# JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber, Extended Composition)
12 December 1996 *

In Case T-19/92,

**Groupement d'Achat Édouard Leclerc,** a cooperative society constituted under French law, established in Paris, represented by Mario Amadio and Gilbert Parléani, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Philippe Hoss, 15 Côte d'Eich,

applicant,

v

**Commission of the European Communities,** represented initially by Bernd Langeheine, then by Berend Jan Drijber, both of its Legal Service, acting as Agents, assisted by Hervé Lehman, of the Paris Bar, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

supported by

**Yves Saint Laurent Parfums SA,** a company constituted under French law, established in Neuilly-sur-Seine, France, represented by Dominique Voillemot and Arnaud Michel, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Jacques Loesch, 11 Rue Goethe,

* Language of the case: French.

**Fédération des Industries de la Parfumerie,** a federation of associations governed by French law, having its headquarters in Paris, represented by Robert Collin, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 Rue Mathias Hardt,

**Comité de Liaison des Syndicats Européens de l'Industrie de la Parfumerie et des Cosmétiques,** an international non-profit-making association governed by Belgian law, having its headquarters in Brussels, represented by Stephen Kon, Solicitor, and Mélanie Thill-Tayara, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Winandy and Err, 60 Avenue Gaston Diderich,

and

**Fédération Européenne des Parfumeurs Détaillants,** an association of national federations or unions governed by French law, having its headquarters in Paris, represented by Rolland Verniau, of the Lyon Bar, with an address for service in Luxembourg at the Chambers of Nico Schaeffer, 12 Avenue de la Porte-Neuve,

interveners,

APPLICATION for annulment of Commission Decision 92/33/EEC of 16 December 1991 relating to a proceeding under Article 85 of the EEC Treaty (IV/33.242 — Yves Saint Laurent Parfums) (OJ 1992 L 12, p. 24),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(Second Chamber, Extended Composition),

composed of: H. Kirschner, President, B. Vesterdorf, C. W. Bellamy, A. Kalogeropoulos and A. Potocki, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 28 and 29 February 1996,

gives the following

## Judgment

### Facts

*Introduction*

1 Cosmetic products cover a wide variety of articles including, in particular, perfumery, skin care and beauty products and hair care and toiletry products. Within the category of cosmetic products, luxury products, that is to say high quality articles sold at a relatively high price and marketed under a prestige brand name, constitute a specific market segment. In general, luxury cosmetic products are sold only through selective distribution networks, all governed by similar conditions. Those networks are, for the most part, made up of specialist perfumeries or specialist areas in department stores.

2 Yves Saint Laurent SA (hereinafter 'Yves Saint Laurent') produces luxury cosmetic products. It forms part of the Yves Saint Laurent group, whose activities include the manufacture and distribution of luxury products. In 1992, Yves Saint Laurent held approximately 9% of the Community market in luxury perfumery products.

3 The breakdown into product ranges provided by Yves Saint Laurent in the course of the proceedings shows that in 1990 and 1991 sales of luxury perfumes represented between 75 and 100%, depending on the Member State concerned, of its total sales by selective distribution, the remainder being accounted for by sales of luxury skin care and beauty products. Those products are sold in approximately 7 500 authorized retail outlets, as well as in duty-free shops which account for a significant proportion of sales in several Member States.

4 On 7 July 1989, Yves Saint Laurent notified the Commission of a network of selective distribution contracts for the marketing in the Community of its perfumery, skin care and beauty products and applied for negative clearance under Article 2 of Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-62, p. 87, hereinafter 'Regulation No 17') or, in the alternative, exemption under Article 85(3) of the Treaty.

5 On 20 December 1990, the Commission published a notice pursuant to Article 19(3) of Regulation No 17 (OJ 1990 C 320, p. 11) stating that it proposed to adopt a favourable attitude towards the notified contracts, as amended in response to comments made by it, and inviting interested third parties to send any comments they might have within 30 days.

6 The applicant, Groupement d'Achat Édouard Leclerc (hereinafter 'Galec'), submitted observations dated 17 January 1991 in response to that notice. Galec is a purchasing association in the form of a cooperative society which supplies a net-

work of retail outlets in France called Centres Distributeurs Leclerc (hereinafter 'Leclerc Centres'), most of which are hypermarkets or supermarkets. In its observations, Galec objected to the proposed decision, in particular on the ground that its adoption would preclude the sale of luxury cosmetic products from a number of suitable Leclerc Centres.

7 Galec participated likewise in the administrative procedure in the Parfums Givenchy case, in which the Commission adopted on 24 July 1992 Decision 92/428/EEC relating to a proceeding under Article 85 of the EEC Treaty (Case No IV/33.542 — Parfums Givenchy system of selective distribution) (OJ 1992 L 236, p. 11), and which is the subject of a parallel action before the Court (Case T-88/92 *Galec* v *Commission*).

8 On 16 December 1991, the Commission adopted Decision 92/33/EEC relating to a proceeding under Article 85 of the EEC Treaty (IV/33.242 — Yves Saint Laurent Parfums) (OJ 1992 L 12, p. 24, hereinafter 'the Decision'), which is the subject of this judgment.

*The Yves Saint Laurent contract*

9 It is clear from 'the Authorized Retailer Contract' (hereinafter 'the Contract') and the General Conditions of Sale annexed thereto, in the version of 11 July 1991 covered by the Decision, that the Yves Saint Laurent distribution network is a closed network which prohibits its members from selling or obtaining products bearing the Yves Saint Laurent brand name outside the network. In return Yves Saint Laurent agrees to ensure distribution in compliance with the laws and regulations in force, and undertakes to withdraw its brand from any retail outlets which do not fulfil the conditions of the selective distribution contract.

10 The selection criteria for authorized retailers laid down in the Contract refer essentially to the professional qualifications of staff, the location and fittings of the retail outlet and the shop-name, and to certain other conditions to be fulfilled by the retailer regarding, in particular, product storage, a minimum amount of annual purchases, the obligation to refrain for one year from the active sale of new products launched in another State, and cooperation on advertising and promotion between the retailer and Yves Saint Laurent.

11 As regards professional qualifications, Paragraph III.5 of the Contract states:

'5. *Professional qualification*

The Authorized Retailer agrees to comply with the provisions relating to professional qualification set out in Article I/3/of the General Conditions of Sale, and to have a sufficient number of its sales staff attend the training sessions organised by the Exclusive Distributor.'

12 Paragraphs I.2 and I.3 of the General Conditions of Sale state:

'2. *Sales staff*

The Authorized Retailer must maintain a sufficient sales staff in regard to the sales area of the Point of Sale and the number of products available for sale to consumers. This sales staff must [be] capable of providing these consumers with a high quality consulting and demonstration service.

3. *Professional qualification*

The Authorized Retailer and its sales staff must have a professional qualification in perfumery products (cosmetic or skin care) resulting from either

— a beauty diploma;

— a professional perfumery training certificate issued by a recognized Chamber of Commerce and Industry;

— at least three years experience in the field of prestige perfumery (cosmetic and skin care) sales.'

13 As regards the retail outlet, Paragraph I.1 of the General Conditions of Sale states:

'a) *Area surrounding the Point of Sale*

The quarter, the streets and the shops in the neighbourhood of the Point of Sale must always be well suited to the prestige and the renown of the Yves Saint Laurent brand name.

b) *Other items taken into consideration*

The shopsign, the façade of the building in which the Point of Sale is located, the signalization of the presence of the point of sale, the shop-windows, the exterior lighting, the surface, the interior lighting, the floors, the walls and

the ceiling, the furniture, the interior decoration, the advertising material, the cleanliness and order of the Point of Sale, the cleanliness of the Products and of the advertising material, the shelves, the identification and the presentation of the brand, the storage conditions, the demonstration area, the appearance and welcoming attitude of the sales staff.

These items must always be well suited to the prestige and the renown of the Yves Saint Laurent brand name.

c) *Sales area*

The sales area shall be proportionate to the number of products sold. It must allow the Authorized Retailer to provide in regard to the other brands offered, an area for the Products corresponding with the prestige and the renown of the Yves Saint Laurent brand name.

d) *Other activities at the Point of Sale*

If one or more other activities are carried on at the Point of Sale, the following items must be taken into consideration:

— the scale of this (these) activity (ies);

— the external and internal presentation of this (these) activity (ies);

— the separation between this (these) activity (ies) and the perfumery-related activity;

— the distribution of sales staff between this (these) activity (ies) and the perfumery-related activity;

— the competence of the sales staff assigned to each of these activities;

— the personal appearance and dress of the sales staff assigned to each of these activities.

...'

14 Paragraphs III.3 and III.4 of the Contract state:

'3. *Type and quality of the products sold at the Point of Sale*

The Authorized Retailer has indicated the type and the quality of all products which are or will be sold at the Point of Sale. The Authorized Retailer is prohibited from offering for sale at the Point of Sale any products the proximity of which might damage the Yves Saint Laurent brand name.

4. *Standards and maintenance of the Point of Sale*

The Authorized Retailer shall maintain the Point of Sale in an excellent state of maintenance and cleanliness for storage and display of the Products. The layout, furnishings and decoration of the Point of Sale and the specialised perfume department within the Point of Sale shall correspond to the standards and quality associated with the Yves Saint Laurent brand name.'

15 As to the shop-name, the second subparagraph of Paragraph I of the General Conditions of Sale states:

'The business name and shopsign of the perfumery, or the business name and shopsign of the shop where the perfumery department is located, or the business name and shopsign of the space within which the perfumery or perfumery depart-

ment is located, must always reflect the prestige of the Yves Saint Laurent brand name. Consequently, the business name and shopsign must be in accordance with the principles governing the distribution of the Products, which are high prestige and high quality products. Such is not the case of a business name and shopsign the image of which is associated with a restriction or an absence of consulting service to the end users, of prestige or of a suitable decor.'

16 As regards the procedure for admission to the network, every application to open an account gives rise, in an average of three months and a maximum of five, to an evaluation of the proposed retail outlet by Yves Saint Laurent or its exclusive agent, by means of an evaluation report, a copy of which was produced by Yves Saint Laurent in the course of these proceedings (Annex 16 to the statement in intervention, hereinafter 'the evaluation report'). In that evaluation report, criteria relating to the external appearance of the point of sale, its internal appearance and professional competence are marked in accordance with a grid containing 33 different headings, or 37 in the case of a point of sale with one or more main activities other than the sale of perfumery products. Between two and ten points or two and seven points, as the case may be, are given under each heading.

17 In order to be admitted as an authorized retailer, the total number of points obtained must exceed 231 (33 headings x 7) or 259 (37 headings x 7), as the case may be. An applicant who obtains three marks of two points under the headings of location of the point of sale, surroundings, façade, lighting, floors, walls, furnishings, other products sold in the point of sale and professional competence is eliminated. For department stores, Yves Saint Laurent used a modified version of the evaluation report until 1992, but that version is to be replaced by a new version suitable for all non-specialist shops. In the meantime, for non-specialist points of sale, the various headings of the current evaluation report relating to the internal appearance of the shop and to the sales staff are, according to Yves Saint Laurent, applied solely to the perfumery 'counter' (reply of 16 January 1996 to the questions put by the Court, pp. 3 and 4).

18 Depending on the outcome of the evaluation, either the application is refused with reasons or the applicant is informed of the steps that he will have to take in order to satisfy the criteria. In the latter case, he is given a maximum period of six months to meet those criteria, after which a new evaluation is carried out. In the event of a positive outcome, the account is opened within a period of nine months from the date of the evaluation.

*The Commission's Decision*

19 The Commission considers in Paragraph II. A.4 of the Decision that Article 85(1) of the Treaty does not apply to selective distribution systems where three conditions are satisfied: (i) that the properties of the products in question necessitate the establishment of such a system in order to preserve their quality and ensure their proper use; (ii) that resellers are chosen on the basis of objective criteria of a qualitative nature relating to the technical qualifications of the reseller and his staff and the suitability of his trading premises; and (iii) that such conditions are laid down uniformly for all potential resellers and are not applied in a discriminatory fashion (see Case 26/76 *Metro* v *Commission* [1977] ECR 1875 (hereinafter '*Metro I*'), paragraph 20, Case 31/80 *L'Oréal* v *De Nieuwe AMCK* [1980] ECR 3775, paragraph 16, and Case 107/82 *AEG* v *Commission* [1983] ECR 3151, paragraph 33).

