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Refusals to Supply: Should the French Rules be Harmonized with Those of the EEC?

*Dominique Brault**

In this article, Mr. Brault contends that "harmonizing" the French rules with those of Germany or the EEC is neither desirable nor necessary because of the disparate economic structures of the EEC Member States and because the French rules are, as a result of French case law, not as rigid and severe as their detractors portray them. Instead, Mr. Brault suggests that in practice, the national antitrust laws of EEC Member States are becoming "harmonized" naturally because German and EEC case law have made the application of apparently lenient refusals to supply statutes significantly more severe.

INTRODUCTION

The prohibition against the imposition of minimum resale prices by suppliers upon distributors has been a central pillar of French competition policy since the first regulations in this area were established by laws in 1953 and 1958.¹ Recently, however, some have begun to doubt not only the efficacy of the prohibition, but also its utility within a system for the protection of free competition.

The prohibition against the imposition of either minimum resale prices or minimum margins is a major component of all laws protecting competition. The prohibition is stronger in countries with more limited national markets. Where the competent authorities must be content with fewer business enterprises and a lessened degree of competition at

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¹ Decrees No. 53-704 of Aug. 9, 1953 and No. 58-545 of June 24, 1958.

the production stage, they are driven to rely more on stimulating competition at the level of distribution. The countries whose markets are rather restricted, such as Ireland and France, thus attach relatively greater importance to rules safeguarding commercial competition than do vast economic communities such as the United States.²

The special weight given to the legal prohibition in French law against the imposition of minimum prices may also have other explanations. One should not forget that it is barely twenty-five years since the whole of French commerce practiced imposed pricing by suppliers, and that it is barely four years since nearly all prices were controlled by the Government. The French tradition historically has been one of state or private direct control of prices. It is not surprising that current laws inspired by a concern with liberalizing the French economy give an eminent place to sellers' freedom to set their resale prices at the retail level.³

The prohibition in France against price maintenance is, however, a fragile pillar which is fissured by a system of recommended prices and the authorities' tolerant attitude in overseeing possibly anticompetitive distribution agreements. In addition, of the two principles which buttress this pillar, only one is relatively solid. Both discriminatory price and service treatment and outright refusals to supply must be controlled so that suppliers may not punish sellers who disregard "recommended" minimum resale prices. Control of discriminatory treatment, the first corollary of a prohibition against imposed resale prices, is by force of circumstance a control of only the most glaring abuses. The second buttress, a prohibition against refusals to supply, is much more solid. The rule is easy for businessmen to understand and relatively easy for the government to enforce.

For several months, however, this prohibition on refusals to supply has been the subject of a debate in France. Under the pretext that liberty is indivisible, some maintain that a merchant's freedom to set his prices should also entail the liberty of choosing his clients. These critics have argued that the French legislation on refusals to supply should be modified in order to harmonize it with the laws of the other countries

² The American rule with regard to unilateral refusals to supply by a firm lacking monopoly power is stated by Justice McReynolds in *United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919):

In the absence of any purpose to create or maintain a monopoly, the [Sherman] act does not restrict the long recognized right of trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal. And, of course, he may announce in advance the circumstances under which he will refuse to sell.

³ See Decrees No. 45-1483 of June 30, 1945 and No. 73-1193 of Dec. 27, 1973 in Appendix I to this article.

of the EEC, putting an end to the characteristic peculiarities of the French law. One should not exaggerate the importance of this debate. It was initiated by a small number of manufacturers who scarcely represent the merchandising wing of progressive French industries. These manufacturers had, for the most part, benefited until the middle of the 1970s from an exemption from the general rule prohibiting price maintenance, and no doubt look back at this period with great nostalgia.⁴ Nevertheless, this minority is very active. It has successfully gained support within business circles and parliaments.⁵

The reflections which follow challenge the value, if not the sincerity, of the objective of harmonization of this portion of French law, as well as the premises on which those who pursue this objective appear to rely.

I. THE VALUE OF HARMONIZING FRENCH COMPETITION LAW

The objective of harmonizing the body of laws and regulations by which the interior markets of each of the Member States operates certainly conforms with the obligations undertaken in the body of the Treaty of Rome,⁶ and is in the collective interests of industries within the EEC.

