COMMISSION DECISION

of 11 December 1980

relating to a proceeding under Article 85 of the EEC Treaty (IV/26.912 — Hennessy-Henkell)

(Only the French and German texts are authentic)

(80/1333/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 85 thereof,

Having regard to Council Regulation No 17 of 6 February 1962 (1), and in particular Articles 3 and 9 thereof,

Having regard to the notification made to the Commission on 20 April 1971 by Jas Hennessy & Co., Cognac, France, in accordance with Article 4 of Council Regulation No 17, concerning an exclusive concession agreement concluded on 23 and 26 February 1971 with Henkell & Co., Wiesbaden-Biebrich, Federal Republic of Germany and amended by a supplementary agreement on 15 November 1974, and the application for an individual decision under Article 85 (3) of the Treaty made on 29 July 1978 by Jas Hennessy, after the Commission had informed the latter that the contract notified contained certain provisions preventing it from benefiting from the provisions of Commission Regulation No 67/67/EEC of 22 March 1967 on the application of Article 85 (3) of the Treaty to certain categories of exclusive dealing agreements (2),

Having regard to the Commission's decision of 8 May 1980 to initiate proceedings,

Having heard the undertakings concerned in accordance with Article 19 (1) of Regulation No 17 and with Commission Regulation No 99/63/EEC of 25 July 1963 (3),

Having regard to the opinion delivered by the Advisory Committee on Restrictive Practices and Dominant Positions in accordance with Article 10 of Regulation No 17 on 16 October 1980,

Whereas:

(1) OJ No 13, 21. 2. 1962, p. 204/62.
(2) OJ No 57, 25. 3. 1967, p. 849/67.
(3) OJ No 127, 20. 8. 1963, p. 2268/63.

I. THE FACTS

The facts may be summarized as follows:

A. The undertakings and the relevant market

1. Jas Hennessy & Co (Hennessy), Cognac, France, has, since 1971, formed part of Moët-Hennessy, a group engaged in three areas of activity, champagne (principal brand name: Moët et Chandon), beauty products (principal brand name Dior) and cognac.

The cognac sector accounts for 27% of the group's turnover, and consists of Hennessy and its subsidiaries. Hennessy is one of the three major cognac merchants and is engaged in the manufacture and marketing of cognac obtained from wine which it distils itself or from spirits purchased from wine growers; in 1979, Hennessy accounted for nearly 16% of all shipments of cognac.

Exports account for 95% of its turnover, which in 1979 was almost FF 543 million. Following Hennessy's own geographical breakdown, its four largest markets outside France were the USA, Ireland (Northern and southern), the Federal Republic of Germany and Great Britain, in that order, and accounted between them for 60% of its sales.

Hennessy cognac is distributed in the common market by Moët-Hennessy subsidiaries in Ireland, Italy and the Netherlands. In the other Member States, with the exception of the United Kingdom, exclusive concession agreements have been entered into, including that for Germany with Henkell & Co., Wiesbaden, which is the subject of this Decision.

2. Sektkellereien Henkell & Co (Henkell), Wiesbaden-Biebrich, Federal Republic of Germany, is engaged in Germany in the business of alcoholic and spirituous beverages. It produces sekt, rum and spirits and imports cognac, champagne, aperitifs, liqueur wines

and wine. Sales of sekt account for most (78%) of its turnover, which in 1979 amounted to DM 330 million. Sales of Hennessy products account for ...% (1) of its turnover. Henkell's share of the cognac and armagnac market in the Federal Republic of Germany is approximately ...%.

3. Total sales of cognac amounted to 381 000 hectolitres of pure alcohol (Hl PA) in 1978, of which 212 541 H PA, broken down as follows, were sold in the common market:

France	85 749
United Kingdom	49 861
Germany	30 307
Netherlands	15 393
Belgium	14 309
Ireland	6 848
Italy	5 044
Denmark	3 922
Luxembourg	1 108

Exports amounted to about FF 2 300 million in value, with the following values (in FF '000) for the three largest markets:

United Kingdom	384 517
USA	303 569
Federal Republic of Germany	236 157

(*Source:* Bureau National du Cognac report on the market situation and trends for the marketing year 1977/78).

B. Description of agreement

1. *Agreement notified*

4. On 23 and 26 February 1971 Hennessy and Henkell concluded an exclusive concession agreement for the distribution of Hennessy cognac in the Federal Republic of Germany. The agreement took effect on 1 July 1971, was concluded for a term of 25 years and was notified to the Commission on 20 April 1971.

