12 Distribution: suppliers' policies and practices

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Background

12.1. This chapter describes the distribution policies and practices of the suppliers of reference white goods and, in particular, sets out our findings on the matter specified within our terms of reference regarding withholding of supplies from dealers. The chapter covers withholding supply from would-be dealers seeking initial supplies but does not describe difficulties experienced by dealers who have been receiving supplies (ie difficulties relevant to our inquiries); these are dealt with in Chapter 10. Unless otherwise stated, the text in this chapter refers to all four reference white goods.

12.2. In his press release announcing the references, the DGFT specifically referred to information indicating that manufacturers had refused to supply `retailers who sold the goods below the manufacturers' recommended price (MRRP) and outlets such as discount warehouse clubs'.

Channels of distribution

12.3. Most reference white goods are sold directly by suppliers to retailers. Wholesalers and distributors, excluding CIH, are of diminishing importance although their influence is stronger in Northern Ireland than in the rest of the UK (see paragraph 9.150). 274 respondents (65 per cent of those who sold reference white goods) to our survey of small retailers said that they bought reference goods[1] from wholesalers, typically when the volume of business was low, or to obtain brands not normally stocked (see Table 11, Appendix 9.1). Hotpoint, for example, told us that it preferred to supply the reference goods directly to its dealers; and Emaco said that it had changed its policy on the use of wholesalers in the past few years; almost all its sales of free-standing models were direct to retail. A fairly high proportion of its built-in products continued to be supplied through wholesalers and distributors. Most suppliers told us that they supplied CIH, either as a buying agent or as a wholesaler (in CIH's terminology, its central stock operation). CIH supplies only retailers who are members of one of its local groups. In 1995 five of its local groups also purchased reference goods direct on behalf of their members (see paragraph 8.57).

12.4. All the suppliers told us that they had no objection to wholesalers reselling their brands to other dealers, whether or not the dealers had been authorized to sell the goods of the supplier concerned. But we were also informed that some dealers obtain supplies through the grey market, usually through a diverter. This service may be provided by a wholesaler, a retailer acting in a wholesaling capacity, or an agent working on his own account with suppliers to move goods the suppliers are unable to sell through the normal channels (most commonly because of over-capacity).

Suppliers' distribution policies

12.5. To a varying extent most of the suppliers of reference white goods seek to impose some controls or restraints on the supply of their brands although not all suppliers accept that they operate formal selective distribution systems. We have used the term `selective distribution' to mean a distribution system adopted by a supplier under which it selects dealers to be supplied with one or more of the reference white goods by taking into account such criteria as it deems appropriate, but for our purposes we disregarded creditworthiness and minimum turnover. This differs from the European Commission's concept of a system of selective distribution which involves essentially two elements. First, the goods are not supplied to every dealer, retailer or wholesaler who is willing to sell the products in question. Only those who meet certain criteria are appointed as authorized retailers or wholesalers. Second, authorized dealers may sell only to other authorized dealers (whether at the same level or at the retail level) and, in the case of retailers, to users.

12.6. The majority of suppliers of reference white goods do not issue formal dealer agreements. But most publish standard terms and conditions. GDA told us that Hotpoint had made a conscious decision to avoid using standard terms and conditions of sale in the conventional sense. The only standard condition that Hotpoint used (in appropriate cases) was a retention of title condition, which was, inter alia, a requirement of its credit insurers. Whirlpool told us it did not have standard trading terms with its dealers; each account was negotiated individually. Emaco told us that none of its brands had standard agreements with their dealers and individually negotiated formal supply agreements were rare.

12.7. It became apparent in our discussions with small retailers that not only did few of them receive written agreements from their suppliers, but many observed that it was unusual for them to receive any written communication from suppliers. Whirlpool, for example, told us that there was no formal procedure requiring a written response to applications for direct supply in general; issues such as this would be handled over the phone or in a meeting.

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[1]Respondents did not specify which reference goods they bought from wholesalers. Some respondents who sold white and brown goods may have included one or more of the brown goods which were the subject of our concurrent inquiries.

Suppliers' selection criteria

12.8. Following the responses we received to our postal questionnaires, we prepared a list of selection criteria which one or more of the suppliers appeared to use in whole or part and sent it to suppliers of each of the reference white goods with 2 per cent or more of the UK market by value in 1995; a definition of the criteria we listed is at Appendix 12.1. We asked suppliers to state which, if any, of the criteria they adopted. We analysed their responses to identify the extent to which each criterion was used and enclosed our analysis with the issues letters (see Appendix 6.1, Annex A). In some cases the responses conflicted with suppliers' earlier evidence. Where this happened we informed those concerned and gave them the opportunity to comment.

12.9. In the issues letters we identified a wide range of practices relating to withholding of supply. These were:

(a) the number, type or location of suppliers' existing dealerships;

(b) the nature of the dealer's business (for example, that its premises were open to all members of the public, that it was a recognized retailer of the reference good(s), or the appearance of the premises);

(c) the conduct of the dealer's business, including the level and type of pre or post-sales service to be provided by the dealer (for example, with regard to staff calibre and training, stockholding, display, demonstration, delivery, installation or repair facilities);

(d) the acceptance by the dealer of restrictions on how the supplier's goods were to be advertised or promoted (for example, by the supplier requiring the dealer to submit advertising material for approval or to use material provided by the supplier);

(e) the acceptance by the dealer of restrictions on onward sale of the supplier's goods to unauthorized dealers;

(f) the dealer's pricing policies; and

(g) refusing to supply reference white goods to retailers who were not so selected.

12.10. Drawing on information provided by suppliers in the lists (see paragraph 12.8) and from other evidence gathered during the course of our inquiries, we compiled a table (Table 12.1) which shows the proportions of suppliers (weighted by sales) that appeared to us to have adopted one or more of the criteria described (at Appendix 12.1) during all or part of the period we were investigating.

12.11. Other than Frigidaire and Smeg (UK) Limited (Smeg), which said that where credit might be a risk pro forma terms were offered as a means of trading, all the suppliers to which we sent the list of criteria said that they insisted on creditworthiness as a condition of supply. Other criteria cited by many suppliers were minimum turnover; display ambience; staff calibre; and home delivery and installation.

12.12. The distribution policies and practices of all suppliers of one or more of the reference white goods with 2 per cent or more of the market in 1995, some smaller suppliers, CIH and its local groups are set out below in paragraphs 12.13 to 12.60.

GDA

12.13. GDA supplied all four reference white goods; its Hotpoint brand was the UK brand leader by value in 1995 in washing machines, dishwashers and CFS equipment as was its Creda brand in tumble driers.