One observes, however, that business circles invoke this objective in a selective fashion. For example, it surely would be more important to reconcile the technical norms of or the conditions of entry into certain businesses than to reconcile the regulations concerning certain commercial practices, but the call for harmonization is less vociferously advanced in the former two instances than in the latter.

Be that as it may, one can wonder whether the harmonization of regulations concerning commercial practices affecting competition is necessary or even desirable. Those who, like several French manufacturers of electric houseware appliances, cite as an enviable model the legal system of the widespread and homogenous American market, forget that each of the fifty states of the United States has an autonomous body of law concerning these commercial practices, the application of which is superimposed upon the federal body of law, and that, while imposed prices are legal in approximately twenty-five of these states,

⁴ See list of exceptions from the ban on imposed prices, June 15, 1972 in Appendix II to this article.

⁵ Bill No. 1650 "To aid competition through the harmonization of our commercial legislation with that of our partners in the European Community," submitted to the Presidency of the National Assembly, Apr. 17, 1980.

⁶ Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11, at arts. 1-2, 100-02 (*entered in force* Jan. 1, 1958) [hereinafter cited as EEC Treaty].

they are proscribed in the rest. But one rarely hears that these disparities in the body of American competition law have fettered the competitiveness of American enterprises, whether in their own or in export markets.

After all, the harmonization of laws between countries makes complete sense if the industrial and commercial market structures are homogenous and the problems to be resolved in each are similar. But in France this is not the case; the objectives and the priorities of the opposite side of the Rhine are very different. For example, attitudes regarding equality in the ease of entry into the retail market of different forms of commercial establishments differ greatly. In the Federal Republic of Germany one recalls with a bit of derision the small shops of "Aunt Emma," while in France, one restrains the spontaneous evolution of the market's distribution structure by passing the Royer Law which restricts the establishment of supermarkets.⁷ Furthermore, commercial custom and public opinion in these two nations is not the same; a consensus accepting free competition has been attained in the Federal Republic of Germany while one is still striving to attain it in France. Finally, the structure of German commerce is much more concentrated than that of France; in 1980 independent and traditional stores comprised 17.5 percent of gross revenues of the retail trade in Germany, as compared to approximately 60 percent in France.

The challenge thus is not to make French and German manufacturers face a comparable degree of constraint in their choice of distributors; rather it is to make gross productivity in production and distribution in France as great as that in the Federal Republic of Germany. It is precisely because of the unique traits which characterize the institutions, the inter-relations and the interaction of businessmen in France that it would be dangerous to liberalize in France the prohibitions against refusals to supply.

According to those who wish to recover total liberty in choosing their clients, the French legislation on refusals to supply is obsolete and maladapted to modern economic conditions. Formed in the post-war shortages, the regulations were a law of circumstance. They might have had some purpose, it is said, at the moment when one had to protect large scale retail establishments which were in their infancy, but the regulations would be without significance today. It is further argued that these regulations would contradict the policy which presently is employed by the public authorities to restore freedom of enterprise.

⁷ Law No. 73-1193 of Dec. 27, 1973 concerning commerce and industry, ch. II, at arts. 28-34; Implementing Decree No. 74-63 of Jan. 28, 1974.

It is true that the original prohibition against refusals to supply proceeded historically from a concern with preventing abuses in a period of shortages. This prohibition was enacted into law in October 1940.⁸ It is also true that the restoration of this rule at the end of the 1950s had a totally different purpose, responding to a necessity, much more evident then than today, of correcting the balance of forces between manufacturers and sellers, a balance which had become manifestly disequibrated to the detriment of commerce. In this period there existed in France no *hyper-marchés*⁹ and very few supermarkets, despite the fact that the shortages had ended. It is equally undeniable that this legislation had been essential for the development in France of self-service lower-margin stores and that it had constituted a powerful factor in the development of competition and commercial modernization for twenty-two years.

Certainly the purchasing power of some commercial distributors today has become such that one should protect certain suppliers from the often exorbitant demands of the largest purchasers. Although one should better control certain anomalies, discriminatory treatment, exclusive dealing or referral bonuses, it would be simplistic to maintain that in France today there is an inversion of disequalities in the balance of commercial contractual relations. In this regard one finds situations very diverse: some small manufacturers must give in to the abusive demands of purchasers, but also some distributors are completely tied by the manufacturers who supply them.