20 In that regard, the Commission notes in the second subparagraph of Paragraph II. A.5 of the Decision:

'The articles in question are high-quality articles based on specific research, which is reflected in the originality of their creation, the sophistication of the ranges marketed and the qualitative level of the materials used, including their packaging. Their nature as luxury products ultimately derives from the aura of exclusivity and

prestige that distinguishes them from similar products falling within other segments of the market and meeting other consumer requirements. This characteristic is, on the one hand, closely linked to the producer's capacity to develop and maintain an up-market brand image, and, on the other, depends on appropriate marketing that brings out the specific aesthetic or function quality of each individual product or line of products ...'

21 Next, the Commission finds that Yves Saint Laurent's selection criteria relating to professional qualifications, the location and fittings of the outlet and the shop-name are not covered by Article 85(1) of the Treaty. It considers, in particular, that 'having specialized technical advice available in the retail outlet is a legitimate requirement in so far as the knowledge specifically required is necessary in order to help consumers select the products best suited to their tastes and requirements and to provide them with the best information on their use and indeed the preservation of such products' (third subparagraph of Paragraph II. A.5), and that 'since the maintenance of a prestige brand image is, on the luxury cosmetic products market, an essential factor in competition, no producer can maintain its position on the market without constant promotion activities. Clearly, such promotion activities would be thwarted if, at the retail stage, Yves Saint Laurent products were marketed in a manner that was liable to affect the way consumers perceived them. Thus, the criteria governing the location and esthetic and functional qualities of the retail outlet constitute legitimate requirements by the producer, since they are aimed at providing the consumer with a setting that is in line with the luxurious and exclusive nature of the products and a presentation which reflects the Yves Saint Laurent brand image. In addition, the criterion relating to the shop-name is designed to ensure that the name of the perfumery or shop or area within which the perfumery counter or perfumery is situated is compatible with the principles governing the distribution of the products in question and thus to exclude any name whose image would be associated with an absence of or restriction in customer service and in standing and with a lack of attention to decoration. It should be stressed in this respect that the down-market nature of a retail outlet or of its name cannot be deduced from the retailer's habitual policy on prices' (fourth subparagraph of Paragraph II. A.5).

22 In the fifth and sixth subparagraphs of Paragraph II. A.5, the Commission continues:

'The ban on selling goods which, through their proximity, are liable to detract from the Yves Saint Laurent brand image is intended merely to safeguard, in the public's mind, the aura of prestige and exclusivity inherent in the products in question, thus preventing any association with lower-quality goods. A similar objective is also pursued by the selection criteria designed to ensure that, in the retail outlets where a variety of activities are carried out, the area set aside for the sale of perfumery products is proportionate and sufficiently separate from the area intended for the sale of other products. It should be stressed in this respect that, since the Yves Saint Laurent Parfums distribution system is open to shops having a specialized counter, and given the various forms of distribution which Yves Saint Laurent Parfums has authorized at Community level, these criteria are not in themselves such as to exclude certain modern forms of distribution such as department stores.

The requirement that the authorized retailer should set aside for Yves Saint Laurent Parfums products a location which, having regard to the other brands represented, corresponds to the standing of the Yves Saint Laurent brand and allows it to be identified by the consumer is intended to meet the objective of ensuring that the products covered by the contract are presented in an enhancing manner ... such a selection criterion is not in itself liable to limit the retailer's freedom to sell and promote competing brands or liable to impede the development of new forms of distribution.'

23 As regards the other obligations and conditions to be fulfilled by authorized retailers, the Commission finds that those relating to the procedure for admission to the network, a minimum amount of annual purchases, cooperation on advertising and promotion, product stocks and the launch of new products are caught by Article 85(1) (see Paragraph II. A.6 of the Decision) and that the barriers to competition encountered constitute an appreciable restriction of intra-Community trade (Paragraph II. A.8).

24 The Commission nevertheless finds in Paragraph II. B.1 of the Decision that the contracts underlying the Yves Saint Laurent distribution system meet the four conditions provided for in Article 85(3) of the Treaty.

25 As to whether the requirements at issue contribute to improving production or distribution within the meaning of Article 85(3) of the Treaty, the Commission states (Paragraph II. B.2):

'Luxury cosmetic products differ from similar products that meet other consumer requirements, *inter alia*, through the image of exclusivity and prestige which, in the consumer's mind, is associated with the brand under which they are sold. The manufacturer's capacity to create and maintain an original and prestigious brand image is thus a key factor in competition. It follows that a luxury cosmetics brand must be distributed on an exclusive basis. Experience shows that generalized distribution of a luxury cosmetic product can affect the consumer's perception of it and in the long term reduce demand for it.'

26 The Commission accordingly considers that the contractual requirements falling within the scope of Article 85(1) (see paragraph 23 above) 'have the effect of ensuring that Yves Saint Laurent products are distributed only under conditions that can preserve the high quality image and exclusivity associated with the fact that they are luxury cosmetic products' (see the end of the final subparagraph of Paragraph II. B.2).

27 As to whether consumers are allowed 'a fair share of the ... benefit', within the meaning of Article 85(3) of the Treaty, the Commission considers in particular that 'the distribution system notified allows the exclusive character of the contract products to be safeguarded, such exclusive character being the main reason why

consumers choose them' (second subparagraph of Paragraph II. B.3) and that 'if customers regard as secondary the brand image or the services associated with sale within the selective distribution system, they can choose similar articles falling within an adjacent market and distributed without the use of selective distribution systems, thus penalizing the commercial strategy pursued by the producer' (third subparagraph of Paragraph II. B.3).

28 Finally, the Commission takes the view, in Paragraph II. B.4 of the Decision, that the Yves Saint Laurent distribution system does not contain any obligation restricting competition which is not indispensable to the attainment of the objectives envisaged, within the meaning of Article 85(3)(a) of the Treaty, and in Paragraph II. B.5, that the contracts in question do not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question, within the meaning of Article 85(3)(b) of the Treaty. The Commission adds in particular that it 'has not been able to establish that the spread of selective distribution systems in the field of luxury cosmetic products impedes in principle certain modern forms of distribution, such as department stores. The selection criteria applied by Yves Saint Laurent Parfums are not such that they cannot also be met by such forms of distribution, even if this requires some change in their particular marketing methods' (fourth subparagraph of Paragraph II. B.5).

29 Article 1 of the Decision reads as follows:

'The provisions of Article 85(1) of the EEC Treaty are hereby declared inapplicable, pursuant to Article 85(3):

— to the standard-form authorized retailer contract binding Yves Saint Laurent Parfums to its specialized retailers established in France, and to the general conditions of sale annexed thereto;

and

— to the standard-form authorized retailer contract binding the exclusive agents of Yves Saint Laurent Parfums established in a Member State other than France to their specialized retailers, and to the general conditions of sale annexed thereto.

This Decision shall apply from 1 June 1991 to 31 May 1997.'

## Procedure and forms of order sought

30 By application lodged at the Court Registry on 9 March 1992, Galec brought the present action. By order of 12 October 1992, Yves Saint Laurent, the Comité de Liaison des Syndicats Européens de l'Industrie de la Parfumerie et des Cosmétiques (Liaison Committee of European Associations for the Perfumes and Cosmetics Industry, hereinafter 'Colipa'), the Fédération des Industries de la Parfumerie (Federation of Perfumery Industries, hereinafter 'FIP') and the Fédération Européenne des Parfumeurs Détaillants (European Federation of Retail Perfumers, hereinafter 'FEPD') were granted leave to intervene in support of the form of order sought by the Commission.

31 Upon hearing the Report of the Judge-Rapporteur, the Court decided to open the oral procedure without any preparatory inquiry. However, by way of measures of organization of procedure, as provided for by Article 64 of the Rules of Procedure, the Commission, Yves Saint Laurent and FEPD were requested to reply in writing to certain questions and to produce certain documents before the hearing. The parties lodged their replies between 16 and 24 January 1996.

32 The parties presented oral argument and answered questions put to them by the Court at the hearing on 28 and 29 February 1996.

33 The applicant claims that the Court should:

— annul the Decision in its entirety;

— order the Commission to pay all the costs of the case.

34 The defendant claims that the Court should:

— dismiss the action;

— order the applicant to pay the costs of the case.

35 The intervener Yves Saint Laurent claims that the Court should:

— declare the action inadmissible;

— in the alternative, dismiss the action as unfounded;

— order the applicant to pay the costs, including those occasioned by Yves Saint Laurent's intervention.

36 The intervener FIP claims that the Court should:

— make an appropriate order on the admissibility of the action;

— dismiss the action as unfounded;

— order the applicant to pay the costs, including those occasioned by FIP's intervention.

37 The intervener Colipa claims that the Court should:

— dismiss the action;

— order the applicant to pay the costs, including those occasioned by Colipa's intervention.

38 The intervener FEPD claims that the Court should:

— dismiss the action;

— order the applicant to pay the costs, including those incurred as a result of FEPD's intervention.

39 In its observations on the interveners' pleadings, the applicant claims that the Court should:

— declare its action admissible;

— order the interveners to bear their own costs.

## Admissibility

*Summary of the arguments of the parties*

40 Yves Saint Laurent contends that the action is inadmissible on the grounds that, first, the Decision does not distinguish Galec individually and, secondly, Galec is not directly concerned by the Decision and has no legal interest in bringing proceedings.

41 First, the Decision makes no reference, whether direct or indirect, to Galec or to the Leclerc Centres; nor, moreover, does the fact that Galec operates in the distribution sector distinguish it individually either by reason of certain attributes which are peculiar to it or by reason of circumstances in which it is differentiated from the other operators on the market (see, in particular, Case 25/62 *Plaumann* v *Commission* [1963] ECR 95 and Joined Cases 10/68 and 18/68 *Eridania and Others* v *Commission* [1969] ECR 459).

42 Furthermore, Galec's involvement was very limited. Although it sent observations to the Commission in the course of the administrative procedure, it has never made a single application to Yves Saint Laurent for authorized status. Nor did it lodge a complaint against the Yves Saint Laurent contracts. In *Metro I*, in Case

75/84 *Metro* v *Commission* [1986] ECR 3021 (hereinafter '*Metro II*') and in Case 169/84 *Cofaz* v *Commission* [1986] ECR 391, the Court of Justice held actions by third parties to be admissible only on the basis of more stringent criteria for distinguishing them individually.

43 Secondly, according to its statutes, Galec operates as an intermediary between its members, the Leclerc Centres, and their suppliers, acting solely on behalf of the former. It cannot therefore be regarded as a distributor, still less as a retailer authorized by Yves Saint Laurent. As a result, it is not directly affected or harmed in any way by the Decision (see Case 135/81 *Groupement des Agences de Voyages* v *Commission* [1982] ECR 3799). It is thus not directly concerned by the Decision and has no vested and present interest in the annulment of the contested measure.

44 Finally, if it is assumed that Galec brought its action in the interests of its members, its statutes contain no provision empowering it to be a party to judicial proceedings in their name. Applying the principle that one cannot sue or be sued by proxy, Galec's action is therefore inadmissible (see the Opinion of Advocate General Rozès in *Groupement des Agences de Voyage*, p. 3811).

45 Galec points out that, in the course of the administrative procedure, it lodged observations pursuant to Article 19(3) of Regulation No 17 whose purpose was equivalent to that of a complaint, and that the Commission took up its arguments in the Decision, in particular in Section I. D and at the end of Paragraph II. B.5.

46 Nor can it seriously be disputed that Galec has a direct and personal interest in bringing proceedings. As the purchasing centre of an economic grouping, it operates directly on the perfume and cosmetic products market, selecting manufacturers and negotiating terms with regard to product ranges, prices, financial conditions and delivery and supply procedures. It adds that, but for the Decision, it could normally have obtained Yves Saint Laurent products by one means or another, whereas it is now denied any entitlement to normal access to that market.

47 The Commission, relying in particular on the judgment in *Metro II*, takes the view that the action brought by Galec is admissible.

48 Galec has clearly demonstrated its wish to distribute luxury perfumes, both in the observations which it lodged in the course of the administrative procedure and by the numerous attempts made by various Leclerc Centres to sell luxury perfumes which have given rise to a particularly large number of cases before the national courts.

49 Furthermore, it is clear from Galec's statutes that its objects include pooling its members' orders and passing them on to suppliers (Article 2) and that it may make purchases directly in its own name (Article 30A). Consequently, if some of Galec's members could be admitted to the Yves Saint Laurent network, Galec might have to purchase the products at issue on their behalf. Moreover, it cannot be disputed that Galec's members may have an interest in forming part of the Yves Saint Laurent distribution network. The situation considered in *Groupement des Agences de Voyages* is therefore fundamentally different from that in the present case.

