II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 2 December 1986

relating to a proceeding under Article 85 of the EEC Treaty (IV/31.128 — Fatty Acids)

(Only the Dutch, French and German texts are authentic)

(87/1/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, first Regulation implementing Articles 85 and 86 of the Treaty [1], as last amended by the Act of Accession of Spain and Portugal, and in particular Articles 3 (1) and 15 (2) thereof,

Having regard to the Commission Decision of 15 January 1986 to initiate proceedings in this case,

Having given the undertakings concerned, Unilever NV, Henkel KGaA and Oleofina SA, the opportunity to make known their views on the objections raised by the Commission, pursuant to Article 19 (1) of Regulation No 17 and Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19 (1) and (2) of Council Regulation No 17 [2],

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

Whereas :

I. THE FACTS

Nature of the case

(1) The present proceedings concern the application of Article 85 of the EEC Treaty to an agreement concluded in September 1979 by the four (now three) major producers in the EEC of the oleochemicals oleine and stearine.

The parties to the agreement, after first having established their respective average market shares over the preceding three-year period, set out subsequently to exchange information of a kind normally regarded as business secrets regarding their total sales of the products concerned in Europe in each quarter, thereby providing each party with the means to monitor the activities of its major competitors and adjust its own behaviour accordingly. The agreement was terminated at the end of 1982 upon the Commission's suggestion, after an investigation had been carried out.

The undertakings

(2) The undertakings party to the agreement are the three major EEC producers of oleine and stearine, namely: the Unichema division of Unilever, Henkel & Co KGaA and Oleofina SA, a wholly controlled subsidiary of Petrofina SA. Hereinafter the undertakings will be referred to as Unichema, Henkel and Oleofina respectively.

The fourth party to the agreement, Unilever-Emry, was a joint subsidiary of Unilever and the US producer Emery Industries. It was originally operated as a separate concern from Unichema but in 1980 was integrated into the Unichema operation.

(3) The parties to the agreement are all important, well-known groups or undertakings with multiple activities throughout the Community and the rest of the world.

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No 127, 20. 8. 1963, p. 2268/63.

In the EEC, Unichema have production plants in the United Kingdom, The Netherlands and Germany. Those of Oleofina and Henkel are situated in Belgium and Germany, respectively.

Turnover

(4) The turnover in the EEC of each undertaking in the products concerned during 1981, the year prior to the termination of the agreement, was as follows :

(ECU)

	Stearine	Oleine
Unichema	....(1)	....
Henkel	....	....
Oleiofina	....	....

(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.

(Sales within the same group are excluded from these figures.

The products

(5) The products concerned are the oleochemicals stearine and oleine, the principal fatty acids produced by splitting natural oils and fats (tallow, palm oil, coconut oil, soya oil, fish oil, etc.) into raw fatty acids and glycerol. The crude fatty acids are processed and separated into fatty acid mixtures which are either used as such or are further refined to produce amines and other derivatives.

Fatty acids are used in a variety of industries as constituents of soaps and detergents, cosmetics, toiletries, paints and resins, industrial lubricants and processed foods. They also have applications in the manufacture of plastics and rubber and the treatment of paper and textiles.

The oleochemical industry(1)

(6) The oleochemical industry in Europe comprises about 40 firms, ranging from small splitting units, with an annual capacity of under 5 000 tonnes and which supply local markets only, to integrated and diversified firms, like Unichema, Henkel and Oleofina producing over 100 000 tonnes per annum. The larger manufacturers have an important captive use for oleine, both as oleine itself and for conversion into derivatives.

The three largest EEC producers are Unichema (part of the Unilever group, one of the world's largest users of, and traders in, oils and fats), Henkel and Oleofina. Unichema, with a share of the market for sales to third parties in Western Europe of over 30 %, is the market leader. Henkel and Oleofina have some 16 % and 14 %, respectively.

According to industry sources, the European market has been characterized by structural overcapacity and low or stagnant growth rates. The Western European producers have relied heavily on imports of fats and oils and have experienced increasing competition from developing countries where plants have been constructed for the processing of locally-produced oils. Trade sources stated that excess capacity was in the region of 20 — 30 %.

Production of fatty acids in western Europe in 1980 was estimated by APAG (as to which see below) at about 640 000 tonnes, valued at some 335 million ECU.