There no longer exists, as in the dawn of the 1960s, a need to correct a general inequality in commercial relations. In reality, the principle of prohibition of refusals to supply continues to correspond to the specific needs of the French economy. It is far from being anachronistic and has not lost its meaning. For consumers it is one of the guarantees that there will be no return to the regime of imposed minimum prices, which for a long time deprived consumers of the advantages of competition in the market.

It remains particularly necessary to react against refusals to supply by suppliers who oppose discount retailers. The French Antitrust Commission has on several occasions taken notice that the traditional retailers pressure producers to cease supplying those shopkeepers who offer consumers the choice of new marketing techniques or advanta-

⁸ Law of Oct. 21, 1940, modifying, completing and codifying price legislation, J.O.R.F., Nov. 10, 1940, 40 Lois, Décrets (Collection Duvergier et Bocquet) 151 (1940).

⁹ Department stores.

geous prices.¹⁰

On closer examination, the idea of harmonizing legal constraints is itself debatable. If there were to be a harmonization, it would not be limited to regulations against the practice of refusing to supply. One should not forget that in effect the prohibition against refusals to supply is a corollary of that on imposed resale prices; the other corollary prohibitions against discriminatory treatment must also be considered, since this practice can also be used by a supplier to sanction a merchant's disregard of the supplier's pricing norms which are "recommended" or imposed.

Harmonization might also apply to the regulations applicable to certain forms of selective price reductions, since sales at a loss and, under certain conditions, the practice of "loss leader" pricing are behind suppliers' motives for refusing to supply.

French manufacturers and their networks of traditional retailers in this regard could regret the loss of certain protections as a result of harmonization, such as that provided by the Law of 1963 concerning resales at a loss, which are actually unique to French legislation.

II. FRENCH LEGISLATION ON THE REFUSAL TO SUPPLY IS NOT AS UNIQUE AS CLAIMED

Assuming that the need is recognized for harmonization, if not unification, of the legislative rules relating to the refusal to supply, which model should be used to implement the desired harmonization? Is the Italian model preferable which does not have any regulation concerning the refusal to supply? Manufacturers or corporate attorneys who challenge the French legislation suggest the German model. To them, the German law seems to strike a just balance, because refusals to supply are not reprehensible in the Federal Republic of Germany except where they constitute an abuse.

Is the French legislation on the refusal to supply truly more formalistic and rigid than other legislation, as certain people hold it to be?¹¹ A rapid comparison of the different legal systems applicable to this commercial practice, the evolution which has characterized them and the conditions in which these systems are realistically applied, ac-

¹⁰ Opinions of the Antitrust Commission: Concerted practices between suppliers and distributors of electric household and acoustic goods, BULLETIN OFFICIEL DES SERVICES DES PRIX (B.O.S.P.) (Feb. 9, 1980); Anticompetitive concerted practices in the furniture market, B.O.S.P. (Jan. 16, 1981).

¹¹ Ferrand, *La Concurrence de Gribouille*, LE MONDE (Feb. 9, 1980).

tually leads to the conclusion that the differences are merely formal and are tending to diminish over time.

A. France

The system concerning prices instituted in France under Article 37(1)(a) of the Ordinance of June 30, 1945,¹² contains a general prohibition on refusals to supply, but it is accompanied by important exceptions. The cases in which refusal to supply is legitimate are numerous, principal among them being cases in which suppliers face "abnormal demand." Periodically, ministerial circulars, such as those to which M. Fontanet attached his name in 1960,¹³ M. Fourcade in 1970,¹⁴ Mme. Scrivener in 1978¹⁵ and M. Monory in 1980,¹⁶ enlarged the notion of "abnormal demand." The Administration also instructed its regional offices of control not to commence legal investigations except in cases of abuse.

Exceptions to the prohibition on refusals to supply have not been limited solely to the illustrations on "abnormal demand" enumerated in the ministerial circulars. The courts have also developed a body of jurisprudence in this area. The restrictive conditions imposed by the Cour de Cassation in the *Brandt*¹⁷ decision of 1962 for finding a reciprocal exclusive dealing agreement legitimate, thus making the product legally unavailable and consequently legitimating a refusal to supply a non-franchisee, are not followed by the courts except in exceptional circumstances. Selective distribution practices are exempted from real control with respect to the law on refusals to supply. In other words, in France refusals to supply currently are endorsed by the law, and this practice is not investigated or prosecuted except in a small number of cases of abuse: only forty-five legal investigations for refusals to supply were commenced in 1979, and thirty-one in the course of the first semester in 1980. In fact, the French system of preventing and repressing refusals to supply rests upon a principle of controlling abuses, and it is not more draconian than that offered as an example by its detractors,

¹² See note 3 *supra*.

