recital (500)), the gravity (see recital (502)) and the duration of the infringement (see recital (503)), the basic amount of the fine to be imposed on WTW Ahlers is EUR [...].

10.3.4. *Adjustments to the basic amount*

10.3.4.1.Aggravating or mitigating circumstances

- (506) In setting the fine, the Commission may take into account, in relation to each undertaking, circumstances that result in an increase or decrease in the basic amount of the fine.⁸³¹
- (507) In this case, the Commission concludes that there are no aggravating or mitigating circumstances that would justify an increase or decrease in the basic amount of the fine to be imposed.

10.3.5. *Application of the 10% turnover limit*

10.3.5.1.Principles

- (508) In accordance with Article 23(2) of Regulation (EC) No 1/2003, the final amount of the fine must not in any event exceed 10% of the total turnover of each of the undertakings participating in the infringement during the business year preceding the date of adoption of the Commission's decision.
- (509) In this context, the Union Courts have held that, when applying the 10% turnover limit, the Commission must ensure that the fine is proportionate to the economic situation of the undertaking concerned during the period in which the infringement was committed⁸³². Moreover, when assessing the economic situation of the undertaking and the appropriate level of fine to impose on it, the Commission must ensure that the fine has a sufficient and proportionate deterrent effect⁸³³.

⁸³¹ Point 28 and 29 of the Guidelines on Fines.

⁸³² Judgment of 22 October 2020, *Silver Plastics and Johannes Reifenhäuser v Commission*, C-702/19 P, EU:C:2020:857, paragraph 102; judgment of 7 July 2016, *HIT Groep BV v Commission*, C-514/15 P, EU:C:2016:575, paragraphs 26 and 27 and judgment of 7 June 2007, *Britannia Alloys & Chemicals Ltd v Commission*, C-76/06 P, EU:C:2007:326, paragraph 25.

⁸³³ Judgment of 22 October 2020, *Silver Plastics and Johannes Reifenhäuser v Commission*, C-702/19 P, EU:C:2020:857, paragraph 102; judgment of 7 July 2016, *HIT Groep BV v Commission*, C-514/15 P, EU:C:2016:575, paragraphs 30 and 38 27 and judgment of 7 June 2007, *Britannia Alloys & Chemicals Ltd v Commission*, C-76/06 P, EU:C:2007:326, paragraph 30.

10.3.5.2.Application

10.3.5.2.1. Cardin

(510) The consolidated worldwide turnover achieved by Cardin in 2023 was EUR [...] ⁸³⁴. [...].

10.3.5.2.2. WTW Ahlers

(511) Concerning WTW Ahlers, the relevant business year preceding the adoption of this Decision (i.e. 1 December 2022 to 30 November 2023 ⁸³⁵) [...] ⁸³⁶.

(512) [...] ⁸³⁷. [...] ⁸³⁸. [...] ⁸³⁹.

(513) [...] ⁸⁴⁰, [...] ⁸⁴¹. [...] ⁸⁴². [...].

(514) In reply to WTW Ahlers' comments, the Commission refers to the case law of the Union courts mentioned in recital (509), according to which, for the purpose of applying the 10% turnover limit, the Commission must determine the proportionality of the fine by reference to the economic situation of the undertaking concerned during the period in which the infringement was committed, and not by reference to the date of the adoption of the decision. The Commission notes that this case law is more recent than the case law relied upon by WTW Ahlers in its reply to the Letter on Fines. The Commission also recalls that, according to this case law, when assessing the economic situation of the undertaking and the appropriate level of the fine to be imposed on it, it must ensure that the fine has a sufficient and proportionate deterrent effect.

(515) In this regard, the Commission recalls that during the period of the infringement (i.e. the Relevant Period), WTW Ahlers, [...] ⁸⁴³. [...].

(516) [...] the Commission relies on *Silver Plastics* (and the other judgments referred to in footnote 832) [...] because in those judgments the Court of Justice repeated its established line of jurisprudence on the period that the Commission should take into account in order to ensure that the fine was proportionate.