APAG(1)

(7) In 1976, the European producers of oleochemicals formed a trade association known as 'l'Association des Producteurs d'Acides Gras' (APAG), with its headquarters in Brussels.

APAG members account for some 90 % of the European fatty acid market.

The three major producers, holding between them about 60 % of that market, are all members of the association.

(8) The articles of association of APAG provide *inter alia* for the organization of information meetings and programmes for its members and for users of fatty acids, but specifically prohibit any measures which could lead to a restriction of competition.

(9) APAG is associated with the European Council of Chemical Manufacturers' Federations (CEFIC), a joint organization representing the National Chemical Industry Federations in Europe. CEFIC rules relating to the exchange of industrial and statistical information contain detailed provisions designed to ensure that in any such programme data relating to individual companies are not disclosed. In addition, an information booklet is issued by CEFIC drawing the attention of members to the need to avoid activities which might be incompatible with national or EEC competition law. Members are enjoined to refrain from formal or informal discussions on individual company

(1) All figures relate to the period relevant to these proceedings.

prices, industry pricing policies, price levels, price differentials, costs of production or distribution, individual company figures on production, inventories, sales and information on future investment or marketing plans.

(10) In September 1977, the Statistics Committee of APAG — of which the chairman at all relevant times was a senior employee of Henkel — initiated a programme for the exchange of statistics on fatty acid production, stock and shipments. The fundamental rule of the information exchange, which was to be carried out via the Swiss fiduciary company FIDES, was that data relating to individual companies were not to be released. Further, statistical summaries were not to be released where this would provide a possibility of the data relating to individual companies being deduced. Under the scheme the individual companies supplied information on a confidential basis to FIDES which prepared global industrial statistics for the whole European market for dissemination to members.

During plenary or committee meetings of APAG, major producers, in particular Unichema, expressed the view that the maintenance of secrecy and the non-disclosure of individual data was absolutely essential.

The agreement

(11) In 1979 Unilever was planning the acquisition of Emery's 50 % shareholding in Unilever-Emery and the integration of its operations with the wholly-owned Unichema subsidiary. The merger would inevitably involve rationalization and the reduction of fatty acid capacity. According to Unichema, there was a possibility of its competitors 'misinterpreting' its merger plans as a first indication of an intention to withdraw from the fatty acid sector, 'thus setting off even more competition and loss of market share for Unichema'.

(12) Concerned about this situation, Unichema approached Henkel and Oleofina on the occasion of an APAG meeting in Berlin, held on 27 September 1979, and it was orally agreed between representatives of these companies and Unilever-Emery that:

'(1) total annual tonnages of stearine and oleine sold to third parties within continental Europe in 1976, 1977 and 1978 would be exchanged;

(2) as from 1980 onwards the same information would be exchanged on a quarterly basis and,

(3) the exchange would be effected by non-sales people and the figures exchanged would not be disclosed to the sales force.'

This description of the contents of the agreement is *verbatim* the one given by Unilever plc in writing to the Commission in March 1982, following the Commission's investigation in February of that year at the premises of Unilever/Unichema in London.

(13) The existence of the agreement with the contents as stated above was admitted by the two other parties to it during inspections at their respective premises at about the same time.

The general manager of Oleofina confirmed that he communicated his company's *chiffres de vente* (sales figures) to the two others and received the same information from them. The representatives of Henkel stated that *Verkaufszahlen* (sales figures) were exchanged.

(14) The Unichema representative, who proposed the agreement to his colleagues, has explained to the Commission that the object — also indicated to the other parties — was to enable the participants to monitor possible major changes in their relative positions as a result of any unilateral capacity reduction by Unichema which would follow the acquisition of Unilever-Emery by Unichema.

It was also emphasized by him that any capacity reduction made by Unichema was not to be taken as a signal that Unichema intended to withdraw from the fatty acids market — this too was indicated to the other parties.

(15) Unichema has further explained to the Commission that it proceeded on the assumption that its proposed capacity reduction would not result in any drop in its market share.

(16) Henkel has stated that the agreement was prompted by shared doubts over the accuracy of the APAG/FIDES figures and was simply intended to provide a check on those statistics.

(17) Oleofina has stated that the object of the arrangement as explained by Unichema was to 'examine the possible reaction of the market' following the takeover of Unilever-Emery and the reorganization of Unichema.