¹³ Circular of Mar. 31, 1960 concerning the prohibition of commercial practices restricting competition (Fontanet circular), [1960] J.O.; [1960] D. JUR.

¹⁴ Circular of May 30, 1970 concerning certain measures enhancing competition, [1970] J.O.; [1970] D.S. JUR.

¹⁵ Circular of Jan. 10, 1978 concerning commercial relations between firms, [1978] J.O.; [1978] D.S. JUR.

¹⁶ Circular of Sept. 22, 1980, B.O.S.P. (Sept. 24, 1980).

¹⁷ Judgment of July 11, 1962, Cour de Cassation, city; Cass. crim. Fr., [1962] D. Jur. 497.

who favor notably the German system or the EEC standard based on the Treaty of Rome.

B. Germany

Although reference to the German system is fashionable, critics rarely examine the actual operation of the German regulations. Price and service discrimination, of which the least visible and thus most utilized form is the refusal to supply, is not the subject of a regulation which, like Article 37 of the French Ordinance of June 30, 1945,¹⁸ is applicable by itself regardless of the economic context. Nevertheless, the principle of contractual liberty, by virtue of which a manufacturer is free to choose his customers, is giving way—step by step—to the demands of competition policy, so that the system applicable to the refusals to supply on the other side of the Rhine in effect approaches that which prevails in France.

Until 1976, section 26 of the German Act Against Restriction of Competition¹⁹ did not permit the prosecution of refusals to supply except when they were the act of an enterprise in a dominant position, or a concerted practice in the form of a boycott.

In 1976 the law was amended to allow for the restraint of discriminatory practices and refusals to supply by individual enterprises, not only those in dominant positions in their markets, but also those possessing a relative power in the market (*relative macht*) where their products, even if not representing an important part of the market, are in effect indispensable to their clients.

From now on, the majority of the German manufacturers of products of known brands are obliged to reconsider before refusing to fill an order. They can, certainly, refuse to supply a customer, but in the event of litigation, they must justify this stance, proving, for example, that they legitimately practice a qualitative selection, or even in certain cases a quantitative selection, of their distributors or that they are tied by exclusive dealing agreements, all of which are under judicial control. The provisions of section 26 were applied one hundred times in 1979.

Section 18 of the German Act Against Restriction of Competition permits the Bundeskartellamt to enjoin a manufacturer to renew deliveries if it establishes the existence of abusive refusals to supply, even though the manufacturer possesses neither a dominant market position

¹⁸ See note 3 *supra*.

¹⁹ See Excerpts of 1957 German law modified concerning restrictions on competition, restrictive and discriminatory behavior, in Appendix III to this article.

nor *relative macht*. The Bundeskartellamt used this power fifteen to twenty times in 1979. One should add that a new amendment to the German law is being prepared for the purpose of better specifying reprehensible cases of discrimination and refusals to supply. German commercial circles demanded this legislative reform to complete and reinforce the legal suppression of discriminatory practices.

One therefore sees that in practice, despite differences which exist as to the burden of proof, the laws affecting French and German manufacturers with respect to refusals to supply are not as different as some allege.

C. *European Economic Community*

The rules of the EEC Treaty, also presented as a model to be followed, are in appearance, as are those of West Germany, much less systematic and more permissive than those of the French law. But as in West Germany, they are the object of an increasingly strict application.

Several years ago, a refusal to supply would not violate the Community law unless it was the deed of an enterprise in a dominant position and resulted in a grave harm to competition.²⁰ In the *Commercial Solvents Corporation* case, also known as the *Zoja* case, the Commission in 1972 condemned a refusal to supply and imposed a fine of 200,000 units of account.²¹ This was then about five times the maximum penal fine provided in this matter in French law. Although the Court of Justice reduced this sanction to 100,000 units of account, it also enjoined Commercial Solvents to resume deliveries, under penalty of contempt.²²

In the *United Brands* decision in 1975, a decision confirmed by the Court of Justice, the Commission condemned a refusal without a legitimate motive to deliver bananas to a Danish client.²³ In 1977, the Commission found that an enterprise could, under certain conditions, dominate its clients without dominating its market. This finding con-

²⁰ Such a course of conduct may be attacked as an abuse of a dominant position under Article 86 of the EEC Treaty, note 6 *supra*.