TABLE 12.1 **Suppliers' adoption* of selection criteria**

	Reference good	*B1 Credit-worthiness*	*B2 Minimum turnover*	*B3 Suitable premises*	*B4 Area already supplied*	*B5 Stock requirement*	*B6 Supplier's range display*	*B7 Others range display*
Aggregate market shares of suppliers adopting criteria listed in headings (all responding suppliers = 100)	WM	100.0	78.3	45.7	22.5	34.3	25.3	0.0
	TD	99.5	99.5	51.2	18.9	19.0	18.9	0.0
	DW	100.0	68.6	28.7	32.7	32.3	35.7	0.0
	CFS	95.0	69.6	29.2	27.9	28.5	28.5	0.0

	Reference good	*B8 Display ambience*	*B9 Staff calibre*	*B10 Product knowledge*	*B11 Pre-sales advice*	*B12 Demonstration facilities*	*B13 Home delivery/ installation*	*B14 Old machine removal*
Aggregate market shares of suppliers adopting criteria listed in headings (all responding suppliers = 100)	WM	57.2	57.2	47.6	46.5	22.5	57.2	0.0
	TD	69.9	69.9	51.2	51.2	18.9	69.9	0.0
	DW	52.9	52.9	31.3	26.0	29.6	52.9	0.0
	CFS	57.1	57.1	29.2	29.9	27.9	61.6	0.0

	Reference good	*B15 Post-sales service*	*B16 Brand promotion*	*B17 Advertising constraints*	*B18 Commitment to brand*	*B19 Specialist retailer*	*B20 Sales restraints to other dealers*	*B21 Dealer profile*	*B22 Recognized retailer*
Aggregate market shares of suppliers adopting criteria listed in headings (all responding suppliers = 100)	WM	22.5	22.5	4.7	25.3	0.0	0.0	2.0	0.0
	TD	18.9	18.9	0.0	18.9	0.0	0.0	0.0	0.0
	DW	29.6	29.6	3.3	32.6	0.0	0.0	2.6	0.0
	CFS	27.9	27.9	0.7	28.5	0.0	0.0	14.4	0.0

Source: MMC.

*See paragraph 12.10.

Note: Listed suppliers are those with 2 per cent or more of the UK reference white goods market by value, 1995. Suppliers with less than 2 per cent of the market, and market share of retailers' own brands (Comet brands and Electra), are omitted.

12.14. GDA said that the distribution policy pursued by Hotpoint and Creda hardly merited the term `selective distribution'. Other than the issue of solvency, there were few UK retailers that did not meet GDA's standards; its policy was to maximize the number of outlets that satisfied its minimum requirements. GDA said that it welcomed new dealers who could fulfil its criteria, including non-electrical specialists (such as Granada and Iceland). About 70 new stockists had been appointed in the 1995/96 financial year. Any dealer refused supply could request GDA to reconsider its decision. If circumstances had changed and the grounds for GDA's objections appeared to have been overcome, it would reconsider the matter.

12.15. GDA said that its selection conditions were the same for all its dealers. In addition to credit-worthiness and potential minimum turnover (to justify GDA's effort in establishing the account and training the dealer's staff), the criteria for its dealers were:

(a) a proper standard of product display in proper surroundings;

(b) retail staff of the appropriate calibre who were able to give pre-sales advice; and

(c) ability to deliver and install GDA's products.

12.16. GDA told us that it did not impose any restrictions on the onward sale of its goods to unauthorized dealers, or take account of dealers' pricing policies, and `only in exceptional circumstances' considered the number, type or location of its existing dealerships, or the nature of the business.

12.17. GDA said that Hotpoint supplied four wholesalers, one of which had been, until recently, a wholly-owned subsidiary of, and another 50 per cent owned by, GEC. Hotpoint tended to use its wholesalers to provide a service to electrical contractors and in distributing niche products and built-in appliances. Creda, which had a stronger presence in the electrical contracting market but a less well- developed dealer network than Hotpoint, relied to a greater extent on wholesalers.

12.18. At the time we submitted our report Hotpoint had agreed to supply Makro with reference goods. GDA told us that it was interested in this development because Makro had said that it wished to display a representative range of white goods in its stores, and because Makro had asked Hotpoint to help with the training of sales staff. Makro was also interested in offering delivery, and pre- and post-sales arrangements.

12.19. GDA told us that Creda was supplying Makro with tumble driers via a Belgian/Dutch distributor. The key issue had been a clear willingness on the part of Makro to invest in staff training and to put time and effort into ensuring that the brand would be sold as GDA thought was appropriate and by knowledgeable staff.

12.20. Hotpoint and Creda supplied CIH. GDA said that most of Hotpoint's sales to CIH members were made directly through CIH's group buying arrangements whilst most of Creda's sales to CIH members first went through CIH's warehouses. Hotpoint supplied all four reference white goods to mail order companies; Creda, washing machines and tumble driers.

Emaco

12.21. Emaco's four brands, Zanussi, Tricity Bendix, Electrolux and AEG, supplied all four reference white goods in 1995. Zanussi's UK market shares by value in that year ranked second in washing machines, dishwashers and CFS equipment and fourth in tumble driers. Emaco told us that it did not operate a policy of selective distribution. It said that, on balance, formal selective distribution systems, with restrictions on resale to unauthorized outlets and significant geographical or other limits on the number of authorized retailers, were inappropriate to mainstream white goods. Emaco said that it sought to achieve the widest possible distribution for its products. It estimated that collectively, its brands were supplying reference white goods to between 4,000 and 5,000 retail outlets across the UK.

12.22. Emaco told us that the nature and conduct of a dealer's business was a relevant consideration in deciding whether to supply, although Emaco's expectations on conduct varied from brand to brand. It insisted on higher standards from AEG and Zanussi dealers than from dealers selling Electrolux and Tricity Bendix brands. The decision rested, too, on the type of account involved. In Emaco's experience it was extremely rare for a dealer to complain that he had been refused supply. Emaco aimed to ensure that complainants received an explanation if they had been refused supply, in writing if requested. Emaco added that if a dealer believed he had been wrongly or unjustly refused supplies, then the onus should be on him to contact Emaco and request an explanation, in writing if felt necessary.

12.23. Emaco said that its criteria for supply were fairly general and most retailers would be able to comply. Its brands did not publish specific criteria but, in addition to creditworthiness, Emaco would normally expect retailers to be able to satisfy it in relation to:

(a) a sufficient level of turnover to ensure that the account was commercially viable;

(b) a commitment to promote the brand (for example, by encouraging retailers to use display stock and point-of sale material);

(c) appropriate display of the goods, possibly with demonstration facilities;

(d) in-store customer service, notably the level of staff calibre and training (Emaco's brands offered training to retailers' staff, though if a retailer preferred to train his own staff, Emaco would wish to be involved); and

(e) range stocking (for example, retailers of Zanussi products would be expected to stock an appropriate number of white goods in the brand range depending on the dealer's status-see paragraph 13.100.