Information exchange

(18) Subsequently, telephone contacts were made by Unichema with Henkel and Oleofina to arrange the exchange of the information with Unichema as the collating point. Figures for 1976 to 1978 were communicated by Henkel and Oleofina to Unichema which then passed back to them the grand total and the figures for each company.

The same system, with Unichema collating and communicating the information to the others, was followed for the quarterly data from 1 January 1980.

Unichema has stated that the information exchanged was not communicated to the sales force and that, to ensure confidentiality, an acronym, 'HUGO' (from Henkel, Unichema, Gouda (i. e. Unilever-Emery) and Oleofina), was used internally by those who knew of the arrangement.

Use of information exchanged

(19) The information received by Unichema under the reciprocal exchange relating to the performance of the four companies in stearine during 1976-78, and then for each quarter during 1980 and the first quarter of 1981, was recorded in a document discovered during the investigation at Unilever in London.

(20) This document set out the respective data for each of the participants which were originally identified in the typed version only by a number from 1 to 4. Subsequently, however, abbreviations showing the identity of each participant were added by hand at the top of each column. The document refers to the average share of each participant for the three-year period as the 'historical APAG Soll (1) and the 'HUGO Soll'.

(21) Attached to the document was an analysis by Unichema of the performance of Oleofina during 1980 as disclosed by the figures exchanged for each quarter of that year. The historical figures exchanged for 1976-78 gave Oleofina an average share of APAG members' supplies of stearine for western Europe of 9,32 %, whereas the 1980 figures showed an apparent share of 13,58 %, which corresponded to an increase of 6 800 tonnes. This increase is referred to as a 'gain over true share'. The document goes on to break down the apparent increase first into 800 tonnes gained from Unichema and 6 000 tonnes from 'outsiders'. The 6 000 tonnes gain is further analysed by country and/or customer. 2 000 tonnes was said to have come from Hercules in Belgium. The explanation given was that this related to 'new plant — new business, nothing stolen but GM refused to share'. GM refers to the Managing Director of Oleofina.

(22) Unichema has explained that this detailed analysis did not result from any contact or communication with Oleofina, but was the result of market intelligence and desk research carried out unilaterally. It is also said by Unichema that the apparent gain by Oleofina was in fact illusory and that it was soon realized that the figures originally supplied by Oleofina must have been incorrect. As a result, a proposal was made by Unichema to Henkel and Oleofina that the same geographical basis and product definition should be employed as were used by the APAG statistical exchange. These modifications were agreed in a meeting in June 1981 between employees of the three companies. The revised 1976-78 figures supplied by Oleofina in fact consisted only of a three-year average. Actual figures for 1979, which had not been available at the time of the original agreement, were also exchanged at this meeting.

From the information exchanged, the participants were able to prepare detailed comparisons of their market shares relative to each other and in relation to the total membership of APAG. In the Unichema tables, the three participants remaining after Unilever-Emery's absorption by Unichema are referred to as the 'Big Three'.

Termination of the agreement

(23) The exchange of information on a quarterly basis continued after the Commission's investigations in February 1982. Data for stearine (but not oleine) were exchanged for the first two quarters of 1982. When it was discovered by Commission officials, during a subsequent visit to Oleofina in October 1982, that the arrangement had continued, the Commission addressed letters to each participant in November 1982, pointing out that the information exchange might constitute an infringement of Article 85 (1). The participants then informed the Commission in December 1982 that they had terminated the agreement with effect as of 1 January 1983.

The Commission's investigation

(24) In the course of the Commission's investigation, further information relevant to these proceedings was obtained, in particular regarding the marketing strategy and policies of Unichema.

(25) Unichema has stated that, owing to the fragmented nature of the market and conditions of intense competition, it considered that the major producers had a duty to 'sanitize' the market. The solution to the problems of the industry, as perceived by Unichema's senior management, was 'orderly marketing'.

(1) *Soll* — from the German verb *sollen* meaning 'ought to have', i. e. an indication of the share allocated to each party to a market-sharing arrangement.

(26) Unichema's conception of its own responsibilities in this direction involved the need to adopt marketing policies which did not provoke its major competitors into blaming it for being 'destructive'. As the leading producer of a commodity product, Unichema considered that it was entitled to maintain its traditional market share and, if competitors were to attempt to take from it established business by means of aggressive price cutting, it would consider such conduct as 'stealing'. If it were to lose business as a result of price-cutting it would have to recoup that business in another market and so bring about a general price instability which it believed would be destructive to the interests of the trade as a whole.