²¹ Commission Decision of Dec. 14, 1972, 15 J.O. COMM. EUR. (No. L 299) 51 (1972), [1973] Comm. Mkt. L.R. D50.

²² *Instituto Chemioterapico Italiana Spa & Commercial Solvents Corps. v. Commission*, [1974] E. Comm. Ct. J. Rep. 232, [1974] 1 Comm. Mkt. L. R. 309.

²³ Commission Decision of Dec. 17, 1975 Relating to a Proceeding under Article 86 of the EEC Treaty, 19 O.J. EUR. COMM. (No. L 95) 1, 2 (1976), [1976] 1 Comm. Mkt. L.R. D28, D32, application for stay granted *sub. nom.* *United Brands Co. v. Commission*, [1976] E. Comm. Ct. J. Rep. 425, [1976] 2 Comm. Mkt. L. R. 147, *modified*, [1978] 1 Comm. Mkt. L. R. 429.

siderably enlarges the field of possibilities for applying the competition rules of the EEC Treaty to refusals to supply.

That same year the Commission extended the notion of abuse of dominant position in censuring refusals to supply. In the *Hugin-Lipton* case the Commission determined that, even if Hugin had not held a dominant position in the cash register market, a separate market existed for supplying replacement parts for the maintenance and repair of the cash registers of this brand.²⁴ Furthermore, the Commission determined that a refusal to supply the replacement parts to a qualified vendor of the cash registers without a valid reason was a sanctionable refusal to supply, and enjoined Hugin to resume its deliveries to Lipton under penalty of a fine of 1,000 units of account per day, as well as imposing a fine of 50,000 units of account.

On January 10, 1980, the Commission was given the power to take preventive measures for enforcing the provisions of Articles 85 and 86 of the Treaty of Rome. The Commission can now enjoin a supplier to make deliveries to a distributor under penalty of fines, even if both parties are from the same Member State, if irreparable harm would result in the absence of this measure and commerce between the Member States could be affected by the refusal to supply.

In Brussels, the Commission is preparing to define the conditions of an allowable selective distribution, and there are reasons to expect that the right of suppliers to refuse to supply certain distributors will be less widely recognized in the future.

Finally, one can note that refusals to supply are often punished in Brussels with a rigor unknown in the enforcement of French law. For example, the Commission imposed a fine of twenty-five million francs on the company manufacturing Pioneer electro-acoustical equipment, for refusals to supply. This was one hundred times the sanction imposed by M. Monory upon the exclusive importer of this brand into France—Musique Diffusion Francaise—for its participation in concerted practices in the houseware appliance sector.²⁵

Thus, it is remarkable that while competition in distribution is much more developed in Germany than in France, the German system for controlling refusals to supply is becoming progressively more rigorous than its French counterpart. It is not less remarkable that the application of the EEC Treaty to refusals to supply is also evolving

²⁴ Commission Decision of Dec. 8, 1977, 21 O.J. EUR. COMM. (No. L 22) 23 (1978), *rev'd sub. nom. Hugiss Kassaregister A.B. v. Commission*, [1979] E. Comm. Ct. J. Rep. 1869, [1979] 3 Comm. Mkt. L. R. 345 (finding no effect on trade between member states).

²⁵ Commission Decision of Dec. 14, 1979, 23 O.J. EUR. COMM. (No. L 60) 21 (1980).

toward stricter control, even though the attention given to protection of commercial competition appears to be lessened in vast markets. In this context, it appears that it would slow down the spontaneous process of the harmonization in progress to bend the French law in an opposite direction.

In the end, the differences between the system of controlling refusals to supply adopted in Germany or in the EEC, on the one hand, and those in France on the other, are more apparent than real. The differences rest essentially on the severity of the burden of proof. The French supplier who objects to seeing his products sold as "loss leaders," for example, must be able to justify a refusal to supply by showing the abnormal character of demand or the bad faith of the demander. On the contrary, in the system advocated by the proponents of legal reform, the retailer who is the object of a refusal to supply must prove his good faith in order to be supplied again.