(517) Therefore, the Commission concludes that, for the purposes of applying the 10% turnover limit to the fine to be imposed on WTW Ahlers, [...].

⁸³⁴ See Cardin's email of 10 July 2024 – ID 3263.

⁸³⁵ See footnote 827.

⁸³⁶ See Ahlers' email of 5 March 2024.

⁸³⁷ See recitals (16), (58) and (499) and [...].

⁸³⁸ See ID 1140 showing [...].

⁸³⁹ See paragraph 15 of the Letter on Fines of 8 May 2024 addressed to Ahlers.

⁸⁴⁰ See (i) Ahlers' reply to the Letter on Fines of 22 May 2024 and (ii) a supplementary submission to this reply on 23 July 2024. See also recital (51).

⁸⁴¹ See Ahlers' reply to the Letter on Fines, paragraph 1.4 and the case law quoted therein, namely Judgment of 11 July 2014, *Sasol and Others v Commission*, T-541/08, EU:T:2014:628, paragraph 445; judgment of 15 June 2006, *Tokai Carbon and Others v Commission*, Joined cases T-71/03, T-74/03, T-87/03 and T-91/03, EU:T:2005:220, paragraph 390; judgment of 24 March 2011, *Pegler Ltd v Commission*, T-386/06, paragraph 120; judgment of 16 November 2011, *Kendrion NV v Commission*, T-54/06, EU:T:2011:667, paragraph 92; confirmed upon appeal in judgment of 26 November 2013, *Kendrion NV v Commission*, C-50/12 P, EU:C:2013:771, paragraph 57; judgment of 4 September 2014, *YKK Corporation and Others v Commission*, C-408/12 P – EU:C:2014:2153, paragraphs 60, 64. See also Ahlers' supplementary submission to its reply to the Letter on Fines, paragraph 1.1. to 1.4.

⁸⁴² See paragraphs 1.11 and 1.12 of Ahlers' reply of 22 May 2024 to the Letter on Fines of 8 May 2024.

⁸⁴³ See Ahlers' email of 5 March 2024.

- (518) On this basis, the consolidated worldwide turnover achieved by WTW Ahlers in 2023 was EUR [...] ⁸⁴⁴.
- (519) Since the basic amount referred to in recital (505) would exceed 10% of the consolidated turnover of WTW Ahlers in the business year preceding the date of the Commission decision, the amount of the fine to be imposed on WTW Ahlers – [...] – is therefore reduced and set at EUR [...].

10.4. Ability to pay

10.4.1. Introduction

- (520) According to point 35 of the Guidelines on Fines, "[i]n exceptional cases, the Commission may, upon request, take account of the undertaking's inability to pay in a specific social and economic context. It will not base any reduction in the fine granted for this reason in the fine on the mere finding of an adverse or loss-making financial situation. A reduction could be granted solely on the basis of objective evidence that the imposition of the fine as provided for in these Guidelines would irretrievably jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value.
- (521) In exercising its discretion under point 35 of the Guidelines on Fines, the Commission carries out an overall assessment of the undertaking's financial situation, with the primary focus on the undertaking's capacity to pay the fine in a specific social and economic context.
- (522) In principle, in so far as an undertaking argues that the estimated fine would have a negative impact on its financial situation but does not adduce credible evidence demonstrating its inability to pay the fine, the Commission is not required to take into account the poor financial situation of that undertaking when determining the amount of the fine to be imposed. Recognition of such an obligation would be tantamount to giving an unjustified competitive advantage to the undertakings least well adapted to the conditions of the market ⁸⁴⁵.

10.4.2. Assessment of the ITP application

- (523) On 18 March 2024, [...] ⁸⁴⁶ applied for a reduction of the fine for inability to pay ("ITP") under point 35 of the Guidelines on Fines.
- (524) It is up to the undertaking to demonstrate that the conditions for ITP are met ⁸⁴⁷. The Commission has duly considered [...] application and has carefully assessed the information submitted by it in reply to RFIs addressed to it by the Commission pursuant to Article 18(1) and (2) of Regulation (EC) No 1/2003 regarding its financial situation and the specific social and economic context it is in.