12.24. Other than for its AEG brand, Emaco said that it did not make it a condition that its dealers offered a delivery and installation service although there was an expectation that they should do so. Dealers selling AEG reference white goods were expected to be able to supply and connect them.

12.25. Emaco told us that when considering an application from a new dealer it was not normally influenced by the presence of other dealers in the immediate area. In extreme circumstances, however, it might decide that there was not enough new business to be gained to warrant setting up a new account.

12.26. Emaco said that it had decided to rely less on wholesalers for its free-standing products, and to deal direct with retailers in order to reduce costs and improve the efficiency of its distribution arrangements. But all its brands were still distributed through wholesalers and other non-retail authorized distributors in the UK, including house-builders and kitchen specialists. Emaco said that a fairly high proportion of its built-in products continued to be supplied through wholesalers and distributors. Emaco required its wholesalers to carry a substantial number of models across a brand range and to maintain a sales force which was trained in Emaco's products.

12.27. All the Emaco brands were supplied to members of CIH's local groups through CIH's buying group arrangements; AEG also supplied CIH central stocks. Emaco told us that because CIH had been established to provide a service to its members, Emaco did not regard CIH as a wholesaler in the traditional sense. Zanussi supplied all four reference white goods to mail order companies; Tricity Bendix, washing machines, dishwashers, and CFS equipment; and Electrolux, CFS equipment only. AEG did not sell to mail order in 1995.

MDA

12.28. MDA supplied all four reference white goods under its Indesit and Ariston brands; and until January 1997 washing machines, dishwashers and CFS equipment under its Scholtès brand (see paragraph 8.24). MDA is owned by Merloni which is also the majority owner of Philco Italia SpA, the main supplier of the Philco brand (see paragraph 8.26). Indesit is MDA's leading brand. It ranked third by value in the UK in 1995 in washing machines and fourth in dishwashers.

12.29. MDA told us that the ability to apply selective distribution policies was an essential tool for the protection of some, but not all brands. MDA operated an open distribution system for its Indesit brand but not for its more up-market brand, Ariston, or for Scholtès, its niche built-in brand (which was supplied only to house-builders and kitchen specialists). Until 1992, Ariston reference white goods had been sold in small quantities by many dealers. But the brand had achieved low market penetration as a result of which it had been in danger of being withdrawn from the UK market. MDA had then adopted a selective distribution system for Ariston free-standing models, involving greater commitment from a smaller number of dealers, chosen on a `first-come, first-served' basis. This had improved sales and the competitiveness of the brand. MDA believed that the selective distribution policy it had adopted in respect of its Scholtès brand had been crucial. Scholtès built-in products were of a high quality and required expert servicing from retailers who had an image consistent with the brand.

12.30. MDA told us that creditworthiness was a pre-condition for all its brands. Indesit had no other criteria. Ariston built-in products were available to all retailers through appointed distributors; in the case of the brand's free-standing goods and Scholtès built-in goods the following additional criteria for supply applied:

Ariston

(a) a display of a wide and representative range;

(b) a good understanding of the features of the models;

(c) conformity with MDA's `dealer profile';

(d) commitment to the brand; and

(e) the sales of Ariston products to constitute about 10 per cent or more of the dealer's business.

Scholtès

The criteria as for Ariston plus:

(a) a dealer's image to be consistent with the product;

(b) the ability to provide adequate service and information;

(c) an expectation that dealers would display at least six models (out of a product range of 200);

(d) suitable trading premises; and

(e) expert advice through trained staff.

Additionally, MDA told us that it had operated a policy of not supplying Scholtès branded goods to dealers in areas which, in MDA's view, were already adequately served.

12.31. MDA supplied Cargo Club with its Indesit brand of reference goods. It supplied distributors[1] with Indesit and Ariston built-in reference goods, and CIH members with Indesit and Ariston free-standing goods, through CIH's buying group arrangement, and to CIH's central stock. MDA also supplied Ariston and Indesit brands to mail order companies.

Bosch-Siemens

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[1]MDA defined distributors as those who actively promote sales of reference goods by deploying a sales force, and wholesalers as performing a warehousing activity. Since MDA required its dealers to take an active part in the promotion of its products, wholesalers were not generally used for free-standing models.

12.32. Bosch-Siemens wholly owns three subsidiaries in the UK: BSDA, Neff, and Gaggenau (see paragraph 8.28). BSDA supplied all four reference white goods under its Bosch and Siemens brands. It told us that its Managing Director was also the Managing Director of Neff. Gaggenau, acquired by Bosch-Siemens in January 1995, was separately managed. Bosch dishwashers have been gaining strength in the market in recent years; the brand ranked third by value in the UK in 1995. Neff, a leading brand in built-in appliances, including some of the reference goods, supplied washing machines, dishwashers and CFS equipment to the UK market. Gaggenau is a niche supplier of built-in kitchen appliances. In 1995 its UK market shares by value were less than 2 per cent in each of the reference white goods.

12.33. BSDA said that it did not operate a selective distribution system. The only constraints it applied were that a dealer should be creditworthy and that BSDA should approve the presentation of its logos (for example, in advertisements).

12.34. BSDA told us that it had supplied PriceCostco with Bosch reference white goods since 1995. PriceCostco had produced good business for BSDA and promised more. BSDA was willing to supply Siemens reference white goods to warehouse clubs, but the unfamiliarity of the brand in the UK was proving an obstacle. Neff was largely supplied to kitchen specialists, and more recently to B&Q. Neff also sold reference goods through specialist wholesalers in the contract market.

12.35. BSDA supplied CIH's central stock and members of CIH's local groups through CIH's group buying arrangements; all traditional wholesalers who met its volume requirements; and washing machines and dishwashers to mail order companies.

12.36. We received conflicting evidence from Gaggenau about its distribution policy. In a policy document which it issued to its dealers in August 1995 it stated, `[Gaggenau] intends that the brand renews and secures its niche by limiting its availability through only the foremost kitchen specialists and the leading cabinet manufacturers'. Later in the document, it stated, `Gaggenau has reduced the number of dealers and distributors to better preserve the security of the brand and the loyalty and rewards for performance and the protection of margin' adding `Gaggenau will now categorically refuse the opportunity for business outside these channels'. (Gaggenau's national network then consisted of about 160 house-builders, kitchen specialists, architects and designers and distributors.)

12.37. Gaggenau told us that it would consider all business from a commercial point of view. Its main selection criterion was creditworthiness. Non-authorized dealers were able to obtain Gaggenau products through its 12 authorized distributors, which it had designated as `Centres of Excellence'. It did not attempt to control the availability of its products through those sources.