III. CONCLUSION

Upon reflection, one is led to very different conclusions from those the advocates of freedom in refusing to supply have urged upon the public authorities in France. In fact, if one recognizes that: a) the different legislative systems should be compared according to their enforcement practices rather than the formal differences in language; b) the enforcement of regulations on the refusal to supply approaches, in France as elsewhere, a simple control of abuses in this practice; and c) a degree of harmonization is spontaneously evolving around this notion of controlling abuses, resulting in the increasing flexibility in enforcement in France occurring alongside increasing rigor in other legislative systems; then one arrives at the conclusion that modification of the French law on refusals to supply in order to make it conform more closely to the legislative models which explicitly pursue only cases of abuse, is far from being a necessity. As a result, one wonders whether this proposition of legislative reform is not inspired by purposes less altruistic than that of harmonizing the laws within the European Economic Community.

One cannot be insensitive to the campaign which is being advanced today by certain French manufacturers for liberalizing the prohibitions on the refusal to supply. One cannot but approve the objective, sought by manufacturers of well-known brands, of exercising certain resale rights to ensure the quality of their products to the ultimate consumer. What is objectionable, however, is the method chosen for effecting this resale right: namely the freedom of refusing to supply.

It would be dangerous to place in the hands of all manufacturers so absolute a weapon, one of which only a few can be in need, on the condition that the uses to which it could be put be closely controlled. This would reinstate the disequilibrium in the balance of power in favor of manufacturers which existed before 1960. This would encourage the tendency, which is evident today in a large part of French commerce, to moderate the free play of effective competition.

In order not to proceed in a way contrary both to these needs and to competition policy, one must view competition law less as a restraint on enterprises than as a stimulus for innovation and competitiveness. More responsive alternatives exist to counter the genuine instances of "loss leader" pricing which is so frequently put forward by suppliers as justifying refusals to supply. One could also usefully define the conditions and the limits of selective distribution. This implies reconciling several contradictory demands: assuring manufacturers a minimum of control over their products up to the end of the product's distribution chain if their product's characteristics justify it, not excessively limiting the freedom of merchants to distribute their products and set their prices, and finally, seeing that French consumers not bear excessively the costs of national market control, thanks to which the conquest of external markets takes place.

APPENDIX I*

Article 37, Decree No. 45-1483 of June 30, 1945:

37. It shall be deemed to be an offense liable to the same penalties as illegal practices in connection with prices:

1. For any producer, person engaged in industry or craftsman: (a) to retain products intended for sale by refusing to satisfy to the best of his ability the demands of purchasers, or to refuse to satisfy to the best of his ability, demands for services, provided that such demands are in no way abnormal and that the sale of the products or the supply of the services is not prohibited by a special regulation of the public authority. . .

4. For any person to establish, maintain or impose a minimum price upon his products and the furnishing of services, or upon service commissions such as by the means of price lists or scales of charges, or as a result of a similar understanding.

Paragraph 4 above does not apply to cases in which the products or services will have been made by a special exception negotiated jointly by a minister charged with power in economic affairs, a minister charged with power in commercial affairs and other interested ministers. Such exceptions which in all cases must be limited with respect to time, may be given particularly in the case of new products or services, in connection with a patent licensing, a trademark licensing or the requirements of book charges which are related to quality and special packaging, or the publicity campaign in connection with the launching of a new product.

Article 37, Decree No. 73-1193 of Dec. 27, 1973:

It is prohibited for any dealer, person engaged in industry or craftsman:

1. To use prices or discriminatory conditions of sale which are not justified by corresponding differences in the cost of the required materials or of the service;

* Translation of Appendices I, II and III by the Staff of the Northwestern Journal of International Law & Business

2. To deal directly or indirectly, with respect to all retailers, fraudulently with regard to any matter in paragraph 1 above, or with respect to gifts of merchandise or money, or the furnishing of free services. Every producer is required to convey to all retailers who request it, his printed table of prices and conditions of sale.

APPENDIX II

LIST OF EXCEPTIONS FROM THE BAN ON IMPOSED PRICES, JUNE 15, 1972.