It replaced another exclusive concession agreement which had been entered into by Hennessy and Henkell on 25 February 1960 and notified to the Commission on 29 January 1963. It is one of a number of agreements concluded by Hennessy for the exclusive distribution of its products in certain EEC countries in which it does not have a marketing subsidiary, that is to say Belgium, Luxembourg and Denmark.

5. The content of the agreement of 23 and 26 February 1971 is basically the following:

— Hennessy made Henkell its general agent for the Federal Republic of Germany, the free ports and duty-free shops, especially those at airports in that country; Henkell was to purchase cognac from Hennessy and to use its best endeavours to promote the sale of Hennessy products (Article 1);

— Henkell undertook to represent no other brand of cognac or wine-based spirit, irrespective of its origin, unless authorized to do so by Hennessy in writing (Article 2);

— Hennessy undertook not to supply its products to any customer other than those stipulated in the agreement, within the Federal Republic of Germany (Article 3);

— Hennessy allowed Henkell a 'commission' of 10% on orders placed with it by Henkell. In addition, for consignments for the German domestic market it agreed to pay 15% towards distribution and marketing costs (Article 5 (1));

— Hennessy guaranteed Henkell a price such that 'the German domestic market and the margin of 25% (10% commission and 15% contribution towards distribution and marketing costs) would be effectively protected from the point of view of prices against infiltration' (Article 5 (4));

— Henkell would fix its resale prices for the German domestic market. Hennessy's consent was required where Henkell 'wishes to fix its resale prices above cost price plus 17% or below cost price plus 12%'. As a temporary measure, Henkell could apply resale prices differing from its price-list provided they did not fall below cost price or exceed cost price plus 17%. If it did this it must inform Hennessy. Costs price was calculated 'on the basis of the price ex Cognac in cases plus carriage costs from Cognac to Wiesbaden plus monopoly duty but net of value added tax'. Henkell must also notify Hennessy as soon as possible of any changes in its price-lists or actual prices (Article 6).

(1) In the published version of the Decision, some figures have hereinafter been omitted, pursuant to the provisions of Article 21 of Regulation No 17 concerning non-disclosure of business secrets.

2. *Supplementary agreement of 15 November 1974*

6. Hennessy informed the Commission on 18 April 1975, in reply to the latter's request of 24 March 1975 for information, that certain amendments had been made to the agreement by a supplementary agreement dated 15 November 1974.

7. The supplementary agreement stipulated *inter alia* that Hennessy's contribution towards Henkell's marketing and distribution costs was reduced to 8%, thereby lowering Henkell's commission to 18%. In addition, Henkell could now distribute wine-based spirits other than cognac and German Weinbrand through its own sales network. Henkell could also distribute cognac and Weinbrand through a second sales network or acquire a shareholding in companies whose interests included cognac or Weinbrand. Henkell was free to purchase Hennessy cognac from other German or foreign companies but not from French companies. Finally, Henkell undertook to distribute Hennessy cognac, applying appropriate procedures, in the same way as the major brands of spirits.

8. The Commission requested Hennessy to explain the meaning of Article 5 (4) of the agreement, in which the company guaranteed Henkell 'a price ex Cognac or free-at-frontier such that the German domestic market and a margin of 18% (25% before the supplementary agreement of 1974) would be effectively protected from the point of view of prices against infiltration'. Hennessy stated in a letter dated 3 November 1978: 'the purpose of Article 5 of our agreement with Henkell was to protect our distributor against parallel imports or infiltration. The basic price invoiced to Henkell was the European price mentioned above', i.e. the basic ex-Cognac tariff applicable to distributors of Hennessy products worldwide.

3. *Similar agreements*

9. The earlier agreement of 25 February 1960 between Hennessy and Henkell contained an Article 6 (b) that was similar to Article 5 (4) of the present agreement on the protection of the German market against infiltration. It did not contain any clause imposing limits within which Henkell must fix its sales prices. Article 7 stipulated, however, that Henkell undertook to fix its retail prices by agreement with Hennessy.