⁸⁴⁴ The figures provided by Ahlers are based on the 2023 consolidated turnover of WTW Ahlers from 1 December 2022 to 30 November 2023, [...].

⁸⁴⁵ See, to that effect, judgments of 8 November 1983, *IAZ v Commission*, C-96/82 to C-102/82, C-104/82, C-105/82, C-108/82 and C-110/82, EU:C:1983:310, paragraphs 54 and 55; of 28 June 2005, *Dansk Rørindustri and Others v Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, ECLI:EU:C:2005:408, paragraph 327; judgment of 29 June 2006, *SGL Carbon v Commission*, C-308/04 P, EU:C:2006:433, paragraph 105; judgment of 2 June 2016, *Moreda-Riviere Trefilerías and Others v Commission*, T-426/10 to T-429/10 and T-438/12 to T-441/12, EU:T:2016:335, paragraphs 492 and 493.

⁸⁴⁶ [...].

⁸⁴⁷ See judgment of 14 May 2014, *Reagens SpA v Commission*, T-30/10, EU:T:2014:253, paragraphs 299 to 301.

- (525) Accordingly, in confidential Annex I, the financial position of [...] and the impact of the fine is assessed in its respective specific social and economic context. The financial situation of [...] has been assessed at the time of the adoption of this Decision based on financial data and information submitted by [...] itself.
- (526) In assessing the financial situation of an undertaking applying for ITP, the Commission considers the annual financial statements (including the balance sheet, the income statement, the statement of changes in equity, the cash-flow statement and the notes) of the last (usually five) business years, as well as their projections for the current financial year and the next (usually) two years. The Commission takes into account the proportion which the expected fine would represent in the undertakings' equity and assets and relies upon a number of financial ratios to measure the profitability, solvency and liquidity, all of which are commonly used when evaluating risks of bankruptcy. The analysis is both prospective and retrospective but with a focus on the present and immediate future of the undertaking concerned. In addition, the Commission takes into account possible restructuring plans and their state of implementation, relations with external financial partners such as banks and relations with shareholders (to assess the ability of those shareholders to financially assist the undertaking concerned)⁸⁴⁸.
- (527) The fact that an undertaking may go into liquidation as a result of the imposition of a fine does not necessarily mean that there will be a total loss of the value of the assets of that undertaking and, therefore, this may not in itself justify a reduction of the fine which would have otherwise been imposed on that undertaking. This is because liquidations sometimes take place in an organised, voluntary manner, as part of a restructuring plan in which new owners or new management ensure the continuity of the undertaking and of its assets. Therefore, an applicant claiming ITP must demonstrate that viable alternative solutions are not available. If there is no credible indication of alternative solutions being available within a reasonably short period of time, which would ensure that the undertaking could continue to operate as a going concern, there is a high risk that its assets would lose a significant part of their value if, as a result of the fine to be imposed, that undertaking were forced into liquidation.
- (528) The Commission also assesses the specific social and economic context if the undertaking's financial situation, including the situation of its assets, is found to be critical following the analysis described in recitals (526) and (527).
- (529) Consequently, where the conditions laid down in point 35 of the Guidelines on Fines are met, the Commission may reduce the final amount of the fine on the basis of the financial analysis of the undertaking, as described in recitals (526) and (527), and taking into account its ability to pay the fine imposed on it and the likely effect that such a payment would have on the economic viability of the concerned undertaking.
- (530) The ITP claim submitted by [...] is partially accepted for the reasons set out in confidential Annex I which is accessible only to [...].

⁸⁴⁸ By analogy with the assessment of 'serious and irreparable harm' in the context of interim measures, the Commission bases its assessment of the undertaking's ability to pay on the financial situation of the undertaking as a whole, including its shareholders, irrespective of the finding of liability (see, to that effect, judgments of the Court of 14 December 1999, *HFV and Others v Commission*, C-335/99 P(R), ECLI:EU:C:1999:608, paragraphs 35-71; of 23 March 2001, *FEG v Commission*, C-7/01 P(R), ECLI:EU:C:2001:183, paragraphs 29-46).