12.38. In a letter to us of 28 February 1996 Gaggenau said that its appliances were `available to all (although not to `high street' stores)'. We sought clarification of this statement which appeared to conflict with Gaggenau's earlier policy statement. Gaggenau replied that it looked at every potential account, whether “High Street” or not, on a completely level playing field. We would be more than happy for the High Street stores to sell our appliances but they do not approach us as they know they cannot sell them at our high retail prices'. Gaggenau said that at no time had it refused to supply high street stores; it currently supplied JLP and Selfridges Ltd.

Crosslee

12.39. Crosslee's White Knight brand of tumble driers ranked second by value in 1995 after Creda. It also supplied washing machines and dishwashers in small numbers. Crosslee said that it did not operate a policy of selective distribution. Its policy was to sell to the widest possible market. It occasionally refused to supply small retailers directly where the volume or business was low, and the retailer was already receiving supplies of Crosslee goods through a wholesaler. Crosslee supplied mail order companies (with tumble driers), wholesalers, and members of CIH's local groups.

CDA

12.40. CDA supplied all four reference white goods in the UK under its Candy brand which ranked fourth in sales by value of CFS equipment in 1995. CDA told us that Candy did not attempt to control the availability of its goods through any outlet. Selective distribution would lead to less choice and higher prices. Candy's criteria for supply were creditworthiness and minimum turnover.

12.41. CDA told us that it distributed directly to multiple retailers; its wholesalers serviced the small independent sector. It supplied wholesalers, and CIH, chiefly to its central stock. CDA also supplied washing machines and CFS equipment to mail order companies.

Hoover

12.42. Hoover supplied washing machines, dishwashers and tumble driers. Its brand ranked fourth in washing machine sales by value in the UK in 1995. Hoover said that it did not consider it had a policy of selective distribution. Other than creditworthiness, the remaining criteria it had listed (see paragraph 12.8), ie:

(a) suitable premises;

(b) stock requirements;

(c) product training; and

(d) pre-sales advice,

were `more theoretical than statements of fact'. In practice its dealer network already achieved full national coverage and it rarely received new requests for the supply of its products. When it was approached it would consider supplying only if the volume of business justified it.

12.43. Hoover supplied mail order companies, wholesalers, Cargo Club and N&P. It supplied members of CIH local groups and CIH's central stock.

Whirlpool

12.44. Whirlpool supplied all four reference white goods under its Whirlpool and Ignis brands; its Bauknecht brand did not supply tumble driers in the UK. Whirlpool, which told that us it was a subsidiary of the world's leading manufacturer of large domestic appliances (see paragraph 8.32), said that it had found it difficult to gain a foothold in the UK market, particularly for its free-standing products where brand familiarity was more important. Its total market shares by value in 1995 ranked seventh in washing machines and sixth in dishwashers.

12.45. Whirlpool stated that it did not regard itself as operating a selective distribution policy. Its problem was not refusing dealerships but in securing them. Whirlpool was anxious to establish direct accounts with all significant retailers who met minimal criteria. It supplied non-traditional retailers such as Iceland and Radio Rentals and was constantly seeking new business.

12.46. Whirlpool told us that its decision whether or not to supply a dealer was based on that dealer's creditworthiness and whether he could achieve a sufficiently high turnover to justify the cost of setting up a direct account. The desired turnover figure was £50,000 at trade prices. Any other criteria were used only in so far as they helped Whirlpool assess the likelihood of a dealer meeting Whirlpool's turnover threshold. In its assessment, Whirlpool might consider whether the dealer was sufficiently committed to the brand, and whether he would devote sufficient floor space to Whirlpool's products. These were not, however, in themselves criteria for supply.

12.47. Whirlpool said that any retailer who was unable to obtain direct supply of reference white goods from it could purchase through CIH (from its central stock or through CIH's buying group arrangements), or from one of Whirlpool's nominated wholesalers. Whirlpool's criteria for supplying wholesalers were based on: minimum turnover; a requirement to stock all models of each of Whirlpool's brands; and readiness for all deliveries to be made within 48 hours of taking an order.

12.48. Whirlpool supplied mail order companies and PriceCostco with which Whirlpool told us, it had `an excellent relationship'. (Whirlpool also supplies PriceCostco in the USA.)

Lec

12.49. Lec supplied CFS equipment. Its UK market share by value in 1995 ranked third. It told us that it did not operate a selective distribution policy. It supplied all creditworthy dealers who requested supply except where they were already being supplied by an existing Lec customer, or where Lec was experiencing stock shortages. Lec supplied wholesalers and mail order companies. A large proportion of its products to members of CIH's local groups was made through CIH's central stock.

Miele

12.50. Miele supplied all four reference white goods to both the free-standing and built-in market sectors under the Miele brand; only dishwashers had a market share by value in 1995 of more than 2 per cent. It also supplied small numbers of built-in dishwashers and CFS products under the Imperial brand, predominantly to kitchen specialists.

12.51. Miele told us that it did not operate a selective distribution policy because to do so would restrict its sales. It stated that competition between retailers selling its products was beneficial. Direct supply using credit depended on a dealer's commercial viability based on potential turnover and creditworthiness. Miele also expected retailers' sales staff to avail themselves of product training (in the workplace if they were not free to attend training courses externally). Miele said that these criteria were essential to ensuring the survival of the brand. Miele said that it supplied wholesalers provided they could distribute the goods more economically than Miele itself.

Servis

12.52. Servis supplied all four reference white goods; its washing machines and dishwashers had a market share by value of more than 2 per cent market share in the UK in 1995. Servis told us that it did not have a selective distribution policy; it was willing to supply any creditworthy retailer who wished to sell its products. Its only stipulation was that it should approve the way the Servis brand was presented where it was contributing to the cost of advertising (for example, too many small retailers wrongly spelled the name of Servis in their advertisements).

12.53. Servis supplied wholesalers, and members of CIH's local groups through CIH's buying group arrangements. Servis supplied washing machines, CFS equipment and dishwashers to mail order.

Frigidaire

12.54. Frigidaire supplied CFS equipment, washing machines and tumble driers under its Frigidaire brand. Only its CFS equipment had a market share of more than 2 per cent by value in 1995.

12.55. Frigidaire told us that its aim was to increase distribution to as many retail and other outlets as possible. For most of its products, it would supply any creditworthy retailer (see paragraph 12.11). The exception was for large US-manufactured refrigerators for which Frigidaire needed to be assured that the dealer could provide an adequate delivery and installation service. Frigidaire said that it supplied wholesalers, members of CIH's local groups through CIH's buying group arrangements and CIH's central stock, N&P and Cargo Club.