*Findings of the Court*

50 The Commission has not pleaded that the action is inadmissible. Accordingly, Yves Saint Laurent is not entitled to raise an objection of inadmissibility and the Court is not bound to consider the pleas on which it relies (Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, paragraphs 20, 21 and 22).

51 However, the Court will examine the admissibility of the action of its own motion, pursuant to Article 113 of the Rules of Procedure (see *CIRFS and Others*, paragraph 23).

52 Under Article 173 of the Treaty, a natural or legal person may institute proceedings against a decision addressed to another person only if that decision is of direct and individual concern to him. Since the Decision was addressed to Yves Saint Laurent, it is necessary to examine whether those two conditions are satisfied with regard to Galec.

53 As for the question whether the Decision is of 'individual' concern to Galec, it is settled law that persons other than those to whom a decision is addressed may claim to be individually concerned only if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and, by virtue of these factors, distinguishes them individually just as in the case of the person addressed (see *Plaumann* v *Commission*, cited above, p. 107, and Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and Others* v *Commission* [1995] ECR II-1971, paragraph 34).

54 Galec is a cooperative society with variable capital whose members are retailers trading under the name É. Leclerc and is established pursuant to French Law No 72-652 of 11 July 1972. Article 1 of that Law provides that such cooperative societies are to have as their object the improvement, through the joint efforts of their members, of the conditions in which those members pursue their trade. For that purpose, they may in particular provide their members with all or part of the merchandise, produce or services, equipment and material which they need to pursue their trade. Article 2(2) of Galec's statutes provides in particular that the services which it proposes to provide to its members shall not be limited in nature or quantity and may in particular relate to any transaction or activity which has any connection with its members' trade. According to Article 30A of its statutes, Galec operates solely on behalf of its members in order to enable them to reduce their purchase costs and costs of distribution to their own members and/or consumers. It may in particular make purchases in its own name on behalf of its members.

55 According to statements made by Galec at the hearing, which have not been disputed, it approached numerous perfumers, including Yves Saint Laurent, before the Decision was adopted, requesting that at least some of its members be admitted to the network as authorized retailers. Subsequently, by letter of 22 August 1990, one of Galec's members, Rocadis, which runs the Leclerc Centre in Poitiers, applied for admission to the Yves Saint Laurent network.

56 Yves Saint Laurent rejected that application by letter of 28 September 1990, on the ground that legal proceedings between it and Rocadis concerning the sale by Rocadis of Yves Saint Laurent products outside its distribution network were still pending before the French courts.

57 It is also not disputed that several other Leclerc Centres have demonstrated their wish to sell Yves Saint Laurent products, as may be seen from the numerous proceedings under national law to which Galec refers in its pleadings.

58 Furthermore, Galec participated in the administrative procedure before the Commission, submitting detailed observations following publication of the notice provided for by Article 19(3) of Regulation No 17 (see paragraph 6 above). In its observations, Galec contended in particular that the Decision would result in its members being precluded from selling Yves Saint Laurent products and invited the Commission to visit the Leclerc Centres that wished to be authorized to sell luxury perfumes, in order to verify the conditions in which luxury products were sold there.

59 By letter of 12 February 1991, the Commission confirmed that Galec's observations would be carefully considered. At the hearing, the Commission stated that it took account of those observations when adopting the Decision. It is not disputed, however, that the Commission essentially approves of the specific features of the Yves Saint Laurent distribution system criticized by Galec during the administrative procedure.

60 The situation in this case is thus not materially different from that underlying the judgment in *Metro II* (paragraphs 21, 22 and 23), in which the Court of Justice held that an operator whose application for admission to a network as an authorized distributor had been refused and who had submitted observations pursuant to Article 19(3) of Regulation No 17 was directly and individually concerned by a Commission decision upholding the criteria which it had criticized in the administrative procedure.

61 Furthermore, the Decision adversely affects Galec's own interests in so far as its objects under its statutes include the negotiation of the Leclerc Centres' supply contracts. Galec is therefore also individually concerned by the Decision in its capacity as negotiator of such supply contracts (see by analogy the judgments in Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219, paragraphs 20 to 25, and *CIRFS and Others*, cited above, paragraph 30).

62 In addition, it is apparent from Galec's statutes, in particular Article 2, that it had implied authority to put forward during the administrative procedure not only its own point of view but also that of its members wishing to belong to the Yves Saint Laurent network. Since those members are potential competitors of the retailers authorized by Yves Saint Laurent, they themselves are 'interested third parties' within the meaning of Article 19(3) of Regulation No 17. It follows that Galec is also individually concerned by the Decision inasmuch as it participated in the administrative procedure in its capacity as representative of its members (see by analogy *AITEC and Others*, paragraphs 60, 61 and 62).

63 As to whether Galec is directly concerned, it is sufficient to note that the Decision left intact all the effects of the Yves Saint Laurent network, thus enabling Yves Saint Laurent to enforce the selection criteria whose lawfulness Galec had contested during the administrative procedure, directly against Galec and its members.

64 In addition, even if Galec itself does not seek to become an authorized Yves Saint Laurent retailer, its purchases of Yves Saint Laurent products are henceforth subject to compliance with the selection criteria whose lawfulness was confirmed by the Decision. It thus has a vested and present interest in challenging the validity of the Decision.

65 Accordingly, the action is admissible.

**Substance**

66 Galec's main ground of challenge is that the cumulative effect of the selection criteria approved in the Decision is to exclude a priori from the Yves Saint Laurent network certain hypermarkets trading under the name É. Leclerc, despite the fact that they would be capable of selling luxury perfumes in proper and

product-enhancing conditions. Around that main ground of challenge, Galec raises in its application three groups of pleas relating to, respectively, a defective statement of reasons, errors of fact and errors of law. Those pleas overlap and comprise, in essence, the following four main contentions: (a) the Decision is vitiated by a defective statement of reasons and/or manifest errors of fact inasmuch as the enhancement methods used in hypermarkets and supermarkets (hereinafter 'large retailers') are regarded in the Decision as inappropriate for selling luxury perfumes; (b) it is vitiated by a defective statement of reasons and/or manifest errors of fact concerning consumer needs and expectations; (c) it is vitiated by errors of law and/or a defective statement of reasons inasmuch as the Commission decided that the criteria summarized in Paragraph II. A.5 are not covered by Article 85(1) of the Treaty; and (d) it is vitiated by errors of law and/or manifest errors of fact and/or a defective statement of reasons in its application of Article 85(3) of the Treaty.

67 It is appropriate to examine first the validity of the Decision with regard to Article 85(1) of the Treaty, bringing together all the pleas and arguments of the parties relating thereto, and then its validity with regard to Article 85(3) of the Treaty.

## I — *Validity of the Decision with regard to Article 85(1) of the Treaty*

### *Summary of the arguments of the parties*

#### Galec's arguments

68 Galec explains first that it sells, through its members operating under the name É. Leclerc, a large number of luxury products (hi-fi equipment, fine wines, jewellery, clocks and watches, cameras, luxury textiles etc.) in perfectly suitable conditions and that it accepts the need for a system based on the concept of 'luxury

selectivity' in order to preserve the prestige of luxury products and meet consumer expectations. It also accepts that not all the shops operating under the name É. Leclerc are suited to such a form of marketing. Some large hypermarkets or supermarkets operating under that name, however, already practise luxury selectivity, by means of particular techniques such as setting aside a specific location in the shop or fitting out a specialized area within the sales area, where appropriate with a further shop-name (for example 'Éole'). Such shops are or can be made suited to the sale of luxury cosmetics, as shown in particular by the photographs, annexed to the application, of 'beauty and health' areas in certain Leclerc Centres.

69 Large retailers are, however, automatically excluded from the Yves Saint Laurent network by the cumulative effect of the selection criteria approved in the Decision, in particular those relating to the immediate vicinity, that is to say the assessment of the 'quarter', the 'streets' or the 'shops in the neighbourhood' (Paragraph I.1(a) of the conditions of sale), to the 'façade' with 'shop-windows', the 'decoration', the general lay-out of the entire sales area and the other factors to be taken into consideration specified in Paragraph I.1(b) of the conditions of sale, to the offering for sale of other products 'the proximity of which might damage the Yves Saint Laurent brand name' and to the carrying-on in the retail outlet of activities other than perfumery which, under Paragraph I.1(d) of the conditions of sale, must be assessed by reference to their scale, their external presentation, their separation from the perfumery-related activity and the personal appearance and dress of the staff assigned to each activity.

70 For Galec, the most arbitrary criterion and the one which gives most scope for discretion is that of the shop-name. The name É. Leclerc encompasses a very wide variety of retail outlets and, even if some outlets trading under that name cannot aspire to sell luxury products, the Commission failed to take account of the possibility that others may meet the requisite objective criteria for their sale.

71 It follows that, contrary to the principles applied by the Court of Justice in its judgments in *Metro I*, *Metro II*, and *L'Oréal*, cited above, and in Case 99/79 *Lancôme* v *Etos* [1980] ECR 2511, the selective distribution system at issue excludes new forms of trading by the use of criteria which are not objective, uniform, applied in a non-discriminatory fashion or proportionate to what is necessary. Moreover, the criteria set out in the Decision have eliminated a 'particular form of trading', contrary to the case-law of the Court of Justice in *Metro I* (paragraphs 20 and 50), *Metro II* (paragraph 34) and *AEG* (paragraphs 36 and 73).

72 According to Galec, either the Decision implies that only certain types of large retailer such as department stores — for instance Le Printemps or Galeries Lafayette — may be admitted to the network, which would be borne out by the report of Professor Weber referred to in Section I. B of the Decision and by the arguments advanced by Yves Saint Laurent in its statement in intervention, or else the criteria approved by the Commission require large retailers to do much more than make some adjustment to their marketing methods. To comply with those criteria, for instance being located in certain streets where the shops are in keeping with the prestige of the brand name, achieving a material separation of the perfumery activity from other activities, dressing all the staff in the sales area in appropriate attire, not having too many 'non-luxury' activities or having shops with windows, large retailers would have to give up their marketing methods entirely.

73 As regards the statement of reasons in the Decision, Galec takes the view that, in a decision involving issues of principle as in this case, the reasoning should have been particularly full. The Commission did not give adequate reasons for its assertion that the notified criteria — which, according to Galec, exclude all forms of trading other than the specialist retailer — do not restrict competition for the purposes of Article 85(1) of the Treaty. The Commission referred to the judgments in *Metro I*, *AEG*, *Lancôme* and *L'Oréal* and transferred to the protection of the brand image of luxury products criteria that until now have been reserved for 'technical' selectivity, but without giving reasons for its decision in the manner required by those judgments.

74 Furthermore, the judgments in *L'Oréal*, *Lancôme* and *Metro* require the Commission to assess the restrictive nature of agreements in relation to the economic context. Since the Commission knew that all 'brand-name perfumers' adopt the same method of exclusive distribution, it should have produced a statement of reasons covering the cumulative effect of networks, in particular because it was approving, as a matter of principle, an absolute blanket exclusion of an entire form of trading from the sale of the products at issue.

75 The Commission further failed to give adequate reasons for the Decision in that it did not take account of the observations submitted by Galec during the administrative procedure to the effect that luxury products are today sold by large retailers in perfectly suitable conditions. In the course of the past decade, large retailers have utterly transformed their marketing methods and have succeeded not only in protecting the brand image attaching to technically advanced or luxury products but also in being competitive in terms of the image of those products.

76 Moreover, the Commission failed to give reasons for its view on consumer expectations in relation to the trading names of large retailers. The consumers of today expect a wide choice of luxury products and respond spontaneously on such choice being made available to them. The Commission counters that verifiable observation solely with statements, unsupported by any reasoning, that certain shop-names are inherently — and permanently — down-market (fourth subparagraph of Paragraph II. A.5 of the Decision) and that in their minds consumers associate their requirement for an 'image of exclusivity and prestige' solely with exclusive distribution by specialist retailers (first subparagraph of Paragraph II. B.2). Those statements are not substantiated by any survey, analysis of public opinion or statistical study, so that the Commission has not enabled the Court to check the pertinence of that portrait of the average consumer.