10. The Commission also examined concession agreements entered into by Hennessy for the sole distribution of its products in Belgium, Denmark and Luxembourg. Those with Chassart in Belgium and T. Jespersen & Cie in Denmark did not restrict the right of the sole distributor to fix his retail prices. The agreement with the Distillerie Othon Schmitt, for Luxembourg, contained a clause in which the latter undertook to fix its retail prices and enforce them by agreement with Hennessy. Following representations by the Commission Hennessy agreed to delete this clause by supplementary agreement. As far as the United Kingdom was concerned, Hennessy stated that an agreement was being prepared with International Distillers & Vintners Limited, but that there was no exclusive agreement relating to that country at that time.

4. *Application of the agreement*

11. Henkell stated in a letter dated 16 January 1980, in reply to a request by the Commission for information concerning the terms on which Article 6 of the agreement would apply: 'Hennessy has never withheld consent for the fixing of prices. In 1974 and 1978 discussions were necessary concerning the Bras d'Or and XO brand names on account of the situation arising under the contract. Prices for these brands were fixed by joint agreement'.

12. In a letter dated 22 October 1979 Hennessy in turn stated: 'It is quite true that we have approached Henkell on two occasions in order to ensure that it performed its obligations under the contract regarding the fixing of the prices of our Bras d'Or brand in 1974 and XO in 1978. Henkell had fixed the price of Bras d'Or at DM . . . and we requested it to raise it to DM . . .. In the case of XO we requested it to raise its price from DM . . . to DM . . ..'

13. In 1974 the cost price, within the meaning of Article 6 of the agreement, of Bras d'Or was DM . . . (according to Hennessy) or DM . . . (according to Henkell). The price originally suggested by Henkell was therefore equivalent to the cost price plus 50·7% and that adopted at Hennessy's request amounted to the cost price plus 117·4%. The cost price in 1978 of the XO

brand was DM ... (according to Hennessy) or DM ... (according to Henkell); consequently the price suggested by Henkell was the cost price plus 17% and that adopted at Hennessy's request was the cost price plus 31·7%.

14. In its letter of 21 January 1980, Henkell forwarded to the Commission, at the latter's request, its cost prices and price-lists, which are shown below, per bottle packed in cases of 12:

1. **Cost prices** *(DM)*

	1971	1972	1973	1974	1975	1976	1977	1978	1979
Hennessy VS									
Hennessy VSOP									
Hennessy Bras d'Or									
Hennessy XO									

2. **Price-lists**

Hennessy VS									
Hennessy VSOP									
Hennessy Bras d'Or									
Hennessy XO									

15. It can be seen from these figures that Henkell's prices for Bras d'Or from 1972 onwards and for XO from 1974 were fixed at a level distinctly higher than the ceiling mentioned in the agreement (cost price plus 17%) and were between 23·3% and 117·4% higher than cost price. Moreover, the prices of the VS and VSOP brands in 1979 were lower than the floor price mentioned in the agreement (cost price plus 12%). For VS they were cost price plus 11% and for VSOP cost price plus 3%.

II. LEGAL ASSESSMENT

A. Applicability of Article 85 (1) of the EEC Treaty

16. Article 85 (1) of the EEC treaty prohibits, as incompatible with the common market, all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market.

17. Hennessy and Henkell are undertakings within the meaning of Article 85 (1). The agreement concluded by Hennessy with Henkell on 23 and 26 February 1971 for the distribution of its products in the Federal Republic of Germany is an agreement between undertakings which may be caught by Article 85 (1).

18. The version of the agreement existing prior to the amendment of 15 November 1974 restricted competition for the following reasons: in the supply of Hennessy cognac in the Federal Republic of Germany, by virtue of the exclusive sales and purchase clause binding Hennessy to Henkell; and as regards opportunities for other producers of cognac or wine-based spirits to use Henkell's sales network for distributing their products in the Federal Republic of Germany, by virtue of the no-competition clause prohibiting Henkell from representing directly or indirectly any other brand of cognac or wine-based spirits, irrespective of its origin, without Hennessy's formal consent in writing.

19. The supplementary agreement of 15 November 1974 narrowed the scope of the exclusive purchasing clause by limiting it to purchases made in France, and that of the restrictive clause by permitting Henkell to distribute directly wine-based spirits other than cognac and German Weinbrand. The agreement continues to restrict competition, however, in that only Henkell, but no other customer in the Federal Republic of Germany, can obtain Hennessy products direct from that company or from its subsidiaries (exclusive sale); in that Henkell is unable to obtain Hennessy products from any other French undertaking (partially

exclusive purchase); and in that no other producer of cognac or Weinbrand can use Henkell's sales network to distribute its products in the Federal Republic of Germany (no-competition clause).