Beko

12.56. Beko supplied CFS equipment in the UK; its market share in 1995 was over 2 per cent by value. Beko told us that it had an open distribution policy. It stipulated that its dealers must buy at least two of its models but in reality it supplied single products to certain retailers, for example, to a mail order company. Beko said that it did not normally supply small retailers direct. Because of credit insurance difficulties, it preferred them to be served by wholesalers.

Philco GB

12.57. Philco GB supplied washing machines, tumble driers and dishwashers under the Philco brand (see paragraph 8.26). It told us that it supplied its products to all creditworthy retailers who wished to purchase them. Philco GB supplied wholesalers, members of CIH's local groups and CIH's central stock.

Other suppliers

12.58. We received evidence from some smaller suppliers to the UK markets, whose market shares in none of the reference white goods by value in 1995 reached 2 per cent. Asko Appliances Ltd (Asko), which supplied all four of the reference white goods, told us that it would expect any limitation on supply to be based on financial considerations, and the correct type of outlet, with both sales and service staff capable of supporting its products. Atag, which supplied up-market washing machines, dishwashers and CFS products as part of a complete kitchen package, said that the service offered by its chosen kitchen specialists was the only route for its quality appliances to be sold through its niche market. Smeg (which did not supply tumble driers) said that it only selected dealers on their ability to pay. Its products were `even on sale in garden centres'. Its distributors were responsible for the criteria they used to supply dealers. TSM which supplied all four reference goods in the UK under the Ocean brand told us that it tried to sell its products to retailers who could display them to allow the benefits to be demonstrated, and who had staff that TSM could train.

CIH

12.59. CIH told us that it had `careful policies on admission [to membership]'. Normally, prospective retailers needed to satisfy the following criteria for admission to one of CIH's local groups:

(a) the production of three years' audited accounts;

(b) a minimum turnover of around £75,000 a year; and

(c) status as bona fide electrical retailers.

CIH said it would consider applications from public limited companies but only if the shareholding was family-based or held within a fairly small community. It said that in the past there had been more local discretion regarding the requirement for three years' audited accounts. But as CIH now took responsibility centrally for managing the risk of non-payment by its members, it insisted that its local groups should conform.

12.60. CIH said that three-quarters or more of the reference goods ordered by members of its local groups were supplied directly from suppliers through CIH's buying group arrangements; the remainder was ordered from CIH's central stock.

Extent of suppliers' conditions for supply to small retailers

12.61. About one-third of respondents to our survey of small retailers said that their suppliers imposed conditions on shop appearance, staff training or levels of service. Table 16 of Appendix 9.1 shows the numbers of respondents reporting alleged imposition of conditions; and Table 17 breaks these down by type of condition and reference good. (To determine the nature of the conditions, we grouped the responses, which were of a wide-ranging nature, into broad categories.) The most commonly cited conditions related to the following areas:

per cent

	Washing machines	*Tumble driers*	*Dishwashers*	*CFS equipment*
(a) Marketing and display	45	46	46	46
(b) Quality and knowledge of staff	35	34	34	35

12.62. Over 90 per cent of respondents to the survey who bought reference white goods from wholesalers said that the wholesalers imposed no conditions on supply (see Table 12, Appendix 9.1). The remainder mentioned conditions which were not within our terms of reference.

Withholding of supply

12.63. We obtained information on suppliers' behaviour and dealers' experiences in relation to withholding of supply from:

(a) responses to questionnaires sent to suppliers, multiple retailers, mail order companies, wholesalers, warehouse clubs, CIH and its local groups;

(b) responses to our issues letters (see Appendix 6.1, Annex A);

(c) hearings with, and visits to, suppliers and dealers, followed up in some cases by further written representations;

(d) our survey of small retailers (see Appendix 9.1);

(e) observations from dealers and others; and

(f) by examining the trade press.

12.64. In all we received 185 observations from dealers about withholding of supply of one or more of the reference white goods. We judged that 126 of these lacked sufficient detailed evidence for us to pursue them further or were not within our terms of reference (see paragraph 6.6). The remaining 59 observations, and suppliers' comments on them, are set out at Appendix 12.2. We accepted the dealer's account of events in 29 of these cases; these observations have been denoted in the appendix, by an asterisk against the name of the dealer. In 20 cases there was a conflict of evidence between the accounts given by the dealer and the supplier which we were unable to resolve. In a further ten cases we were unable to reach a judgment because the retailer had asked to remain anonymous and the supplier declined to respond without being given more information. These cases together with those in which there was an irreconcilable conflict of evidence remain unmarked in Appendix 12.2 and we have not relied up on them in reaching our conclusions.

12.65. All the suppliers denied that they had withheld supply from dealers because they had charged, or were expected to charge, prices below RRPs. Emaco told us that it was not aware it had `ever withheld supplies (or indeed been accused of withholding supplies) to a retailer solely on the ground that it was associated with discount retailing'. GDA told us that in all the cases of its alleged refusal to supply, excluding that of the warehouse clubs, it would appear that the complainant concerned had been under a misapprehension.

Wholesalers

12.66. We received no evidence about wholesalers adopting selective distribution policies and no wholesalers complained about suppliers' distribution policies. Portway Domestic Appliances Ltd, distributor of all four reference white goods, told us that whilst it had no evidence that suppliers withheld supplies because of price cutting, it believed they had the right to do so where they judged that such a cut in pricing would result in business failure and a bad debt.

CIH

12.67. We received minutes of meetings of some of CIH's local groups indicating that they had in recent years rejected applications for membership from retailers of whose pricing they disapproved. The minutes of meetings of some CIH local groups indicated:

(a) a reluctance to admit a prospective new member whose business was in close proximity to an existing member;

(b) a requirement that new members should be admitted only if acceptable to existing members;

(c) an objection to a prospective applicant `with regard to location, pricing policy' (*sic*);

(d) one local group which admitted a known discounter to its membership rather than him applying to, and possibly being accepted for membership by, another CIH local group, so that `neighbours can keep an eye on his activities'; and

(e) another group expressing concern about the pricing policy of a prospective member but deciding that he should be admitted as the prices he advertised and displayed in his store were acceptable.

12.68. At an early stage in our inquiries, we were told that CIH had reminded all the retailers it supplied that they should sell goods bought from CIH only to the general public or to CIH members. CIH later told us that it had fully revised its membership rules in consultation with the OFT. As a result it had no objection to being asked to give an undertaking that it would not make any recommendation to the members of its local groups that they should not resell goods to other dealers. CIH told us that it did not accept that its current practice of requiring three years' accounts as the best way of checking on a prospective member's creditworthiness was unreasonable (see paragraph 12.59). It said that personal guarantees of payment often turned out to be worthless, and to exact from members payment guarantees such as a bond or bank guarantee would be imposing an unreasonable burden on entry to membership.