77 As regards the errors of fact in the Decision, Galec contends that, for the reasons already set out, the Commission failed to take account of the ability of large retailers to sell luxury perfumes in satisfactory conditions. In addition, the Commission patently misjudged customer motivation by stating in the second subparagraph of Paragraph II. B.3 of the Decision that 'the distribution system notified allows the exclusive character of the contract products to be safeguarded, such exclusive character being the main reason why consumers choose them'. Such reasoning 'belongs to the past' and is attributed to consumers without the slightest proof.

78 The truth is that as soon as large retailers manage to market luxury perfumes, they are met by substantial spontaneous demand from consumers, seeking luxury and a chance to dream but not necessarily the price that is asked in a closed network. In particular, there is a category of consumers — often relatively young, well-off, sophisticated and keen on novelties and prestige brands — who prefer to make their purchases, including all 'top of the range' articles, from large retailers, but whose existence the Commission denies.

79 In addition, changes in retailing have fundamentally altered consumer perception of shop-names. It is thus wrong to assume that consumers still have a uniform and down-market vision of large retailers or that sale by a large retailer transforms every luxury product into an everyday product. The Commission was fully aware of that development but did not take it into account, which amounts to a manifest error of assessment (see the judgment in *AEG*, paragraphs 74 and 75).

80 As regards the errors of law, Galec contends that the Commission infringed Community law by deciding that the criteria summarized in Paragraph II. A.5 of the Decision, in particular those relating to the presence of qualified staff, the location,

the aesthetic qualities and the name of the retail outlet, other activities in the shop and the relative importance of the Yves Saint Laurent brand compared with competing brands, do not fall within the scope of the prohibition in Article 85(1) of the Treaty.

81 In finding that such criteria, which, according to Galec, rule out some potential retailers 'a priori', were legitimate, the Commission offended against the principle that restrictions placed on the distribution of products must be proportionate and the principle that quantitative restrictions are prima facie unlawful (see, in particular, the judgments in *Metro I*, *Metro II*, *L'Oréal* and *AEG*). The restrictions go beyond what is necessary in the light of the characteristics of the products at issue, the need to protect their quality, and their proper use.

82 The Commission also infringed Community law by failing to assess in their context the evident restrictions resulting from the Yves Saint Laurent network (see *Metro II*, paragraph 40). In its defence, the Commission claimed that the relevant market was the 'cosmetic products' market, while both in the Decision and elsewhere in its defence it stated that the luxury perfume market constituted a specific and autonomous market. Contrary to the Commission's contentions, there is no doubt that the cumulative effect of similar networks is to eliminate large retailers from the luxury perfume market, which is the relevant market in this case.

The Commission's arguments

83 The Commission submits that in the Decision it did not express an opinion on whether some Leclerc Centres could comply with the criteria notified by Yves Saint Laurent, but examined the content, effects and lawfulness of those criteria under Community law. Besides, the Decision does not exclude any form of trading a priori. It is stated in the Decision, first, that those criteria 'are not in themselves

such as to exclude certain modern forms of distribution such as department stores' (end of the fifth subparagraph of Paragraph II. A.5) and, secondly, that certain modern forms of distribution may satisfy the selection criteria by changing their trading methods (fourth subparagraph of Paragraph II. B.5). At the hearing, the Commission's representative confirmed that the Decision did not exclude a priori any form of distribution of the 'supermarket type' in the luxury cosmetic sector and that the term 'department stores' (*'grands magasins'* in the French version) in the fifth subparagraph of Paragraph II. A.5 and the fourth subparagraph of Paragraph II. B.5 of the Decision had to be interpreted as encompassing hypermarkets.

84 Galec's assertion that the requisite criteria can be met only by specialist town-centre retailers is incorrect; both central and suburban districts have shops other than specialist retailers. Nor is the requirement that outlets be in keeping with the prestige and renown of the brand name necessarily inappropriate to large retailers since, judging by the photographs produced by Galec, some of its own shops are capable of providing internal decoration suitable for marketing prestige brands.

85 The need for the criterion relating to the shop-name is particularly clear when one considers that it enables certain names with an obviously down-market image to be excluded. Indeed, one of the enhancement methods used by Leclerc Centres for the sale of luxury cosmetic products consists of giving them ancillary premises and a further name, for example 'Éole'. Furthermore, it is stated in the Decision that the down-market nature of a shop-name cannot be deduced from a retailer's habitual policy on prices (end of the fourth subparagraph of Paragraph II. A.5).

86 Galec's argument that large retailers can meet the criteria at issue only if they radically change their marketing methods thus does not accord at all with the Commission's position. Those criteria may require only a partial modification of

the particular marketing methods adopted by certain modern forms of retailing, the extent of modification depending on a case-by-case assessment.

87 The statement of reasons in the Decision is clear and complete, in particular in Paragraph II. A.5. Furthermore, it is clear from the judgments in *Lancôme* and *L'Oréal* and from Commission Decision 85/616/EEC of 16 December 1985 relating to a proceeding pursuant to Article 85 of the EEC Treaty (IV/30.665 — Villeroy & Boch) (OJ 1985 L 376, p. 15) that there was nothing novel in considering that preservation of the prestige image of a product may justify qualitative criteria relating to a retailer's professional qualifications and premises. Nor did the Commission fail to take account of the cumulative effect of selective distribution systems, as is clear from Paragraph II. A.8 of the Decision.

88 The Commission contends that, while consumers of luxury products may be attracted in the short term by lower prices, the essential appeal for them is the assurance that the products will not become commonplace products as a result of their image being robbed of its distinctiveness, and of the reduction in creativity which would result in the long term from lower prices. Furthermore, according to Section I. D of the Decision, the observations of consumer associations which the Commission took into consideration indicated that consumers wished luxury perfumery products to be sold only in high-quality retail outlets and by qualified staff.

89 The Commission denies having expressed any opinion as to the suitability of large retailers to sell Yves Saint Laurent products. If some of their shops are capable of satisfying the criteria required by the selective distribution of luxury perfumes, that is a matter which simply calls for verification in each individual case, in the first place by Yves Saint Laurent and not the Commission. The Decision does not state that the sale of luxury products by large retailers renders them commonplace.

90 Finally, as regards Article 85(1) of the Treaty, the Commission takes the view that the criteria considered in Paragraph II. A.5 of the Decision are patently objective criteria of a qualitative nature of the kind described in the judgment in *Metro I*, and that they are laid down in a uniform and non-discriminatory manner, since they do not exclude any retailer capable of satisfying them. Moreover, the Commission stated that those criteria were not to be applied in a discriminatory fashion, which is a question of practice and not an assessment of the criteria as such. Nor do the criteria agreed offend against the principle of proportionality, since they are necessary to maintain the aura of prestige and exclusivity which distinguishes the products at issue from other similar products and to preserve the image of a prestige brand name.

91 Paragraph 40 of the judgment in *Metro II* is not relevant, because that judgment was concerned with a situation in which there was no longer any form of distribution apart from selective networks and price rigidity was not counterbalanced by genuine competition between brands. That is not the situation in the cosmetic products market, where there is a wide range of both producers and distributors and the proportion of all cosmetic products marketed by authorized distributor networks varies from only 22.4% in the United Kingdom to 36.2% in Italy. Consumers can thus buy other perfumes at lower prices outside the selective distribution networks and there is genuine competition between competing brands of luxury perfume and between luxury products with the same brand name.

Arguments of the interveners

92 Since the interveners have expounded at length arguments similar to those of the Commission, only the following points need to be set out.

93 According to Yves Saint Laurent, the action is based on an incorrect assumption. The Commission neither legitimated the a priori exclusion of a form of trading nor accepted that town-centre specialist retailers could enjoy exclusivity. On the contrary, it concerned itself in the Decision with checking that the distribution system was open to all forms of distribution and did not exclude any a priori (Paragraph II. B.5).

94 The Yves Saint Laurent network in fact includes, apart from specialist perfumeries, department store chains (in Germany, France, Italy, the United Kingdom, Greece, Spain and Belgium), and, in all the Member States, retail outlets specializing in a variety of products, in particular perfumes and household products (the United Kingdom, the Netherlands, Germany and Denmark), perfumes and pharmaceutical products (France, Italy, Spain, Portugal), perfumes and clothing (Spain, Portugal), 'Boots', a chain specializing in a variety of products in the United Kingdom, and modern chains of large perfumeries, in particular in Germany, Belgium, the Netherlands, Italy and France. 99.6% of sales in the United Kingdom and 75% of sales in Denmark take place in non-specialist retail outlets. In France, Spain and the Netherlands, that proportion varies between 20% and 40%. Also, the maps produced by Yves Saint Laurent show retail outlets outside town centres.

95 As regards the analysis of the motivation and expectations of consumers, the Commission's assessment is also confirmed by other studies annexed to Yves Saint Laurent's statement in intervention, namely those carried out by Professor Glais, the American magazine *Mademoiselle* and Professor Thoenig, from which it appears that consumers attach importance to a product's brand name, that their main reason for buying a luxury product relates to the prestige of that product and that they favour a distribution system which safeguards the product's prestigious image. In contrast, Galec's contention that the Commission analysis reflects a particularly obsolete and outdated view of the motivating factors for consumers is not substantiated by any study or market survey.

96 As to the need for a selective distribution system, Yves Saint Laurent points out that, while the Commission concerned itself with the prestige and renown of the Yves Saint Laurent brand name, it also took account of the characteristics of the products, in particular the quality of the raw materials used, research and development procedures and packaging materials (Paragraph II. A.5). For example, approximately three years are needed to develop a new product up to its industrial manufacture, and different formulae are studied each year by Yves Saint Laurent's permanent research and development centre. More than 5 000 raw materials, many of which are rare, sophisticated and costly, are used and many trials are needed. The originality, sophistication and high quality of those products, in conjunction with the prestige and renown of the brand names under which they are sold, thus justify selective distribution, failing which they will suffer the same fate as Coty perfumes, which disappeared from the market because of an inappropriate match between product quality and an approach to distribution which did not meet consumer expectations.

97 As regards Article 85(1) of the Treaty, the criterion relating to professional qualifications is necessary in order to meet consumer expectations and because the products are technical in nature and involve significant research. The outlet's external surroundings also constitute an objective criterion, which is necessary to enhance the image of the outlet itself and the product sold but does not rule out any form of distribution. The appearance of the outlet, its layout and shop window provide a 'showcase' for the product and must be consistent with its image. The shop-name is also an objective selection criterion which can conjure up a positive, negative or neutral image in terms of staff qualifications, service and helpfulness, reflecting on the products sold. Lastly, the requisite physical separation between the cosmetics counters of non-specialist retail outlets and the counters given over to everyday consumables does not restrict competition or preclude entry into the network of non-specialist forms of trading. Moreover, it reflects a specific expectation of manufacturers and consumers, namely that the purchase of luxury products is not to be confused with the purchase of everyday consumables such as foodstuffs.

98 Finally, the evaluation report for retail outlets (paragraph 16 above) shows that the procedure for admission into the network is carried out on an objective and

uniform basis. The applicant retailer is aware of the evaluation and may ask for a second evaluation. Any disputes may be brought before the national courts. In order to determine whether a shop-name may have a down-market image, Yves Saint Laurent relies on consumer surveys carried out by independent bodies. It annexes to its statement of intervention the list of questions stipulated for those surveys and points out that the results are sent to the undertaking concerned, which is free to challenge them.

99 Colipa notes first that the Decision refers to the report of Professor Weber, which accords with Colipa's own knowledge of the market. That report shows that the Community market in cosmetic products is segmented and that the segmentation is accompanied by differences in distribution methods, depending on the sector considered. That report is consistent with the conclusions of the Commission, in particular in Paragraph II. B.3, that, although luxury cosmetic products and similar products falling within other market segments can to some extent be substituted for each other in the minds of consumers, consumers who regard as secondary the brand image or the services associated with sale within selective distribution systems may purchase articles in an adjacent market which does not use such systems.

100 Furthermore, Professor Weber's report confirms that there is a large number of producers and distributors operating in the luxury cosmetic products market, under dynamic and highly competitive conditions, and that the number of new entrants in the market is also high. In addition, producers must constantly research and develop new products and develop and maintain a marketing policy appropriate to the image of a prestige brand name. The Commission's assessment of the competitive context of the notified contracts in the Decision was therefore correct. Galec's contention that large retailers are excluded by those contracts is not substantiated by any economic analysis or other evidence.