(27) Unichema also considered that the major producers should bear the responsibility for capacity reduction. For its part, it had expressed a readiness to purchase the goodwill of smaller competitors and thereby facilitate the closure of uneconomic units. This opinion was shared by the other large producers. In a report to Unilever, the chairman of Unichema states that 'there is a common view between the leading producers that the only way out is the closure of the smaller inefficient plants and to stop the price erosion which started during the fourth quarter 1980'.

Developments in market shares

(28) Following the making of the information exchange agreement between the three major producers, the total APAG stearine market declined, but their combined share of this market increased from some 52 % in 1979 to almost 60 % in the first half of 1982. In relation to the other two major producers, Unichema dropped from 52 % in 1979 to 45,6 % of the 'Big Three' business in the first half of 1982, while Henkel increased its share from 23,7 % to 31,2 %, and Oleofina's share remained relatively steady. In relation to the total APAG market, however, Unichema kept its market share at its 1978 level.

The three major producers together held over 80 % of the total oleine market in 1981, an increase of 10 % over 1976-1978. Again the total market declined, and while Unichema's share of the 'Big Three' business declined from 72 % to 60 %, its share of the total APAG market was maintained. Oleofina's share of the oleine market doubled from its 1978 level.

In a review of its activities in 1981, Unichema reported that its 'initiative to improve the situation' by the closure of more plant 'is not as yet followed by similar action from our competitors'.

The parties' main arguments

(29) The parties have not disputed the fact that they concluded the agreement to exchange information, nor have they denied that it was fully implemented.

Apart from the abovementioned explanations given by the parties concerning the object of the agreement, their main argument in the course of this proceeding has been that the information exchanged related to the past only, and was of such a general nature and covered such a wide geographical market, without any breakdown for individual countries or markets, that it could not have affected their individual competitive behaviour and therefore could have had neither as its object nor effect the restriction of competition between them.

II. LEGAL ASSESSMENT

A. Article 85 (1)

(30) Article 85 (1) of the EEC Treaty prohibits as incompatible with the common market all agreements between undertakings or 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.

Undertakings

(31) Unichema, Henkel and Oleofina are all undertakings within the meaning of Article 85 (1).

The Statement of Objections in this case was addressed to Unilever plc, London, on behalf of Unichema. The reply to the Statement of Objections was made by Unilever NV, Rotterdam on behalf of Unichema, and accordingly this decision is addressed to Unilever NV on behalf of Unichema.

Agreement

(32) The agreement which those three undertakings concluded in September 1979, and implemented until the end of 1982, concerning the exchange of information on their sales of fatty acids was an agreement within the meaning of Article 85 (1).

Restriction of competition

(33) The agreement had as its object and effect the restriction or distortion of competition within the common market.

(34) In its Seventh Report on Competition Policy (1), the Commission explained its general attitude to the exchange of information between competitors along the lines indicated by the Court of Justice in the Sugar case (2).

(35) The Commission stated that it had no fundamental objection to the exchange of statistical information through trade associations or reporting agencies even when they provide a breakdown of the figures, e. g. by country or product, as long as the information exchanged does not enable the identification of individual businesses.

The Commission went on to say that it would generally regard the organized exchange of individual data from individual firms, such as figures on quantities produced and sold, as practices which have as their object or effect the restriction or distortion of competition and which are therefore prohibited.

(36) The agreement between Unichema, Henkel and Oleofina to exchange historic individual sales figures for the years 1976-1978 enabled the parties to determine their traditional respective position on a given market. The subsequent regular exchange of information gave each of the parties the opportunity of identifying the individual businesses of his two major competitors and thus to measure on a quarterly basis their future performance on that market.

The document found at Unichema clearly confirms this in particular by the use of the term *soll* with its normal connotation and also the description 'nothing stolen' in connection with Oleofina's apparently substantial gain in market share, as well as the use of the words 'GM refused to share'.