Beneficiary	Products or Services	Authorized Rebates	Decree	Date of B.O.S.P.*	Expiration Date**
Moulinex	Electric food processors Vacuum cleaners Electric roasters	15%	n°25.859 of 3.10.71	3.17.71 and 4.12.72	9.17.72
Rossignol	Skis (Roc.550) (Roc.520) (Strato)	7%	n°25.862 of 4.21.71	5.19.71	5.19.73
Dynastar	Skis (M.V. 2) (S.430)	7%	n°25.836 of 4.21.71	5.19.71	5.19.73
Le Trappeur	Ski footwear	7%	n°25.864 of 4.21.71	5.19.71	5.19.73
Heschung et Cie	Ski footwear	7%	n°25.865 of 4.21.71	5.19.71	5.19.73
Francois Salomon et fils	Ski bindings	7%	n°25.866 of 4.21.71	5.19.71	5.19.73
Look	Ski bindings	7%	n°25.867 of 4.21.71	5.19.71	5.19.73
Some manufacturers of perfume products	Perfume products with the exception of cologne, toilet and lavender water with less than 70% alcohol, mouthwash products, shampoo and shaving products	Perfumes 5% Beauty Products 10%	n°25.914 of 9.15.71	9.17.71	3.17.73
Calor	Washing machines (50.02-50.04 and 50.12)	15%	n°25.908 of 10.4.71	10.14.71 and 3.15.72	4.14.73

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Beneficiary	Products or Services	Authorized Rebates	Decree	Date of B.O.S.P.	Expiration Date
Société d'Emboutissage de Bourgogne S.E.B.	Superfryer SEB	15%	n°25.915	10.14.71	4.14.73
	Minute-grill SEB		of 10.4.71		
Arthur-Martin	Kitchen appliances	10%	n°72-14/P	4.12.72	7.1.73
	Washing machines		of		
	Dishwashers		4.10.72		
	Refrigerators	15%			
Thomson-Houston- Hotchkiss-Brandt	Kitchen appliances	15%	n°72-15/P	4.12.72	10.12.73
	Washing machines		of		
	Refrigerators		4.10.72		

* B.O.S.P.: Bulletin Officiel des Services des Prix, an official publication of the Ministry.

** Most of these expiration dates have been renewed for many years.

APPENDIX III

EXTRACTS FROM THE AMENDED GERMAN LAW OF 1957 RELATING TO RESTRICTIONS OF COMPETITION: RESTRICTIVE AND DISCRIMINATORY BEHAVIOR.

Article 25

- (1) Any concerted action on the part of enterprises or associations of enterprises which, according to the present law may not be made the object of a contractual agreement is forbidden.
- (2) It is forbidden for enterprises and associations of enterprises to threaten other enterprises with injury or to cause injuries or to promise other enterprises or to bestow upon them such favorable treatment or to induce them to adopt practices which according to the present law or to a decision of the appropriate authorities in control of such understandings pursuant to the present law may not be made the object of a contractual agreement.
- (3) It is forbidden for enterprises or associations of enterprises to require other enterprises:
 - (1) To adhere to an agreement or a decision as defined in Article 2(a), Article 29, Article 99(2), Article 100(1) and (7), Article 102 and Article 103;
 - (2) To join with other enterprises as defined in Article 23; or
 - (3) To adopt a similar attitude in the market with the purpose of restraining commerce.

Article 26

- (1) It is forbidden for enterprises or associations of enterprises to induce another enterprise or association of enterprises to refuse deliveries or to boycott certain purchases in favor of other enterprises with the intent of causing unfair injury to specific competitors in the market.
- (2) It is forbidden for enterprises occupying a dominant position in the market and for associations of enterprises as defined in Articles 2 through 8, Article 99(2), Article 100(1) through (7), Articles 102 and 103, as well as for enterprises which impose their prices in the sense of Articles 16, 100(3) or 103(1) (no. 3), to hamper in any unfair manner

directly or indirectly another enterprise in the normal conduct of its business relations which would be expected of similar businesses, or to apply directly or indirectly a discriminatory system with respect to businesses similar to itself without objectively justifiable reasons. The first sentence also applies to enterprises and associations of enterprises which are subsidiaries of suppliers or of buyers of certain types of products or commercial services to the extent that there is not a sufficient number of reasonable possibilities for [such enterprises and associations of enterprises] to apply themselves to other enterprises.