101 Colipa then points out the legal principles that apply to selective distribution, which it derives in particular from an analysis of the case-law of the Court of Justice, as well as from the 'free rider' principle in American law and the 'Immanenztheorie' in German law, and takes the view that that form of distribution is fully justified for luxury cosmetics, as has been recognized by the Court of Justice, in particular in its judgments in *L'Oréal* and *Lancôme*, cited above, and by Advocate General Reischl in Joined Cases 253/78, 1/79, 2/79 and 3/79 *Procureur de la République and Others* v *Giry and Guerlain and Others* [1980] ECR 2327, at p. 2377.

102 That economic approach, based on the rule of reason, recognizes that competition based on factors other than price has advantages, having regard in particular to the substantial investment that is necessary and the need to avoid 'parasite' retailers living at the expense of those who accept the economic constraints of the manufacturer's commercial policy. Nor is competition eliminated in the market in question, because the selective distribution at issue exists alongside different methods accounting, in this case, for more than 50% of the products of the European perfumery industry.

103 The parallel existence of other selective distribution networks is relevant only in so far as it constitutes a barrier to access to the market (see Case C-234/89 *Delimitis* v *Henninger Bräu* [1991] ECR I-935), does not leave any room for other forms of distribution centred round a different kind of competition policy, or results in a rigidity in price structure which is not counterbalanced by other competitive factors (*Metro II*), which is not the case here. On the contrary, no modern form of distribution is necessarily precluded from admission to the network and, to be admitted, Galec needed only to apply for authorized status and meet the selection criteria.

104 At the hearing, Colipa also relied on the Monopolies and Mergers Commission report *Fine Fragrances — A Report on the Supply in the UK for Retail Sale of Fine Fragrances* (Cm 2380, November 1993), according to which selective distribution

in the luxury cosmetics sector is not contrary to the public interest within the meaning of the Fair Trading Act 1973. Colipa also pointed out that in several Member States luxury cosmetic products are sold through selective distribution networks in 'non-specialist' or 'multiple-product' shops such as Boots in the United Kingdom, Matas in Denmark, Sephora in France, Müller in Germany and so forth.

105 FIP contends that the intangible element of any luxury product is essential and the atmosphere created around any prestige service paramount, because the reputation of the brand name and, therefore, its success, are in the hands of its retailers, who are its shop-window for consumers. In that respect, authorized retailers offer consumers a number of assurances: that the complete range, or a sufficient choice including the brand's most recent new products, will be displayed, that advice will be given by competent staff trained by the manufacturer, that a guarantee and after-sales service will be provided and that the sales environment will make the purchase an evocative moment of pleasure. However, the symbolic forces which make and break luxury can be shattered if prestige products are marketed in unsuitable conditions, or in a product environment (for example with foodstuffs and cleaning products) which may detract from the prestige image of the brand concerned, such as that which led to the demise of Coty perfumes when its brand name became commonplace. It is particularly important to maintain the brand image in the eyes of consumers because, compared with the intrinsic cost of the raw materials, the manufacturer invests considerable sums in developing new products, in quality control and in advertising, which can amount to as much as 30% of a brand's turnover figures.

106 In that context, FIP takes the view that the qualitative obligations at issue, including those relating to the shop-name, are indispensable in order to maintain the manufacturer's brand image and ensure better advice to consumers, even if those requirements may lead to some retailers being refused admission to the network. In this case, the Commission observed the case-law of the Court of Justice scrupulously and did not in any way accept the a priori exclusion of a particular form of distribution.

107 FEPD contends, first, that the usefulness of selective distribution, which is recognized by manufacturers, retailers and consumers and confirmed by the case-law of the Court of Justice, is clear from its purpose: to preserve the coherence and the image of a network distributing luxury and high quality products in order to provide consumers with a better service and to satisfy certain of their specific needs. When consumers purchase high quality products, they expect to receive appropriate advice in an environment which favours product choice. In this case, the amendments to the contracts secured by the Commission set a threshold below which there would no longer be any selective distribution of luxury perfumes because, if the requirements were less exacting, any retailer could meet them.

108 In that context, specialist retail businesses devote sufficient effort and have the necessary qualities to satisfy consumer needs, in particular on account of their structure, specialization, premises and geographical spread. They are for the most part undertakings of modest size with flexible decision-making processes and appropriate knowledge and premises for the sale of the products in question, which is necessary in order to build a loyal customer base. The outlets are not restricted to specialist town-centre retailers, but are located both in town centres and in peripheral or suburban areas, including malls of shopping centres and hypermarkets. Those arguments are substantiated by Professor Glais's report, from which it appears in particular that the advice available in specialist shops is given a high enhancement value.

109 Galec's aim in bringing this action is to secure a lowering of the level of selectivity of the requisite criteria to that of the premises from which the Leclerc Centres currently trade, which would drive specialist retailers out of business, frustrate consumers, and compel producers to scale down their research, innovation and public relations activities to a point where the luxury element in the products disappeared. Galec alone is responsible for the exclusion to which it claims to be subject, by its refusal to accept coherent and pertinent admission criteria. It is not excluded a priori but needs only to adjust its methods to accord with the nature of the products at issue, and that does not require a radical change in the marketing methods of Leclerc Centres.

*Findings of the Court*

110 The assessment of the validity of the Decision in so far as it applies Article 85(1) of the Treaty raises four main questions: (A) whether selective distribution based on qualitative criteria in the luxury cosmetics sector is compatible in principle with Article 85(1) of the Treaty; (B) whether Yves Saint Laurent's selection criteria referred to in Paragraph II. A.5 of the Decision fulfil the conditions necessary for them to be regarded as lawful under Article 85(1) of the Treaty; (C) whether Galec's pleas and arguments relating to whether its members are excluded a priori from the Yves Saint Laurent network and to consumer attitudes in that regard are well founded; and (D) whether Article 85(1) of the Treaty applies because there are parallel networks in the relevant sector.

A — Whether a selective distribution system based on qualitative criteria in the luxury cosmetics sector is compatible in principle with Article 85(1) of the Treaty

111 Although Galec states that it accepts the need for a system based on the concept of 'luxury selectivity' in order to preserve the prestige of luxury products and meet consumer expectations, it nevertheless challenges the lawfulness of Yves Saint Laurent's selection criteria in the light of Article 85(1) of the Treaty. Accordingly, it is necessary first to examine the basic legal principles governing the application of Article 85(1) in the luxury cosmetics sector.

112 According to the case-law of the Court of Justice, selective distribution systems constitute an element of competition which is in conformity with Article 85(1) of the Treaty if four conditions are satisfied: first, that the characteristics of the product in question necessitate a selective distribution system, in the sense that

such a system constitutes a legitimate requirement having regard to the nature of the product concerned, in particular its high quality or technical sophistication, in order to preserve its quality and ensure its proper use (see *L'Oréal*, cited above, paragraph 16, interpreted in the light of *Metro I*, paragraphs 20 and 21, of *AEG*, cited above, paragraph 33, and of Case T-19/91 *Vichy* v *Commission* [1992] ECR II-415, paragraphs 69, 70 and 71); secondly, that resellers are chosen on the basis of objective criteria of a qualitative nature which are laid down uniformly for all potential resellers and are not applied in a discriminatory fashion (see, for example, *Metro I*, paragraph 20, *L'Oréal*, paragraph 15, and *AEG*, paragraph 35); thirdly, that the system in question seeks to achieve a result which enhances competition and thus counterbalances the restriction of competition inherent in selective distribution systems, in particular as regards price (see *Metro I*, paragraphs 20, 21 and 22, *AEG*, paragraphs 33, 34 and 73, and *Metro II*, paragraph 45); and, fourthly, that the criteria laid down do not go beyond what is necessary (see *L'Oréal*, paragraph 16, and *Vichy*, paragraphs 69, 70 and 71). The question whether those conditions are fulfilled must be assessed objectively, taking account of the interests of consumers (see *Metro I*, paragraph 21, and *Vichy*, paragraphs 69, 70, and 71).

113 While the Court of Justice has held in particular that such selective distribution systems based on qualitative criteria may be accepted in the sector covering production of high-quality and technically advanced consumer durables without infringing Article 85(1) of the Treaty, in particular in order to maintain a specialist trade capable of providing specific services for such products (see *Metro I*, paragraph 20, *AEG*, paragraph 33, *Metro II*, paragraph 54, and Case 31/85 *ETA* v *DK Investment* [1985] ECR 3933, paragraph 16), it is also apparent from its case-law that selective distribution systems which are justified by the specific nature of the products or the requirements for their distribution may be established in other economic sectors without infringing Article 85(1) (see Case 243/83 *Binon* v *AMP* [1985] ECR 2015, paragraphs 31 and 32, and Case 126/80 *Salonia* v *Poidomani and Giglio* [1981] ECR 1563). Likewise, the Court of Justice held in *Metro I* (paragraph 20) that the nature and intensiveness of the 'workable competition' necessary to attain the objectives of the Treaty could vary to an extent dictated by the products or services in question and the economic structure of the relevant market sectors, without offending against the principle in Articles 3 and 85 of the Treaty that competition is not to be distorted.

114 It is common ground, first, that luxury cosmetics, and in particular the luxury perfumes which constitute the bulk of the products at issue, are sophisticated and high-quality products which are the result of meticulous research, and which use materials of high quality, in particular in their presentation and packaging; secondly, that those products enjoy a 'luxury image' which distinguishes them from other similar products lacking such an image; and, thirdly, that that luxury image is important in the eyes of consumers, who appreciate the opportunity of purchasing luxury cosmetics, and luxury perfumes in particular. There is, in consumers' minds, only a low degree of substitutability between luxury cosmetic products and similar products falling within other segments of the sector (see Paragraph II. A.8 of the Decision).

115 Accordingly, the Court considers that the concept of the 'characteristics' of luxury cosmetics, within the meaning of the judgment in *L'Oréal*, cannot be limited to their material characteristics but also encompasses the specific perception that consumers have of them, in particular their 'aura of luxury'. This case is therefore concerned with products which, on the one hand, are of a high intrinsic quality and, on the other, have a luxury character arising from their very nature.

116 As to whether selective distribution constitutes a legitimate requirement in the case of products possessing such characteristics, the Court notes that the reasoning in the Decision on that point (Section II. A) is not based on the concept of a specialist trade capable of providing specific services for technically advanced products, as referred to in the judgments in *Metro I*, *Metro II* and *AEG*, but rather on two other principal considerations, namely (a) Yves Saint Laurent's interest as a producer of luxury cosmetic products in preserving its prestige brand image and safeguarding the fruits of its promotion activities (see the second and fourth subparagraphs of Paragraph II. A.5 of the Decision and, to like effect, Paragraph II. B.2) and (b) the need to safeguard, in the consumer's mind, the 'aura of exclusivity and prestige' of the products at issue, in particular by ensuring 'appropriate marketing that brings out the specific aesthetic or function quality' of the products (second subparagraph of Paragraph II. A.5) and 'a setting that is in line with the luxurious

and exclusive nature of the products and a presentation which reflects the ... brand image' (fourth subparagraph of Paragraph II. A.5; see also the fifth and sixth subparagraphs).

117 Although a producer is free to choose his own marketing policy, Article 85(1) of the Treaty must be taken into account where implementation of that policy results in agreements which impose on other independent economic operators obligations capable of restricting their freedom to compete to an extent that appreciably affects intra-Community trade. Accordingly, the mere fact that a producer has made significant efforts to promote his products does not in itself constitute an objective justification capable of rendering Article 85(1) inapplicable to a distribution network which limits the freedom to compete of participating undertakings and third parties. Were it otherwise, any manufacturer could justify the adoption of a selective distribution system simply on the basis of his promotion efforts, and any restrictive selection criterion at all could be justified on the ground that it was necessary in order to protect the marketing policy desired by the manufacturer (see *Vichy*, paragraph 71).

118 A selective distribution system thus falls outside the scope of Article 85(1) of the Treaty only if it is objectively justified, account being also taken of the interests of consumers (see the end of paragraph 112 above).

119 It is in the interests of consumers seeking to purchase luxury cosmetics that such products are appropriately presented in retail outlets. Since they are high-quality products whose luxury image is appreciated by consumers, criteria which seek only to ensure that they are presented in an enhancing manner pursue an objective which improves competition by preserving that luxury image and thus counterbalances the restriction of competition inherent in selective distribution systems. Such criteria thus constitute a legitimate requirement for the purposes of the case-law cited above (see *Metro I*, paragraph 37).