Warehouse clubs

12.69. It is clear from the evidence we were given that warehouse clubs have rarely been successful in their efforts to obtain direct supply of many brands of reference white goods, either from suppliers or other sources authorized by them. (But we were told that some suppliers `turned a blind eye' to their products being supplied to warehouse clubs by diverters.)

12.70. PriceCostco, whose declared philosophy is to avoid costs typically associated with retail stores, for example, `elaborate sales fixtures, service personnel, advertising, credit and broad product selection', told us that it had been refused supply of:

(a) washing machines, tumble driers, dishwashers and CFS equipment from Hotpoint, Emaco (Zanussi and Electrolux brands) and MDA (Ariston brand); and

(b) CFS equipment from Frigidaire.

12.71. GDA told us that Hotpoint had decided not to supply PriceCostco or Cargo Club because they did not fulfil the distribution criteria which Hotpoint had historically adopted. GDA believed the warehouse clubs might have a valuable role to play in the retail market for food bought in bulk. But they were not, nor were they likely to be, useful outlets for major domestic appliances, in particular for those in the middle to top ranges of the market. GDA said experience in the USA indicated clearly that the presence of warehouse clubs did nothing to increase a supplier's overall sales levels; although it was estimated that some 10 per cent or more of the population in the USA were members of warehouse clubs, the latter accounted for only 1 per cent or thereabouts of sales of reference goods. If PriceCostco were to provide a full range of customer services, GDA would reconsider its policy.

12.72. GDA stated that the reason that Hotpoint, which attracted a high degree of brand loyalty from its customers and hence had substantial goodwill to protect, refused to supply the warehouse clubs was the damage that would be done to its brand through sales made without proper trained advice being available, and without appropriate arrangements for delivery and installation. GDA said that if a warehouse club relied on the supplier to make direct deliveries to the customer but the orders were processed by warehouse club staff who had not been properly trained in ordering procedures, this inevitably gave rise to a high rate of returns at substantial cost to the supplier. There were also substantial further operating costs involved in dealing with complaints from dissatisfied customers.

12.73. But in March 1997, GDA told us that at a trade exhibition the previous month, Creda had received an approach from PriceCostco which had said that it believed it now met GDA's criteria for supply. If this statement was correct, GDA believed PriceCostco had clearly modified its declared philosophy in relation to reference goods. Arrangements had been made for Creda to visit PriceCostco.

12.74. Emaco told us that until February 1996 none of its brands had received any formal request for supply from PriceCostco. Its Electrolux brand had previously had exploratory discussions with PriceCostco and had voiced a concern about PriceCostco's ability to retail white goods successfully, given PriceCostco's lack of suitably trained and knowledgeable staff, and appropriate customer care facilities. Emaco had been concerned, too, that PriceCostco did not offer an after-sales service. Emaco believed that when consumers were making a major purchase, such as any of the reference goods, it was important that they obtained the right information at the point of sale so that they understood fully what they were buying. If they bought the wrong machine, that reflected on the brand. In Emaco's view, PriceCostco did not offer that kind of service. One of Emaco's brands, Zanussi, had given a commitment, which it had published, to support `independent' retailers. To supply wholesalers, including PriceCostco, would be contrary to that commitment.

12.75. Emaco said that in February 1996 PriceCostco had contacted Zanussi with a view to obtaining direct supplies. Zanussi had informed PriceCostco that a direct trading relationship was inappropriate since PriceCostco's emphasis on wholesaling was at odds with Zanussi's marketing strategy of moving towards direct trading with retailers. Zanussi had expressed reservations about PriceCostco's lack of qualified sales personnel in the area of major white goods, the absence of appropriate customer care facilities and the fact that PriceCostco only wanted to stock and display a small range of Zanussi appliances.

12.76. We asked Emaco whether its attitude towards PriceCostco would change if PriceCostco's sales were directed more towards the end user of the goods. Emaco replied that it would still require some assurance regarding the retailing format employed. If the target of a warehouse club was the end consumer, it might also introduce customer care standards. Emaco would not object to a dealer acting as a wholesaler on an exceptional basis, but it would expect the dealer's main business to be retail. Emaco did not stipulate formally that its dealers must sell only to members of the public.

12.77. We asked Emaco why it insisted that its dealers should offer post-sales service (Emaco, in common with all other major suppliers of reference white goods, undertakes the responsibility for post-sales service during the guarantee period). Emaco said that its definition of post-sales service in this context was not the repair and servicing of the product but the opportunity for a customer to return to the retailer for more advice on the product which had been purchased, or on other related products.

12.78. MDA told us that it had offered Indesit products to PriceCostco unsuccessfully and had refused only to supply its Ariston brand (see paragraph 12.29). In MDA's view, the volume of business that would be gained through its supplying Ariston products to PriceCostco was outweighed by the disillusionment that would be felt by Ariston's existing retailers who had demonstrated commitment to the brand. There was a danger that PriceCostco would, after a trial period, cease selling Ariston which would destroy the efforts MDA had been making to boost sales of the brand.

12.79. Frigidaire told us that it had supplied N&P and Cargo Club. Its experience with the high level of returns of American-style fridge-freezers from Cargo Club had convinced Frigidaire that a cash-and-carry style operation was not suitable for these highly technical products; they needed an installation and after-sales service. For these reasons, when asked for supply of American-style CFS products by PriceCostco, Frigidaire had declined.

12.80. PriceCostco's observations, and suppliers' responses to them, are set out at Appendix 12.2.

12.81. N&P told us it that had been refused supplies for its Cargo Club business by Hotpoint (see paragraph 12.71) and that Zanussi had refused to supply N&P's Trade & Business Warehouse. Zanussi had written to N&P in December 1994 declining to supply reference products because N&P's intention to sell the goods at discounted prices did `not fit comfortably with the Zanussi orderly marketing policy'.

12.82. Emaco told us that N&P had wanted supply of Zanussi reference goods for its wholesaling activities to supply to N&P account customers (ie retailers) and this had not fitted in with Zanussi's marketing policy of moving towards direct trading with retailers. As phrased, Zanussi's letter had been, with hindsight, misleading and had not properly recorded Zanussi's reasoning at that time.

12.83. Emaco told us that until 1996 it had supplied an N&P subsidiary, M6 Cash and Carry, with Zanussi's reference goods. Prior to 1991 M6 Cash and Carry had obtained Zanussi's goods through two distributors. Zanussi had acquired both distributors in 1991 and continued to trade direct with M6 Cash and Carry as it was an existing customer. N&P acquired M6 Cash and Carry in 1994/95 and decided not to continue to sell major appliances through it.