(37) At the time of the quarterly exchanges, each of the parties to the agreement will of course have had available information about its own individual performance in the market, including fluctuations in its sales volume due to the gain of new customers or the loss of traditional ones. This information did not, however, enable the undertaking to establish with any accuracy its relative position on the market compared with that of its competitors nor any changes in that position. Valuable additional information was obtained, therefore, by the agreement to exchange information, in that it provided the parties with the global sales volumes of the others from which could be deduced each party's market share and any changes thereto. The exchange, therefore, enabled each of the parties to identify more precisely the competitive behaviour of the others more quickly and easily than would have been possible, if at all, in the absence of the agreement.

The agreement thus removed an important element of uncertainty on the part of each of them as to the activities of the others.

(38) Despite the alleged general nature of the information exchanged it did improve their knowledge of market conditions in a way which strengthened the connection between them so that they would be able to react more rapidly and efficiently to one another's actions.

In view of the market stabilization which the parties undoubtedly wanted to achieve, this inevitably lessened the intensity of competition that would otherwise have existed between them. This is so even if it is accepted that the sales figures first given by Oleofina for 1976-1978 were wrong and had to be corrected because they still provided the others with a parameter for adapting their market behaviour.

Finally, the regular contacts to exchange the sales figures also provided them with a forum for raising criticism if inroads were made into their respective market shares or if the balance of power in the market were to be upset drastically.

(39) Further evidence of the restrictive nature of the agreement is that it created a climate or conditions in which additional restrictive arrangements such as fixed national quotas or prices could become possible. Even if such quotas or prices are not fixed directly by the parties they may well be brought about indirectly by an agreement to exchange information.

Although there is no evidence to suggest that, in this particular case, the parties to the exchange of information agreement did fix quotas directly, the Commission nevertheless considers that the object of the agreement bears a strong resemblance to that of an outright quota-fixing agreement since it clearly aimed at dissuading the parties from adopting aggressively competitive behaviour towards each other and also at achieving stabilization of their relative positions on the market.

(1) Published in April 1978, Chapter I, Paragraph 2, points 5-8.
(2) Cases 40-48/73, etc., Suiker Unie and others *v.* Commission, ECR (1975), p. 1663.

(40) The whole economic context in which the agreement occurred also provides further evidence of its restrictive object and nature.

The agreement was concluded in a time of economic recession with considerable surplus production capacity and declining prices and margins.

When Unichema proposed the information exchange, it announced to its two major competitors that its reorganization plans were not to be interpreted as a sign that it was preparing to reduce its presence on the market. Unichema's expectation in making this communication must have been that competitive conditions between them would not alter and that the others would not use the opportunity to seize market share at its expense.

Indeed Unichema has stated that it assumed there would be no change in the market place.

(41) It may well be that the parties had different conceptions of the agreement. However, Henkel's claim that it was designed only to check the APAG statistics is both contradicted by the statements of the two other participants and illogical. If the APAG statistics were defective, the remedy lay in raising the matter openly, particularly as a senior Henkel employee was chairman of the Statistics Committee. Furthermore, the information which the 'Big Three' exchanged could not give any better view of production in the industry as a whole than the APAG scheme since, by definition, it covered only three producers.

(42) When the agreement was concluded a perfectly legitimate system of exchange of information already existed within the framework of APAG.

Unichema and others had expressed their concern that information revealing the identify and behaviour of individual companies and considered as business secrets should not be divulged through APAG because of the obvious risk of conflict with competition laws which the publication of such information would have.

Nevertheless, Unichema, Henkel and Oleofina specificaly agreed to exchange just that kind of information and to limit the exchange to the three major producers which could be most dangerous to each other.

(43) The parties' argument that the information exchanged related to the past only and was of too general a nature to have an anti-competitive object must therefore also be rejected. Clearly, the parties considered the agreement to be important since they continued the regular exchange of information for more than three years.

(44) The object of the agreement therefore remained the restriction or distortion of competition within the common market.

(45) The agreement was effectively applied by the parties for a period of just over three years. The Commission considers that an agreement concluded between, and subsequently implemented by, the three major producers in a market in recession, and based on an exchange of confidential information on the one hand about traditional market positions and on the other hand providing a means of monitoring their future performance, has inherent restrictive effects upon competition although these may not be measurable or even apparent to an observer of the market unaware of the existence of such an agreement.