120 In that regard, the Court considers that it is in the interests of consumers seeking to purchase luxury cosmetics that the luxury image of such products is not tarnished, as they would otherwise no longer be regarded as luxury products. The current segmentation of the cosmetics sector between luxury and non-luxury cosmetics reflects the varying needs of consumers and thus is not improper in economic terms. Although the 'luxury' nature of luxury cosmetics also derives, *inter alia*, from their high intrinsic quality, their higher price and manufacturers' advertising campaigns, the fact that they are sold through selective distribution systems which seek to ensure that they are presented in retail outlets in an enhancing manner also contributes to that luxury image and thus to the preservation of one of the main characteristics of the products which consumers seek to purchase. Generalized distribution of the products at issue, as a result of which Yves Saint Laurent would have no opportunity of ensuring that its products were sold in appropriate conditions, would entail the risk of deterioration in product presentation in retail outlets which could harm the 'luxury image' and thus the very character of the products. Consequently, criteria aimed at ensuring that the products are presented in retail outlets in a manner which is in keeping with their luxury nature constitute a legitimate requirement of such a kind as to enhance competition in the interests of consumers within the meaning of the case-law cited above.

121 That conclusion is not invalidated by the fact, established in the course of these proceedings, that in certain Member States, in particular the Netherlands but also the United Kingdom and France, a greater or lesser proportion of sales is by unauthorized distributors who obtain their supplies on the parallel market. It cannot be ruled out that consumers' interest in such sales has resulted in part from the luxury image whose preservation is due at least partly to selective distribution. It therefore does not follow that that luxury image would remain intact if there were no selective distribution.

122 However, while it is in the interests of consumers to be able to obtain luxury cosmetics which are suitably presented for sale and to ensure that their luxury image is preserved in that way, it is also in their interests that distribution systems founded on that consideration are not applied too restrictively and, in particular, that access to the products is not limited inordinately, as contended during the

administrative procedure by the four consumer associations (see paragraph 175 below). Also, it is clear from the case-law of the Court of Justice that Yves Saint Laurent's system cannot be regarded as pursuing a legitimate objective counterbalancing the restriction of competition inherent in that system unless it is open to all potential retailers who are capable of ensuring that the products will be well presented to consumers in an appropriate setting and of preserving the luxury image of the products concerned (see paragraph 112 above). A selective distribution system which resulted in the exclusion of certain forms of marketing capable of being used to sell products in enhancing conditions, for example in a space or area adapted for that purpose, would simply protect existing forms of trading from competition from new operators and would therefore be inconsistent with Article 85(1) of the Treaty (see *AEG*, paragraphs 74 and 75).

123 It follows that, in the luxury cosmetics sector, qualitative criteria for the selection of retailers which do not go beyond what is necessary to ensure that those products are suitably presented for sale are in principle not covered by Article 85(1) of the Treaty, in so far as they are objective, laid down uniformly for all potential retailers and not applied in a discriminatory fashion.

B — Whether Yves Saint Laurent's selection criteria referred to in Paragraph II. A.5 of the Decision fulfil the conditions necessary for them to be regarded as lawful under Article 85(1)

1. The respective roles of the Court and of the competent national courts and authorities

124 Galec considers that some of Yves Saint Laurent's selection criteria allow Yves Saint Laurent a discretion that is excessive and not capable of review and that they are therefore not objective within the meaning of the case-law of the Court of

Justice. The Commission and the interveners take the view that those criteria result in a case-by-case assessment by the manufacturer which is subject to compliance with the principle of non-discrimination and to review by the competent courts.

125 In view of those arguments, the respective roles of this Court and of the competent national courts or authorities must be made clear.

126 Review by the Court under Article 173 of the Treaty of whether the criteria at issue fulfil the conditions necessary for them to be regarded as lawful under Article 85(1) of the Treaty, that is to say whether they are qualitative and objective and not discriminatory or disproportionate, is limited to establishing whether the Commission's findings in Paragraph II. A.5 of the Decision are vitiated by a defective statement of reasons, a manifest error of fact or of law, a manifest error of assessment or a misuse of powers. It is not for this Court to rule on the application of those criteria in specific cases.

127 However, as the Commission and Yves Saint Laurent have rightly pointed out, the application of those criteria in specific cases is not solely a matter for the manufacturer's discretion but must be determined objectively. For the Yves Saint Laurent network to be lawful under Article 85(1), an essential element is thus the possibility of obtaining independent and effective review of the application of those criteria in specific cases (see Paragraph II. A.6(a) and the fourth subparagraph of Paragraph II. B.4 of the Decision).

128 It is settled law that national courts are competent to apply Article 85(1) of the Treaty because it has direct effect (see Case 127/73 *BRT* v *Commission* [1974] ECR 51, paragraphs 15 and 16). An applicant refused admission to the network who considers that the criteria at issue have been applied to him in a manner inconsistent with Article 85(1), in particular in a discriminatory or disproportionate

fashion, may therefore bring a case before the competent national courts. Such a case may also be brought, where appropriate, before the national authorities responsible for the application of Article 85(1).

129 It is accordingly for the competent national courts or authorities to which such a case is referred to decide, in the light of the case-law of the Court of Justice and this Court where relevant, whether in a specific case Yves Saint Laurent's selection criteria have been applied in a discriminatory or disproportionate fashion, thus infringing Article 85(1). Those national courts or authorities are responsible in particular for ensuring that the criteria at issue are not used to prevent new operators capable of selling the products in question in conditions which do not detract from their image from gaining admission to the network.

130 In addition, an applicant refused admission to the network may, subject to the principles laid down by this Court in Case T-24/90 *Automec* v *Commission* [1992] ECR II-2223, submit a complaint to the Commission under Article 3 of Regulation No 17, in particular if the conditions for admission are systematically used in a manner incompatible with Community law (see *AEG*, paragraphs 44, 45 and 46, and 67 et seq.).

2. The lawfulness in principle of the criteria at issue under Article 85(1) of the Treaty

(a) The criteria relating to professional qualifications

131 In its pleadings, Galec has not challenged the criteria in Paragraphs I.2 and I.3 of the General Conditions of Sale relating to the professional qualifications of staff and a consulting and demonstration service (see paragraph 25 of its observations

on the statements in intervention), but it submitted at the hearing that those criteria were disproportionate in relation to the demands of selling the products in question in appropriate conditions.

132 The Court finds that having a person in the retail outlet capable of giving consumers appropriate advice or information is in principle a legitimate requirement for the sale of luxury cosmetics and an integral element in the proper presentation of those products.

133 As for the remaining aspects, Galec has not adduced any evidence that enables the Court to decide whether the qualifications required by Paragraph I.3 of the General Conditions of Sale, namely either a beauty diploma or an equivalent professional qualification, or at least three years' experience in selling prestige perfumery products, are disproportionate having regard to the nature of the products concerned.

134 In any event, it is for the competent national courts or authorities to ensure that the provisions in the Contract relating to professional qualifications are not applied in a discriminatory or disproportionate fashion in specific cases.

(b) The criteria relating to the location and fittings of the retail outlet

135 Galec criticizes in particular the criteria regarding the 'area surrounding' the retail outlet, its external appearance, in particular its shop windows, and the sale of other goods in it. According to Galec, those criteria are too subjective, they are disproportionate and they discriminate against its members.

— The 'area surrounding' the retail outlet and its location

136 Paragraph I.1(a) of the General Conditions of Sale provides: 'The quarter, the streets and the shops in the neighbourhood of the Point of Sale must always be well suited to the prestige and the renown of the Yves Saint Laurent brand name.' It is apparent from the first and second headings of the evaluation report that a business located in an area which is 'well served by transport and commercial' or 'central and commercial' and in a street near 'enhancing or luxury' businesses, with buildings which are 'of good standing' or 'very enhancing', is marked higher in Yves Saint Laurent's evaluation than a business located in another area or another street. Those two headings account for 30 points in the evaluation report and thus carry significant weight.

137 The Court finds that a criterion relating to the surroundings of an outlet selling luxury cosmetics is not inherently covered by Article 85(1) of the Treaty inasmuch as its purpose is to ensure that such products are not sold in totally unsuitable premises. It is, however, for the competent national courts or authorities to ensure that that criterion is not applied in a discriminatory or disproportionate fashion in specific cases.

— The external appearance of the retail outlet

138 Galec complains in particular about the provisions in Paragraph I.1(b) of the General Conditions of Sale relating to the quality of the façade and to the shop windows and about the provisions of Paragraph III.4 of the Contract which states that the 'decoration' of the retail outlet is to reflect the standards and quality associated with the Yves Saint Laurent brand image. In the evaluation report, the third and fourth headings relating to the outlet's external appearance, including its shop windows, account for a total of 80 points, that is to say approximately 25% of the possible maximum number of points.

139 The Court finds that such provisions, in particular those relating to the shop windows, lend themselves to being applied in a discriminatory fashion against a retail outlet — such as a hypermarket — which does not have the same façade as a traditional business, in particular a façade including shop windows, but has fitted out a space or area inside a shop in a manner appropriate to the sale of luxury cosmetics. Furthermore, external shop windows do not appear to be necessary for good product presentation in the context of a space or area fitted out inside a 'multiple-product' shop.

140 However, it cannot be ruled out that the criteria relating to shop windows may be interpreted as referring to the 'shop windows' of an area fitted out inside a retail outlet and not to the external shop windows.

141 Accordingly, it is sufficient to hold that it is for the competent national courts or authorities to ensure that the criteria relating to the external appearance of the retail outlet, including those relating to the shop windows, are not applied in a discriminatory or disproportionate fashion.

— The sale of other goods which may detract from the brand image of Yves Saint Laurent

142 The only criticisms regarding the interior of the retail outlet made by Galec before the Court are those relating to the restrictions imposed on the sale of other goods. Galec challenges in particular the lawfulness of Paragraph III.3 of the Contract, which states that the authorized retailer 'is prohibited from offering for sale ... any products the proximity of which might damage the Yves Saint Laurent brand name', and Paragraph I.1(d) of the General Conditions of Sale, according to which if another activity is carried on in the retail outlet, the factors to be taken into consideration include the scale of that activity, its external and internal presenta-

tion, the separation between it and the perfumery-related activity, the distribution of sales staff between it and the perfumery-related activity, the competence of the sales staff assigned to each of the activities and the personal appearance and dress of the sales staff assigned to each of the activities.

143 Neither the Contract nor the evaluation report specify the products which, if sold in the same place, might detract from the brand image of Yves Saint Laurent. In the Decision, the Commission merely states that the purpose of that provision is to safeguard, in the public's mind, the aura of prestige and exclusivity inherent in the products in question, 'thus preventing any association with lower-quality goods' (fifth subparagraph of Paragraph II. A.5).

144 Paragraph III.3 of the Contract thus lacks precision and clarity and lends itself to being applied in a subjective and possibly discriminatory fashion. Also, Paragraph I.1(d) of the General Conditions of Sale seems to grant Yves Saint Laurent a very wide discretion, in particular because it is allowed to assess not only the scale and presentation of other products sold but also the number, competence and personal appearance of the staff assigned to the sale of those products.

145 However, the Commission takes the view that hypermarkets cannot be excluded from the network simply because they sell other goods (see the fifth subparagraph of Paragraph II. A.5 of the Decision and paragraph 164 et seq. below). Nor have the interveners identified the products, with the exception of foodstuffs and cleaning products, whose sale would be such as to detract from the 'image' of cosmetic products.

146 Accordingly, the Decision must be interpreted as meaning that the sale of other goods typically found in a hypermarket is not in itself capable of harming the 'luxury image' of the products at issue, provided that the place or area devoted to the sale of luxury cosmetics is laid out in such a way that they are presented in enhancing conditions. That may require certain other products, such as foodstuffs or cleaning products, not to be sold 'near' the luxury cosmetics, or the sale of luxury cosmetics to be separated sufficiently from the sale of other, lower-quality, products (see the fifth subparagraph of Paragraph II. A.5 of the Decision).

147 In the light of the above, the supervision to be carried out, where difficulties arise, by the competent national courts or authorities counterbalances the lack of clarity in this criterion. It is for them to ensure that it is not applied in a disproportionate or discriminatory fashion.

— The scale of other activities carried on in the retail outlet

148 As regards the criterion relating to shops' other activities, Galec has also criticized in its application the fact that, if another activity is carried on in the retail outlet, the application for authorized status is assessed with regard to the scale of that activity (see Paragraph I.1(d) of the General Conditions of Sale). It is apparent from the eighth heading in Yves Saint Laurent's evaluation report, which is worth 20 points, that if other products occupy more than 40% of the sales area, shelf space or shop windows, the applicant in question receives two points, that is to say an assessment which may contribute to his elimination.