12.84. N&P's observations, and suppliers' comments on them, are set out in full at Appendix 12.2.

12.85. We asked some of the suppliers which did not supply warehouse clubs whether their reluctance showed that they wished to discourage price discounting by retailers. All denied that there was any association between their refusal to supply and the warehouse clubs' discounting policies. GDA, for example, told us that its refusal to supply PriceCostco to date had been consistent with its generally applicable policy towards new accounts and had nothing to do with PriceCostco's pricing policy.

12.86. We asked some of the suppliers which supplied reference white goods to mail order companies but not to warehouse clubs to explain the rationale for selling to the former and not the latter. We had in mind the fact that mail order companies are not able to exhibit the goods, nor provide advice by knowledgeable staff.

12.87. GDA told us that mail order demonstrably worked as a channel for selling its products whereas warehouse clubs did not; they presented a risk to the image of GDA's brands. Mail order companies invested in expensive catalogues and were a substantial element of the market. Customers were able to obtain pre-sales advice from the catalogue page, the agent or the companies' enquiry centres. And consumers were safeguarded by the ability to return a product with no questions asked. Mail order also provided home delivery, sometimes undertaken on the company's behalf by the supplier. In GDA's view the investment made by mail order companies in their catalogues and staff back-up was comparable with that made by retailers in their premises.

12.88. Emaco said that mail order companies, unlike PriceCostco, supplied the consumer directly and did not act as a wholesaler. Mail order companies also had administrative back-up, for example customer helplines. This might not entail a customer being able to obtain expert pre- or post-sales advice about a product but meant that he or she could receive customer care through the local agent.

12.89. MDA said that it did not see any conflict in its selective distribution policy relating to Ariston products. Its policy had been designed to strengthen Ariston's position in the market.

Multiple retailers

12.90. Savacentre told us of problems it had experienced in attempting to obtain supply of Zanussi products for its hypermarkets.

12.91. Emaco told us that Zanussi had been concerned about Savacentre's limited support in terms of suitably qualified sales staff and customer care facilities (notably pre- and post-sales support). It had also considered that the cash-and-carry environment (in a relatively small corner of a large food store) might detract from the image of Zanussi's range of reference white goods. Emaco had agreed to hold further discussions once Savacentre had reflected on Zanussi's concerns but Zanussi had heard no more.

12.92. A fuller statement of Savacentre's observation, and Emaco's comments on it, is set out at Appendix 12.2.

12.93. Aldi Stores Ltd told us that it was interested in expanding into white goods but had found some difficulty in finding a suitable source. It assumed that this was as a result of its reputation for discounting prices. Certain concerns had been expressed, more particularly as it never discussed retail price levels with suppliers. Aldi declined to name any particular supplier.

Small retailers

12.94. About 8 per cent of respondents to our survey of small retailers alleged that they had been refused supply of reference white goods[1] (see Table 19, Appendix 9.1). Some respondents alleged that they been refused supply by more than one supplier. In all, 40 instances of alleged refusal to supply washing machines were cited; 36, tumble driers; 40, dishwashers; and 39, CFS equipment (see Table 20*(f)*, Appendix 9.1). In all cases in which a supplier was named, we followed up the retailer's observation. Those about which we were able to obtain sufficiently detailed information are shown, with the suppliers' responses, at Appendix 12.2.

Retailers' pressure on suppliers

12.95. At a dinner which Dixons gave for its suppliers in September 1993, Dixons' Chairman said:

> You will face the dilemma of whether or not you supply the warehouse clubs. Some here may succumb and try and ride two horses simultaneously-a fairly dangerous exercise. Others will try and fudge by supplying them only with special merchandise. There will be those who will claim colour blindness when confronted with grey shipments; those who suffer from cholesterol will at least have the advantage of knowing which side of the bread has the butter. But the far-sighted suppliers should be sensibly resolute. I believe there is a fundamental conflict with parallel distribution and you will have to consider which offers the most attractive option-cut-price or value-added retailers.

12.96. At the first hearing with Dixons in July 1995, we asked whether this speech had constituted an invitation to suppliers to infringe the RPA by refusing to supply a price cutter.

12.97. In response Dixons said that the speech had been a reflection of its concern about the planning constraints and higher rates that bore on retailers but not on wholesalers, with resulting advantages to the

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[1] 7 per cent in respect of those who sold tumble driers.

latter. In particular, discount warehouses sought to obtain an unfair competitive advantage by purporting to trade as wholesalers whilst intending to trade as retailers. If the net effect was to drive down prices on a broad front, this was not a sustainable proposition as far as Dixons or any of the retail trades were concerned. Dixons had seen from its experience in the USA where this development could lead; it wanted suppliers to consider the consequences.

12.98. In further evidence at the hearing Dixons said, in the context of the Chairman's speech:

> We have a responsibility to seek to protect our business and not to be other than straightforward with our suppliers. We had to let our suppliers know that we would not just sit on the sideline and allow this to go on. We at no stage ever, either directly or I would suggest by implication, said `You should not supply them'. What we did say was `If you go ahead with this, do understand that there will be a competitive reaction from us, and this *may* have an effect on your business.

12.99. In September 1995, following up points raised at the July hearing, Dixons let us have a note on this matter, together with a copy of a letter written by its Chairman to the DGFT in December 1993 and a copy of the DGFT's reply. In the note Dixons said that the speech had reminded suppliers of Dixons' objective of selling at competitive prices, and with the appropriate degree of service, in an environment which purchasers found exciting. Dixons had added value to the products it sold by introducing new standards of service. To enhance customer satisfaction it had invested heavily in systems enabling it to monitor product performance. Manufacturers had enjoyed increased sales, so both they and Dixons had benefited from Dixons' initiatives. Manufacturers should reflect on the advantages to be derived by them from distribution systems which benefited from value-added services, such as those Dixons provided, compared with the returns manufacturers could expect from cut-price retailers. It was for manufacturers to decide for themselves, and the Chairman neither suggested nor invited any supplier to refuse to supply PriceCostco or any other price cutter.

12.100. In October 1996 Dixons asked that in our report the quotation from the Chairman's speech should be introduced by the words:

> In his speech, the Chairman noted that the cost of creating and developing Dixons' retailing environment was very considerable, and that manufacturers would benefit from gaining a much better understanding of the retail business generally, and of the issues which were of particular concern to consumers. In the context of the many services Dixons provided to customers, which included an extensive after sales service, the Chairman stated: ….