20. Articles 5 (4) and 6 of the agreement aggravate these restrictions on competition. Article 5 (4) provides that Hennessy undertakes to guarantee Henkell prices such 'that the German domestic market and the margin of 18% are effectively protected from the point of view of prices against infiltration,' and according to Hennessy's statement is intended to protect (Henkell) against parallel imports, i.e. to protect it against competition from other merchants. Article 6, which has the object of limiting Henkell's freedom to fix resale prices, prevents the exclusive dealer from fixing them freely on the basis of the conditions obtaining on the market.

21. The Agreement may affect trade between Member States firstly because it creates a sole direct importer of Hennessy cognac into the Federal Republic of Germany and prevents Henkell from obtaining Hennessy products through another French undertaking and from distributing other brands of cognac through its sales organization; secondly, because it also seeks to restrict parallel imports into Germany; and thirdly because Henkell's lack of freedom to fix its retail prices may deflect trade from the direction it would naturally take if there was total freedom to form prices.

22. The restriction of competition and the effect upon trade between Member States are appreciable, given that Hennessy, with a turnover of FF 543 million, is one of the three major producers of cognac, the Federal Republic of Germany is the world's third largest importer of cognac (after the United Kingdom and the United States) and Henkell, whose turnover is DM 330 million, sells approximately ..% of the cognac and armagnac on that market.

B. Inapplicability of Article 85 (3) of the EEC Treaty

23. Article 85 (3) of the EEC Treaty provides that the provisions of paragraph 1 of that Article may be declared inapplicable in the case of certain agreements or categories of agreements between undertakings meeting certain requirements.

24. Article 1 (1) of Regulation No 67/67/EEC provides that under Article 85 (3) of the Treaty the prohibition contained in Article 85 (1) of the Treaty is not to apply to agreements to which only two undertakings are party and whereby one party agrees with the other to supply only to that other certain goods for resale within a defined area of the common market, provides that apart from the exclusivity, no restriction on competition be imposed on the exclusive dealer other than those provided for in Article 2 (1) of that Regulation. Although the notified agreement does indeed contain, in addition to exclusivity of sales and purchases, a no-competition clause permitted by Article 2 (1) of Regulation No 67/67/EEC, it does not qualify for exemption under that Regulation, because it contains further restrictions. The obligation imposed by Article 6 of the contract on the exclusive dealer to obtain the manufacturer's consent in order to exceed the limits laid down in the agreement when fixing retail prices is not one of the restrictions which may be imposed on him by virtue of Article 2 (1) of Regulation No 67/67/EEC, nor is it included among the obligations which, according to Article 2 (2), do not preclude the applicability of Article 1 (1) of the Regulation.

25. Moreover, Article 3 (b) of Regulation No 67/67/EEC provides that Article 1 (1) of that Regulation is not to apply:

'... in particular where the Contracting Parties ... take other measures to prevent dealers or consumers from obtaining from elsewhere goods to which the contract relates or from selling them in the territory covered by the contract',

while Article 5 (4) of the agreement provides that 'Jas Hennessy & Co. guarantees Henkell & Co. a price ex Cognac or free-at-frontier such that the German domestic market and the margin of 18% are effectively protected from the point of view of prices against infiltration', and is intended, as Hennessy stated in its letter of 3 November 1978, to protect Henkell 'against parallel imports or infiltration'.

26. Notwithstanding the inapplicability of Regulation No 67/67/EEC, a duly notified exclusive dealership agreement may be exempted after undergoing individual

examination provided it satisfies the conditions laid down in Article 85 (3). The latter specify that it must contribute to improving the distribution of products while allowing consumers a fair share of the resulting benefit, and it must not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives nor afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

27. As the Commission has stated in the recitals to Regulation No 67/67/EEC, in the present state of trade exclusive dealing agreements relating to international trade lead in general to an improvement in distribution. The fact that a producer maintains contacts with only one dealer in a country makes it easier to overcome sales difficulties resulting from linguistic, legal and other differences.

In the case under consideration it can be conceded that the exclusive dealership agreement in question would, for the reasons outlined above, help improve the distribution of Hennessy products on the German market. In particular, Henkell, as the sole distributor of those products in the Federal Republic, would enjoy a certain measure of security which would encourage it to invest so as ensure their wider distribution.