149 Admittedly, that heading is not mentioned in the Decision. It is, however, apparent from the Decision (fifth subparagraph of Paragraph II. A.5) that the Commission decided that Yves Saint Laurent's criteria relating to the scale of other activities carried on in the retail outlet were not covered by Article 85(1) of the Treaty. Since

the evaluation report is an integral part of the procedure for admission to the network to which the Decision relates, as Yves Saint Laurent has itself stated, it follows that the Decision must be interpreted as also deciding that a criterion such as that provided for by the eighth heading is not covered by Article 85(1).

150 Although, according to the evaluation report, applicants are eliminated only if, under 11 specific headings, they obtain three marks of two points (paragraph 17 above), the eighth heading of the report contributes none the less to the elimination of applicants, such as 'multiple-product' shops, whose perfumery activity accounts for less than 60% of their activities, even if they have a specialized area for the sale of the products at issue.

151 Accordingly, the eighth heading of the evaluation report must be regarded as disproportionate inasmuch as the mere fact that perfumery constitutes less than 60% of a shop's activities has no inherent connection with the legitimate requirement of preserving the luxury image of the products in question.

152 Furthermore, that heading is discriminatory inasmuch as it tends to favour applications by specialist perfumeries at the expense of those by 'multiple-product' shops with a specialized area laid out in such a way as to meet the qualitative criteria appropriate to the sale of luxury cosmetics.

153 That heading is therefore inherently likely to restrict or distort competition within the meaning of Article 85(1) of the Treaty inasmuch as its effect is to treat an applicant less favourably merely because perfumery represents a minority of the activities in the shop.

154 Although the evaluation report forms an integral part of the procedure for admission to the network, Paragraph II. A.5 of the Decision contains no reasoning to justify the heading at issue. The Decision's statement of reasons is therefore defective in that regard.

155 The Decision must accordingly be annulled in so far as it decides that a provision allowing Yves Saint Laurent to treat retailers' applications less favourably merely because perfumery represents a minority of their activities is not covered by Article 85(1) of the Treaty.

(c) The criterion of the shop-name ('*enseigne*')

156 Galec criticizes as subjective, discriminatory and disproportionate the second subparagraph of Paragraph I of the General Conditions of Sale concerning the criterion of the shop-name. The Commission and the interveners consider that provision to be necessary in order to preserve the luxury character of the products and the luxury image of the Yves Saint Laurent brand name (see the fourth subparagraph of Paragraph II. A.5 of the Decision).

157 The second subparagraph of Paragraph 1 of the General Conditions of Sale states:

'The business name and shopsign of the perfumery, or the business name and shopsign of the shop where the perfumery department is located, or the business name and the shopsign of the space within which the perfumery or perfumery department is located, must always reflect the prestige of the Yves Saint Laurent brand name. Consequently, the business name and shopsign must be in accordance with the principles governing the distribution of the Products, which are high prestige and high quality Products. Such is not the case of a business name and shopsign the image of which is associated with a restriction or an absence of consulting service to the end users, of prestige or of a suitable decor.'

158 A criterion whose sole purpose is to ensure that a retailer's shop-name does not detract from the luxury image of luxury cosmetics is in principle a legitimate requirement for the distribution of such products and thus is not necessarily caught by Article 85(1) of the Treaty. It is to be feared that, in the absence of such a criterion, the luxury image of luxury cosmetics, and thus their very character, may be prejudiced by their sale by a retailer whose shop-name is manifestly down-market in consumers' eyes.

159 However, having regard in particular to the fact that, unlike criteria relating to material aspects of a retail outlet, the criterion of the shop-name cannot be checked by a photographic report or a visit, the competent national courts or authorities have a particular responsibility to ensure that it is not applied in an unjustified or disproportionate fashion.

160 First, that criterion may refer only to current consumer perception of the name in question. It follows that the second subparagraph of Paragraph 1 of the General Conditions of Sale cannot be interpreted as excluding modern forms of trading which, when they began, were based on limited decoration or services but which since then have developed new enhancement methods for the sale of luxury products, so that their name is no longer regarded as down-market in that regard.

161 Secondly, in accordance with the principles which the Court has just stated (see paragraph 127 et seq. above), the perception of the name in question is not solely a matter for the manufacturer's discretion but must be established in as objective a manner as possible. In this case, Yves Saint Laurent has relied in particular on surveys or market studies undertaken by it for this purpose. If disputes arise, objective evidence such as consumer surveys or market studies should, where appropriate, be put before the competent national courts or authorities.

162 Thirdly, as the Commission has itself pointed out, it is stated in Paragraph II. A.5 of the Decision that the image arising from the 'retailer's habitual policy on prices' is not to be regarded as down-market. The criterion of the shop-name cannot be used for the sole purpose of excluding shops capable of offering the products at reduced prices but in product-enhancing conditions.

163 Finally, the criterion of the shop-name must be applied with particular caution when there is no doubt that the retailer has made the necessary investment to satisfy all the requirements concerning the material conditions for selling the products (fittings, separation from other products, qualified staff and so forth) and has accepted the obligations as to stocks, a minimum amount of annual purchases, cooperation on advertising and so forth. In such a case, the competent national courts or authorities have the task of establishing that the criterion of the shop-name is not used for the sole purpose of excluding from the network a retail outlet which is capable of selling the products concerned, where there is no genuine risk of their image being prejudiced.

C — Galec's pleas and arguments relating to whether its members are excluded a priori from the Yves Saint Laurent network and to consumer attitudes in that regard

164 In the light of the foregoing, it is necessary at this stage to address Galec's pleas and arguments relating to whether its members are excluded a priori from the Yves Saint Laurent network by the combination of the selection criteria, and to consumer attitudes in that regard.

165 The Commission has made it clear on many occasions during this case that the Decision does not envisage the a priori exclusion of modern forms of trading, such as the hypermarkets operated by the Leclerc Centres (see, for example, paragraphs 83 and 86 above). Yves Saint Laurent has pointed out that the Decision establishes that its system is open to all forms of distribution and does not exclude any a priori (see paragraph 93 above). The three other interveners have also contended

that the Decision does not in itself exclude the form of distribution carried on by Galec's members or other modern forms of distribution. On the contrary, Yves Saint Laurent and the other interveners have pointed out in particular, in order to demonstrate the non-restrictive character of the Yves Saint Laurent system, that 'multiple-product' retailers are authorized in several Member States.

166 It follows that none of the parties has contended before the Court that hypermarkets or other forms of 'multiple-product' distribution are in principle unsuitable for the sale of luxury cosmetics. The Commission and the interveners accept that the Decision envisages that possibility, as long as such outlets are appropriately fitted out and accept obligations equivalent to those accepted by other authorized retailers. The Court considers that, were it otherwise, Yves Saint Laurent's network would infringe Article 85(1) of the Treaty, by excluding a priori a category of potential retailers from the system (see paragraph 122 above).

167 Even though the Commission expressed itself somewhat ambiguously in the fifth subparagraph of Paragraph II. A.5 and the fourth subparagraph of Paragraph II. B.5 of the Decision by using the term 'department stores' ('*grands magasins*'), which normally refers to a traditional form of trading, and by stating that it 'has not been able to establish' that the spread of selective distribution systems in the field of luxury cosmetic products impedes 'in principle' certain modern forms of distribution, it has specified during these proceedings that, in adopting the Decision, it did not intend to exclude forms of trading such as the hypermarkets of Galec's members and that the term '*grands magasins*' in the Decision encompasses such forms of trading (see paragraph 83 above).

168 Furthermore, the Court has made clear in this judgment the role to be played by the competent national courts or authorities in ensuring that the criteria at issue are applied in a non-discriminatory and proportionate fashion (see paragraph 124 et seq. above).

169 It follows that Galec has not adequately established that there are currently barriers preventing large retailers from engaging in the distribution of luxury cosmetics if their outlets are appropriately fitted out for the sale of such products.

170 It is for Galec or its members to submit applications and, if necessary, for the competent national courts or authorities to decide whether refusal of admission in a specific case is compatible with Article 85(1) of the Treaty, in the light of the case-law of the Court of Justice and this Court. In addition, it is for the Commission to ensure, in particular in the event of application being made for renewal of the Decision, that modern forms of distribution are not unjustifiably excluded from Yves Saint Laurent's network or similar networks.

171 Accordingly, Galec's contention that its members are excluded a priori from the Yves Saint Laurent network must be rejected.

172 It is also necessary to reject Galec's pleas and/or arguments that the Commission did not give reasons for its assertion that the enhancement methods of large retailers are inadequate for the sale of luxury products. The Decision cannot be interpreted as containing such an assertion.

173 For the same reasons, Galec's contention that the Commission was manifestly in error as to the facts as regards the alleged exclusion of large retailers from marketing the products at issue must be rejected.

174 For the same reasons again, it is necessary to reject Galec's allegation that the Commission both failed to justify its statements regarding consumer motivation and was manifestly in error as to the facts in that regard.

175 In this connection, it is true that the Commission did not rely on an independent expert's report substantiating its statements regarding consumer motivation, in particular in Paragraph II. B.2 of the Decision. It is also true, as Galec asserted at the hearing, that the four French consumer associations which submitted observations during the administrative procedure, namely the Union Féminine Civique et Sociale (Women's Civic and Social Federation, hereinafter 'UCS'), the Institut National de la Consommation (National Consumer Institute, hereinafter 'INC'), the Confédération Syndicale du Cadre de Vie (Trades Union Confederation for the Quality of Life, hereinafter 'CSCV') and the Confédération des Familles (Confederation for Families, hereinafter 'CSF'), did not support unreservedly the position adopted by the Commission. The CSF and the INC set out their opposition to the proposed decision, in particular on the ground that it would have the effect of maintaining excessively high prices and of preventing a significant part of the population from having access to the products. The UCS contended that some of the provisions at issue made it more difficult than before for new forms of distribution to enter the market and that those provisions were 'not moving in the direction of either the opening up and enjoyment of improved competition in the single market or the interests of consumers'. The CSCV concluded its observations by remarking that 'under cover of the technical nature of its products and the prestige of a brand name, Yves Saint Laurent SA restricts competition through discriminatory selection criteria and artificially maintains very high prices for its products'.

176 However, Galec has not established that the Commission manifestly erred as to the facts or provided a defective statement of reasons as regards consumer expectations. It follows from the Decision that consumers who prefer to buy luxury cosmetics from an appropriately fitted-out hypermarket outlet must have the opportunity to do so, while consumers of the kind referred to in Professor Glais's report, who prefer to make their purchases in a specialist perfumery or a traditional department store, likewise remain free to continue to go to those outlets.

177 Accordingly, all of Galec's pleas and arguments relating to whether its members are precluded a priori from selling luxury cosmetics and its related pleas and arguments concerning consumer attitudes must be rejected.

D — Whether the prohibition in Article 85(1) of the Treaty applies because there are parallel networks in the relevant sector

178 Galec also submits that, in any event, Article 85(1) of the Treaty has been infringed in this case because networks similar to that of Yves Saint Laurent exist in the whole of the sector at issue, so that there is no room left for other forms of distribution and there is no workable competition in the relevant market — that is to say that of 'luxury perfumes' — within the meaning of paragraphs 40, 41 and 42 of the judgment in *Metro II*. The Commission and the interveners take the view that, although there are networks parallel to that of Yves Saint Laurent, there is workable competition in the relevant market — that of 'luxury cosmetics' — so that Article 85(1) is not applicable.

179 As the Court of Justice held in paragraph 40 of its judgment in *Metro II*, although 'simple' selective distribution systems (that is to say systems based solely on qualitative criteria) are capable of constituting an aspect of competition compatible with Article 85(1) of the Treaty, there may nevertheless be a restriction or elimination of competition where the existence of a certain number of such systems does not leave any room for other forms of distribution based on a different way of competing or results in a rigidity in price structure which is not counterbalanced by other aspects of competition between products of the same brand and by the existence of effective competition between different brands. However, according to paragraphs 41 and 42 of the same judgment, the existence of a large number of such selective distribution systems for a particular product does not in itself permit the conclusion that competition is restricted or distorted within the meaning of

Article 85(1). Where there is a proliferation of 'simple' selective distribution systems, Article 85(1) applies only if the relevant market is so rigid and structured that there is no longer any workable competition as regards price (see also paragraphs 44 and 45 of that judgment).