12.101. In February 1997, Dixons told us that its Chairman's speech:

> was not an implicit invitation to refuse supply. [He] had spoken of the benefits to be had from distribution through a supply chain which assured customers of a full level of service: the cost of creating and developing Dixons' retailing environment was very considerable. Dixons regarded warehouse clubs as legitimate competitors, but deplored the fact that consumers could have a demonstration of the product they wanted at a Dixons' store with a view to buying it at a lower price from a warehouse club.

A supplier of electrical goods who was in the audience told us that he had gained the clear impression from the speech that suppliers which decided to deal with discount companies such as PriceCostco and Cargo Club would not receive custom from Dixons.

12.102. Dixons told us on a separate occasion that outlets such as warehouse clubs which provided minimal pre-sales information were `free riding' on the service available at other retailers who offered a high level of competent pre-sales service and incurred costs accordingly. Several small retailers made the same point.

12.103. We asked suppliers whether any of their retailers had suggested or requested that they should not start to supply, or should no longer supply, particular retailers or categories of retailer. GDA told us that Hotpoint and Creda were aware of certain press reports of comments alleged to have been made by retailers in relation to warehouse clubs but no suggestion or request of the type mentioned in the question had been made orally or in writing to GDA or its subsidiaries by any retailer. There had been certain indications from retail groups that, if manufacturers were to supply warehouse clubs, retailers would expect compensating increases in the discounts they received so as to enable them to continue to compete. In GDA's view, given the substantial amount of money and effort which the retail groups put into marketing white and brown goods, such a reaction was predictable.

12.104. Emaco told us that it had been on the receiving end of comments from major retailers commenting about the prospect of Emaco supplying a competitor. It took the view that it had to do what was right for Emaco and not be intimidated by veiled threats about what might happen to its business if it were to broaden its distribution.

12.105. MDA showed us a letter Comet had sent MDA in May 1994. In the letter, Comet's Merchandising Director had stated, `I have heard that you are seriously considering widening your distribution of Indesit. This surprises me as it was never discussed [with Comet] but we did discuss the benefits of selective distribution which we noted has helped grow our business last year'. MDA's response to Comet had reaffirmed its policy of distributing Indesit widely and maintaining a selective distribution policy in respect of its Ariston brand (of which Comet was the largest stockist). Comet told us that the May 1994 letter it had sent to MDA related to distribution of the Indesit brand elsewhere in Europe. Comet stated that it had never sought to influence MDA's business plan for the Indesit brand.

The legal position on selective distribution

12.106. In the UK, selective distribution systems will not normally require registration under the RTPA. However, provision exists under the FTA and the Competition Act 1980 for the MMC and the OFT to investigate the effects on the public interest of such systems.

12.107. In addition the provisions of the RPA make it illegal for a supplier to refuse to supply goods to a dealer on the basis that the dealer has sold or is likely to sell such goods below the RRP set by the supplier (see Appendix 6.2).

EC aspects

12.108. We were mindful of the fact that our terms of reference require us to consider the questions which had been referred to us by the DGFT from the point of view of the effect on the UK public interest, and did not require us to decide whether a particular matter was in breach of EC law. Also, we were advised that the ECJ has recognized that competition concerns are not the exclusive preserve of EC law. The ECJ has said[1] that EC and national competition legal regimes may consider anti-competitive practices from rather different points of view. Whereas Articles 85 and 86 of the EC Treaty are designed to deal with competition issues which affect trade between member states, national law arises from and may involve considerations particular to the relevant individual member state. Given these different types of concerns at the EC and national levels, it therefore follows that, where appropriate, national competition law authorities may take action with regard to situations that infringe their regulatory systems subject, however, to the condition that the application of national law may not prejudice the full and uniform application of community law or the effects of measures taken or to be taken to implement it.[2]

12.109. Article 85(1) states, inter alia, that the following shall be prohibited as incompatible within the common market:

> all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

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[1] *Procureur de la Republique v Giry & Guerlain SA* [1980] ECR 2327.

[2] *Walt Wilhelm v Bundeskartellamt* [1969] ECR 1.

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production, markets, technical development or investment ….

12.110. We were advised that in past cases the European Commission and the ECJ have been inclined to accept selective distribution systems in certain circumstances, with each case having been considered on its own merits. Their view appears to be that such systems fall outside Article 85(1) in some circumstances, and even if they come within Article 85(1) they may fulfil the requirements for exemption under Article 85(3). Benefits which may be taken into account include the maintenance of a specialist trade capable of providing specific services in the context of transactions concerning high- quality and high-technology products. Even so, as far as we are aware, none of the cases considered in formal decisions of the European Commission or in judgments of the ECJ have specifically involved the sale of any of the reference white goods.

12.111. In general terms, for a selective distribution system to fall outside Article 85(1):

(a) dealers should be selected solely on the basis of non-discriminatory qualitative criteria relating to their technical ability to handle the goods and the suitability of their premises and staff;[1]

(b) the nature of the product(s) in question must justify the application of a system of selective distribution;

(c) the qualitative criteria applied should be necessary to ensure an adequate distribution of the goods;

(d) all suitably qualified dealers, if they so wish, should be admitted to the supplier's selective distribution system;

(e) the dealers must not be subject to any restrictions on competition other than a ban on sales to unauthorized resellers; and

(f) weaknesses in inter-brand competition should not be reinforced as a result of competing manufacturers applying selective distribution.

12.112. Article 85(1) may apply if the supplier seeks to impose additional or quantitative requirements which, for example, set turnover or sales targets for the dealers to achieve; stipulate minimum stock levels to be held by dealers; and impose other obligations on dealers to promote the supplier's goods.

12.113. In particular Article 85(1) is likely to apply if the additional or quantitative requirements either in form or effect seek to limit the number of dealers to be appointed in any given area.

12.114. Consequently, in assessing whether or not Article 85(1) is applicable in any particular case, the European Commission (and where relevant, the ECJ) will take into account the nature of the product and whether it merits the supplier's requirements. Furthermore the features of the relevant product market will be considered and in particular whether effective competition exists in that market. It could be the case that even if the selective distribution system satisfies the conditions stated above (in that it contains only non-discriminatory qualitative requirements and is open to all suitably qualified dealers), it may still be caught by Article 85(1) in that it is detrimental to competition in the particular product market. If an agreement is within Article 85(1), the question whether it fulfils the requirements for exemption under Article 85(3) arises.[2] Conditions may change from time to time, and exemption may be revoked, amended or not renewed.

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[1]This is what is sometimes referred to as a `simple' selective distribution system: see *Metro v Commission* [1977] ECR 1875.

[2]We understand that an exception is not likely to be granted in respect of a selective distribution system containing requirements which seek to impose territorial restrictions on the resale of products, restrict parallel imports or which can be used by the supplier to control the level of prices.