(531) Based on the evidence described in Annex I and in order to avoid the imposition of a fine that would seriously jeopardise the economic viability of [...], the final amount to be imposed on [...] should be reduced to the amount of EUR [...], in application of point 35 of the Guidelines on Fines. This amount represents a reduction of about [...] %.

(532) [...] should also be granted payment conditions.

10.5. Final amount of individual fines

(533) The fines to be imposed on the Parties pursuant to Article 23(2) of Regulation (EC) No 1/2003 are therefore as follows:

Party	Total fine (EUR)
Cardin Evolution and Cardin SAS, jointly and severally liable	2 237 000
WTW Ahlers	3 500 000

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings have infringed Article 101(1) of the Treaty and Article 53 of the EEA Agreement by participating in a single and continuous infringement covering the whole of the EEA, which consisted in agreements and/or concerted practices that had the object of restricting out-of-territory passive sales by Cardin licensees and their customers as well as the customers to whom Cardin licensees and their customers could sell Pierre Cardin-licensed products within the EEA:

- (a) Pierre Cardin Evolution
- (b) Société de Gestion Pierre Cardin
- (c) Westfälisches Textilwerk Adolf Ahlers Stiftung & Co. KG

The duration of the infringement was from 1 January 2008 until 31 March 2021.

Article 2

For the infringement referred to in Article 1, the following fines are imposed:

- (a) Pierre Cardin Evolution and Société de Gestion Pierre Cardin, jointly and severally liable: EUR 2 237 000
- (b) Westfälisches Textilwerk Adolf Ahlers Stiftung & Co. KG: EUR 3 500 000

The fines shall be credited, in euros, within three months of the date of notification of this Decision, to the following bank account held in the name of the European Commission:

BANQUE CENTRALE DU LUXEMBOURG
2, Boulevard Royal
L-2983 Luxembourg

IBAN: LU27 9990 0001 1400 100E

After the expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where an action pursuant to Article 263 of the Treaty is brought before the Court of Justice of the European Union against this Decision, the fines shall be covered by their due date, either by providing an acceptable financial guarantee or by making a provisional payment of the fine in accordance with Article 108 of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council⁸⁴⁹.

Article 3

The fine imposed on [...] in Article 2 may be paid in instalments, provided that EUR [...] is paid within 3 months of the date of notification of this Decision. The remaining amount, including interest calculated for the whole payment period in accordance with the last paragraph of this Article, shall be paid in three instalments, the amount of which being equal to:

- (a) EUR [...] on [...] including the interest calculated on the outstanding amount for the period until the day of the payment;
- (b) EUR [...] on [...] including the interest calculated on the outstanding amount for the period until the respective day of the payment;
- (c) EUR [...] on [...] including the interest calculated on the outstanding amount for the period until the respective day of the payment.

The interest shall be calculated at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 1.5 percentage points.

Article 4

The undertakings listed in Article 1 shall immediately bring to an end the infringements referred to in that Article insofar as they have not already done so.

They shall refrain from repeating any act or conduct described in Article 1, and from any act or conduct having the same or similar object or effect.

⁸⁴⁹ Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (OJ L, 26.09.2024; p. 1).

Article 5

This Decision is addressed to

Pierre Cardin Evolution, 27 Avenue de Marigny, 75008 Paris, France

Société de Gestion Pierre Cardin, 59 Rue du Faubourg Saint-Honoré, 75008 Paris, France

Westfälisches Textilwerk Adolf Ahlers Stiftung & Co. KG, Elverdisser Straße 313, 32052 Herford, Germany

This Decision shall be enforceable pursuant to Article 299 of the Treaty and Article 110 of the EEA Agreement.

Done at Luxembourg, 28.11.2024

For the Commission

‘eSigned’

Margrethe VESTAGER
Executive Vice-President