180 Unlike the case which gave rise to the judgment in *Metro II*, in which the consumer electronics equipment at issue was not always sold through selective distribution networks, it is not disputed in this case that almost all the manufacturers in the luxury cosmetics sector use distribution systems similar to that of Yves Saint Laurent.

181 This Court has already held, however, that the selective distribution of luxury cosmetics improves competition in the interests of consumers, in particular by contributing to the preservation of the 'luxury' image of the products compared with similar products which do not enjoy such an image, so that Article 85(1) of the Treaty does not apply to certain qualitative criteria which have that objective (paragraph 114 et seq. above).

182 Accordingly, the reference in *Metro II* to competition being eliminated 'where the existence of a certain number of ... systems does not leave any room for other forms of distribution based on a different type of competition policy' does not mean that Article 85(1) of the Treaty is automatically applicable merely because all the manufacturers in the luxury cosmetics sector have chosen the same distribution methods. In this case, paragraphs 40 to 46 of the judgment in *Metro II* must be interpreted to the effect that, if some of Yves Saint Laurent's selection criteria, taken individually, are not caught by Article 85(1) the cumulative effect of other networks does not alter that conclusion unless it is established either that there are barriers preventing access to the market by new competitors capable of selling the products in question, so that the selective distribution systems at issue have the

effect of constraining distribution to the advantage of certain existing channels (see *Delimitis*, cited above, paragraph 15 et seq.), or that there is no workable competition, in particular as regards price, taking account of the nature of the products at issue.

183 The Court has already found that the existence of barriers preventing access by new competitors capable of selling the products in question has not been established as regards the hypermarkets affiliated to Galec (see paragraph 164 et seq. above).

184 More generally, as to the question whether there is workable competition, it is necessary first to establish the relevant market. Even though the Commission was justified in dealing with the whole of the luxury cosmetics sector in the Decision, on the ground that luxury perfumery, beauty and skin care products share the same luxury image and are often sold together under the same brand name, the question whether there is workable competition can be judged only in the context of the market comprising the totality of the products which, with respect to their characteristics, are particularly suitable for satisfying constant needs and are only to a limited extent interchangeable with other products (see *L'Oréal*, cited above, paragraph 25).

185 It is not disputed in this case that a perfume is not interchangeable as regards its characteristics or use with a beauty product (for example make-up) or a skin care product (for example a night cream). Nor is it disputed that, at the time, luxury perfumes represented more than 80% of Yves Saint Laurent's total sales. In the light of the significance of that distinct sector, it is necessary to ascertain whether luxury perfumes are subject to workable competition at the retail level, despite the fact that they are always marketed by means of selective distribution.

186 First of all, the argument of the Commission and the interveners based on the third subparagraph of Paragraph II. B.3 of the Decision, which states that 'if customers regard as secondary the brand image or the services associated with sale within the selective distribution system, they can choose similar articles falling within an adjacent market and distributed without the use of selective distribution systems, thus penalizing the commercial strategy pursued by the producer', must be rejected. The Commission itself stated in the Decision that the extent to which luxury cosmetics were substitutable for similar products falling within other market segments was 'generally limited' (first paragraph of Section I. B) and that 'given the low degree of substitutability in the consumer's mind between luxury cosmetic products and similar products falling within other segments of the sector, the relevant market is that for luxury cosmetic products' (Paragraph II. A.8). In addition, it is apparent from Section I. B and Paragraph II. A.8 of the Decision that the Commission took account of Yves Saint Laurent's share of the luxury perfumery products market in order to establish whether the restrictions in question were such as to have an appreciable effect on intra-Community trade.

187 Accordingly, in order to determine whether luxury perfumes are subject to workable competition, it is not appropriate to take account of supposed competition with non-luxury perfumes.

188 It is also necessary to reject the argument, put forward by the Commission and the interveners, that the existence of workable competition can be inferred from the fact that, according to the third paragraph of Section I. B of the Decision, which is based on Professor Weber's report, products marketed through authorized retailer networks 'accounted, in 1987, for 24.7% of all cosmetic products sold in the Federal Republic of Germany, 30.3% in France, 36.2% in Italy and 22.4% in the United Kingdom'. Those figures come from Table No 22 in Professor Weber's report and represent the proportion of selective distribution sales expressed as a percentage of total sales of all categories of cosmetics combined, that is to say perfume, beauty products, skin care products, hair care products (in particular shampoo) and toiletry products (toothpaste, soap, deodorant and so forth). Also,

according to that report (p. 89), the proportion of perfume sold in Italy by selective distribution was 81% and in France 65%. According to the figures produced by FIP, the proportion of perfume sold in France by selective distribution is 73% (see Annex I to its statement in intervention, p. 17). The figures quoted in the third paragraph of Section I. B of the Decision are thus not of assistance for assessing whether there is workable competition in a specific sector such as that of luxury perfumes.

189 The Commission and the interveners contend, however, that even in the luxury perfumes market considered as such, there is workable competition both between manufacturers (inter-brand competition) and between Yves Saint Laurent's authorized retailers (intra-brand competition).

190 The position of the Commission and the interveners is not supported by Professor Weber's report, from which it appears, in particular at pp. 71, 89 to 96, 105 and 110, that in 1987 there was only very limited competition between luxury perfume retailers and between the different forms of distribution. However, before adopting the Decision, the Commission required Yves Saint Laurent to make numerous amendments to its contracts, including the removal of all purely quantitative selection criteria, the deletion of clauses restricting onward sale of the products to other members of the selective network, the deletion of clauses limiting the freedom of retailers to offer other brands for sale in their outlets and an express acknowledgment that they were free to set their prices independently. In addition, as the Court has just found, the Decision provides for the possibility of new forms of trading which are suitable for sale of the products in question having access to Yves Saint Laurent's network.

191 It was accordingly for Galec to adduce sufficient evidence that, following the Decision, the market has become so rigid and structured that there is no longer workable competition between authorized retailers of luxury perfumes, in

particular as regards price (see *Metro II*, paragraphs 42 and 44). Since Galec has not adduced anything specific in this regard, such evidence is lacking in this case.

192 It follows from all of the above that Galec's pleas and arguments alleging infringement of Article 85(1) of the Treaty and its other related pleas and arguments must be rejected, save in relation to the provision referred to in paragraph 155 above.

II — *Validity of the Decision with regard to Article 85(3) of the Treaty*

*Summary of the arguments of the parties*

193 As regards the exemption granted, Galec puts forward five main arguments to establish that the conditions of Article 85(3) of the Treaty are not met. First, the Commission sees the improvement of production and distribution of luxury perfumes only within a context of exclusivity (see the first subparagraph of paragraph II. B.2 of the Decision), although the additional obligations set out in the second to sixth subparagraphs of Paragraph II. B.2 can be met by large retailers. Secondly, as to benefits to consumers, the Commission has retained an outdated view of consumer behaviour and expectations. Thirdly, the Commission has legitimated a complete lack of intra-brand price competition, which large retailers could have ensured. Fourthly, in breach of the principle of proportionality, the Commission failed to compare selective distribution through specialist retailers with selective distribution involving other forms of trading, thus ignoring the fact that large retailers would be subject to the same obligations and charges as any other authorized retailer (see, in particular, the end of the second subparagraph of

Paragraph II. B.4 of the Decision). Fifthly, by imposing on other forms of distribution 'some change in their particular marketing methods', the Decision eliminates competition from those forms of distribution, except in the marginal case of department stores.

194 The Commission states in reply that the exemption granted concerns only the procedure for admission, the minimum amount of annual purchases, the obligations regarding stocks and cooperation on advertising and promotion, the prohibition on selling products which have not yet been launched, the checking of invoices by Yves Saint Laurent and, where the client is himself a retailer, checking that he belongs to the official distribution network — obligations which Galec did not criticize with regard to Article 85(1) of the Treaty.

195 In addition, Galec's criticisms are not pertinent. In particular, the Court of Justice stressed in paragraph 45 of its judgment in *Metro II* that account must be taken of the costs borne by the retailers in the network as a result of their contractual obligations. As regards elimination of competition, the Decision expressly states that certain modern forms of distribution are not excluded as a matter of principle and notes that there is competition both between brands and between authorized retailers.

196 The arguments of the interveners support the Commission's position.

*Findings of the Court*

197 As the Commission has rightly pointed out, the reasoning in Section II. B of the Decision concerns only the aspects of the Contract which the Commission considered were caught by Article 85(1) of the Treaty, that is to say those regarding, in particular, the procedure for admission to the network, stocks, the minimum

amount of annual purchases, the launch of new products and cooperation on advertising and promotion. In its action Galec has not criticized those aspects of the Contract.

198 As to Galec's first argument, that the Commission envisages the improvement of production and distribution only within a context of 'exclusivity', the Commission's statement in the first subparagraph of Paragraph II. B.2 of the Decision, that 'a luxury cosmetics brand must be distributed on an exclusive basis', refers to the Commission's concern to safeguard the exclusive or luxury character of the products at issue (see the second subparagraph of Paragraph II. B.3). That phrase cannot be interpreted, therefore, as meaning that large retailers are automatically excluded from selling the products at issue and that their sale is reserved exclusively for traditional channels such as perfumeries and department stores in the strict sense.

199 Since the Court has already found that the Commission did not intend to preclude large retailers from selling the products at issue (see paragraph 164 et seq. above), Galec's argument that the Commission saw the improvement of production and distribution, within the meaning of Article 85(3) of the Treaty, only within a context which precluded large retailers from selling the products at issue must be rejected.

200 As to Galec's second argument, that the Commission has retained an outdated view of consumer expectations, the Court has already rejected the arguments concerning consumer motivation in paragraph 174 et seq. above.

201 As regards Galec's third argument, that the Commission has legitimated a complete lack of intra-brand price competition, the Court has already found that Galec has not adduced any proof to that effect (see paragraph 191 above).

202 As regards Galec's fourth argument, that the Commission compared selective distribution through specialist retailers with generalized distribution, thus ignoring the possibility of selective distribution through other forms of trading, the Court finds that the Commission made no such comparison.

203 As to Galec's fifth argument, that the imposition of 'some change in their particular marketing methods' eliminates large retailers from the luxury cosmetics sector, it has been established in the course of this case that the Decision does not provide for the elimination of large retailers from the luxury cosmetics sector. The reference to 'some change in their particular marketing methods' must therefore be interpreted as requiring such changes inside the shop and not changes which radically alter the very character of the shop as a supermarket or hypermarket. Although it would have been desirable for the Decision to be clearer on this point, the fact that the Commission did not identify, even in general terms, the changes to be made is not in itself sufficient to vitiate the Decision, in particular since specific cases will, where necessary, be subject to review by the competent national courts or authorities.

204 Accordingly, Galec's pleas and arguments alleging infringement of Article 85(3) of the Treaty must be dismissed.

205 It follows from all of the above that the action must be dismissed, save in relation to the part of the Decision referred to in paragraph 155 above.

## Costs

206 Under the first subparagraph of Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under the third subparagraph of Article 87(4) thereof, the Court may order an intervener other than a Member State or an institution to bear its own costs.

207 Since the applicant has been essentially unsuccessful in its claims, it must be ordered to pay its own and the Commission's costs, and also those of the intervener Yves Saint Laurent, to which the Decision was addressed.

208 The other interveners, FIP, Colipa and FEPD, had a less direct interest than Yves Saint Laurent in the outcome of the action. Since this is a case in which those three interveners made general points in the interest of their members without adding any decisive elements to the Commission's arguments, the Court considers that it is equitable under Article 87(4) of the Rules of Procedure for them to be ordered to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)

hereby:

**1. Annuls Commission Decision 92/33/EEC of 16 December 1991 relating to a proceeding under Article 85 of the EEC Treaty (IV/33.242 — Yves Saint**

**Laurent Parfums) in so far as it decides that a provision allowing Yves Saint Laurent to treat retailers' applications less favourably merely because perfumery represents a minority of their activities is not covered by Article 85(1) of the Treaty;**

**2. Dismisses the remainder of the action;**

**3. Orders the applicant to pay the costs of the Commission and of the intervener Yves Saint Laurent Parfums SA, and to bear its own costs;**

**4. Orders each of the other interveners, the Fédération des Industries de la Parfumerie, the Comité de Liaison des Syndicats Européens de l'Industrie de la Parfumerie et des Cosmétiques and the Fédération Européenne des Parfumeurs Détaillants, to bear its own costs.**

Kirschner Vesterdorf Bellamy

Kalogeropoulos Potocki

Delivered in open court in Luxembourg on 12 December 1996.

H. Jung H. Kirschner

Registrar President

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