28. For such improvement to be effective, however, the exclusive dealer would have to be able to fix resale prices freely on the basis of the cost price of the products purchased from the manufacturer and by adapting his profit margin to the sales policy determined by him on the basis of the conditions obtaining on the market. This requirement is essential if Hennessy products are to penetrate the German market better, and to combat competition from other brands.

29. Such is not the case here, since Hennessy is enabled to oversee Henkell's prices. Under Article 6 of the agreement, 'Hennessy's consent is necessary when Henkell wishes to fix its resale prices above cost price plus 17% or below cost price plus 12%'. Henkell may, nevertheless, apply prices differing from those in its price-list, but only temporarily and provided Hennessy is notified as quickly as possible. Above all, such prices may not under any circumstances fall below the 'cost price' which includes a commission of 18% paid by Hennessy to Henkell, whereas Henkell should be free to reduce this rebate and charge lower prices if it considered that necessary. It is clear from the information provided by Hennessy and Henkell that the abovementioned provisions of Article 6 of the agreement have been applied annually in respect of Bras d'Or since 1972 and XO since 1974, and in respect of VS and VSOP in 1979. In addition, Hennessy availed itself of this clause when requesting Henkell to fix its prices above the maximum price laid down in the agreement. Hennessy stated in its letter of 22 October 1979: 'It is quite true that we have approached Henkell on two occasions in order to ensure that it performed its obligations under the contract' by increasing its resale prices for Bras d'Or in 1974 and XO in 1978, whereas the prices originally fixed by Henkell came within the limits laid down in the agreement (for XO in 1978) or already exceeded the ceiling laid down in the agreement (for Bras d'Or in 1974).

30. Nor can it be concluded that a fair share of the benefits which could result from exclusive distribution is being set aside for consumers. An improvement in distribution should be accompanied, particularly, by a reduction in sales prices to consumers, whereas under Article 6 of the agreement Henkell is not free to take a decision on this, and it is clear from the manner in which the agreement has been applied that Hennessy has prevailed upon Henkell to fix higher prices than those which ought to have ensued from the agreement.

31. The no-competition clause in Article 2 of the contract may be considered indispensable to the attainment of the objectives of the exclusive concession contract, as they allow more intensive promotion of the goods the subject of the contract, in that the exclusive concessionnaire will concentrate his efforts on the latter, as was indicated by the Commission in point III.3 of its 'Jallatte' Decision (*Official Journal of the European Communities* No 3 of 6 January 1966, page 37).

32. By contrast, the restriction of the concessionnaire's freedom to fix his resale prices, contained in Article 6, cannot be regarded as indispensable to the attainment of the objectives of the agreement, even if the products in question are considered, as Hennessy considers them, to be luxury products. Hennessy stated in its letter of 3 November 1978 that the purpose of Article 6 of the agreement is to ensure that its products

'which are regarded as luxury products, do not become subject to cut-price selling which would lead to business anarchy'. The Commission has already stated, however, when considering selective distribution arrangements in the luxury perfumes industry, that 'the luxury character of a product could not in itself be regarded as an adequate ground for exemption under Article 85 (3)' (1). Hennessy has also put the following argument, in its letter of 3 November 1978: 'We consider that the relative freedom which we give to Henkell, to fix the prices of its products within limits which seem reasonable to us, is the counterpart of the exclusivity of sale which we guarantee to our distributor'.

But in the context of an exclusive concession contract, surveillance by the manufacturer of its distributor's resale prices cannot be considered indispensable to the attainment of any beneficial purpose, referred to at 27 above, which may exist. Moreover, the 'relative freedom' pleaded by Hennessy does not exist, since the latter was able to force Henkell to fix its prices outside the limits provided for in the contract.

33. Hennessy maintained, moreover, in its letter of 20 July 1978 that 'to authorize a distributor to apply resale prices determined by him alone, where the market in question was that of a brand name and not of a distributor, might jeopardize the brand name and the product'. This argument is undermined, however, by the behaviour of Hennessy itself, which has not imposed such stringent clauses on other distributors of the same brands in the common market, or has agreed to abolish them at the Commission's request. Hennessy also maintains that its agreement is a special case in view of its long duration (25 years) and the importance of the German market, and states in this connection: 'We consider it our duty under such an agreement to monitor closely the trade policy pursued by our agent when promoting our products and consequently his price policy which to us appears essential for maintaining the brand image of our products'. It should be noted, however, that Hennessy's competitors, the other cognac merchants who have notified their sole distribution agreements to the Commission, especially Martell, Camus and Courvoisier, have not taken measures to restrict the freedom of their sole distributors to fix their prices or to protect their territories, notwithstanding that some of those contracts concern the German market or others of similar importance. Above all, under no circumstances is it acceptable that circumstances such as the size of the market in question or the duration of the agreement could justify additional restrictions on competition. On the contrary, they invite much closer examination of the terms under which a distributor has been made sole dealer, since the unfavourable effects of these restrictions may be more appreciable.

34. Nor can Article 5 (4) of the agreement, which is designed to protect Henkell against parallel imports, be regarded as indispensable to the attainment of the objectives of the agreement, since it goes beyond those objectives in seeking to shield the sole dealer against competition from products bearing the same brand name, coming from other Member States.

35. The provisions of the contract which prevent the exclusive concessionnaire from freely fixing its resale prices (Article 6) and which protect the concessionnaire against parallel imports (Article 5 (4)) cannot be exempted under Article 85 (3) of the Treaty, and the same applies to the provisions for exclusivity of sale and purchase and for non-competition, since they go hand-in-hand with the abovementioned provisions of Articles 5 (4) and 6. The agreement notified cannot, therefore, be granted exemption under Article 85 (3) of the Treaty.

C. Article 3 (1) of Regulation No 17

36. According to Article 3 of Regulation No 17, the Commission may, if it finds upon application or upon its own initiative that there is infringement of Article 85, by decision require the undertakings or associations of undertakings concerned to bring such infringement to an end.

37. For the abovementioned reasons, Hennessy and Henkell have infringed Article 85 of the Treaty and should consequently be required by the Commission to bring those infringements

(1) Fourth Report on Competition Policy, point 35.

to an end. To achieve this purpose, it is sufficient for them to bring the contract within the terms of Regulation No 67/67/EEC by deleting the restrictive clauses of Article 5 (4) and 6 of the said contract.

HAS ADOPTED THIS DECISION:

Article 1

Articles 1, 2, 3, 5 (4) and 6 of the exclusive concession agreement concluded on 23 and 26 February 1971 between Jas Hennessy & Co. and Henkell & Co. for the distribution of Hennessy cognac in the Federal Republic of Germany constitute infringements of the provisions of Article 85 (1) of the Treaty establishing the European Economic Community.

Article 2

The request for application of Article 85 (3) of the Treaty to the agreement notified is dismissed.

Article 3

The parties to whom this Decision is addressed shall terminate forthwith the infringements referred to in Article 1 hereto.

Article 4

This Decision is addressed to:

— Jas Hennessy & Co.,
1, rue de la Richonne,
F — 16101 Cognac — cedex;

— Henkell & Co.,
Biebricher Allee 142,
D — 6200 Wiesbaden 1.

Done at Brussels, 11 December 1980.

For the Commission
Raymond VOUEL
Member of the Commission

ANNEX I

'L'article 5 notre contrat avec Henkell a pour objet de protéger notre distributeur contre les importations parallèles ou les infiltrations. Les prix de base facturé à Henkell reste le prix en Europe, comme mentionné ci-dessus.'

ANNEX II

'Nous sommes bien intervenus à deux reprises pour qu'Henkell exécute ses obligations contractuelles en ce qui concerne la fixation des prix de notre qualité Bras d'Or en 1974 et en 1978 pour la vente de notre qualité XO Henkell avait fixé ses tarifs pour le Bras d'Or à 33,48 DM et nous lui avons demandé de les fixer à 48,30 DM; pour l'XO nous avons demandé à notre agent de porter son prix de 61,66 DM à 69,40.'

ANNEX III

'Nous estimons que la liberté relative que nous laissons à la Société Henkell de fixer à la vente les prix de nos produits, dans une fourchette qui nous semble raisonnable, est la contrepartie de l'exclusivité de vente que nous garantissons à notre distributeur.'

ANNEX IV

'Autoriser un distributeur à pratiquer à la revente les prix qu'il déterminerait seul, alors qu'il s'agit du marché d'une marque et non pas du distributeur, risquerait de porter atteinte aux intérets de la marque et du produit.'

ANNEX V

'Nous considérons que dans le cadre d'un tel accord, nous devons controler étroitement la politique commerciale suivie par notre agent pour le développement de nos marques, et par voie de conséquence, sa politique de prix qui nous semble essentielle quant au maintien de l'image de marque de nos produits.'