By effectively applying the agreement, the parties have shown their genuine commitment to the market stabilization objective underlying it. Through the exchange of information they artificially increased transparency between them by obtaining knowledge of each other's activities which they would not have had in the absence of the agreement. The Commission considers that this will inevitably have led them to temper their competitive behaviour towards each other. In that respect, it is immaterial that the development of the parties' respective market shares may show that there was scope for competition between them and that they may well have taken business from each other. This illustrates at best that the parties' commitment to market stabilization did not amount to an outright quota-fixing arrangement.

(46) The continued regular contacts between the parties during which each of them could be called upon to explain or justify possible inroads into the others' traditional markets also point to the practical effect and importance of the agreement to the parties.

(47) In view of the position of Unichema, Henkel and Oleofina on the market, and the economic importance of this market, the restriction of competition stemming from their agreement was appreciable.

Effect upon trade between Member States

(48) The restrictions upon competition described above were inherently liable substantially to affect trade between Member States because they involved supplies to the whole of the common market by the three principal producers of fatty acids which together supply the major part of the needs of the EEC market for these products. Unichema, at least, had production facilities in several Member States

of the Community and all three producers marketed the products in several or all Member States.

Furthermore, an agreement between the major EEC producers of a particular commodity whose object is the restriction of competition between them will, by its very nature, affect the pattern of trade between Member States which would have emerged in the absence of any such agreement.

B. Article 85 (3)

(49) The agreement between Unichema, Henkel and Oleofina to exchange information on their sales is not eligible for an exemption under Article 85 (3), since it was not properly notified in accordance with Article 4 of Regulation No 17.

Nor was the agreement exempt from notification under Article 4 (2) (1) and (2) of Regulation No 17.

(50) Even if the agreement had been properly notified, it could not have been exempted since it is difficult to see how such a restrictive information system, limited to the three biggest producers of a particular commodity aiming at market stabilization for their own benefit, could contribute to the improvement of production or distribution of goods, or to the promotion of technical or economic progress, and in particular, what benefits would accrue to the consumers.

C. Articles 3 and 15 of Regulation No 17

Termination of the infringement

(51) Under Article 3 (1) of Regulation No 17, the Commission may, if it finds, on application or on its own initiative, that there has been an infringement of Articles 85 or 86 of the Treaty, require by decision that the undertakings or associations of undertakings concerned should bring such infringements to an end.

(52) The three undertakings have declared that they terminated the agreement to exchange information about their sales of fatty acids with effect from 1 January 1983.

The Commission accepts this declaration and considers that there is no longer any reason for it to require the termination by decision of the infringement constituted by the agreement.

It is necessary, therefore, for the Commission only to find that Unichema, Henkel and Oleofina have committed an infringement of Article 85 and to impose appropriate fines.

Fines

(53) Under Article 15 (2) of Regulation No 17 the Commission may, by decision, impose on undertakings or associations of undertakings fines of from 1 000 to one million ECU or a sum in excess thereof but not exceeding 10 % of the turnover in the previous business year of each of the undertakings participating in the infringement, where either intentionally or negligently they infringe Article 85 (1) or Article 86 of the Treaty. In fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement.

(54) The Commission considers that it is appropriate in this case to impose a fine on Unichema, Henkel and Oleofina for their infringement of Article 85.

(55) The Commission is of the opinion that the infringement was intentional or at least negligent.

The parties were well aware, both from the rules of APAG and CEFIC, that their agreement might contravene Article 85. Indeed, one of them had on several occasions openly expressed concern about the need to ensure confidentiality for individual information in the APAG scheme, and yet they deliberately agreed to exchange just that kind of information.

Furthermore the judgment in the Sugar case was well knwon at the time as was the Commission's publicly declared general attitude to these kinds of agreement.

(56) The parties to the agreement control between them the major part of the market for fatty acids in the EEC and they each have considerable turnover in the products concerned.

The agreement affected the competitive behaviour of the parties, although the economic impact of it in the market was probably very limited.

There is no evidence that quotas were fixed directly by the parties.

(57) The infringement lasted for about three years and, although it continued after the Commission's investigations, it was terminated voluntarily by the parties, albeit at the Commission's suggestion.

(58) Despite the Commission's declarations in public about its attitude to agreements to exchange information this is the first case in which it has imposed a fine for a pure exchange of information agreement.

(59) The Commission considers, therefore, that the fine to be imposed in this case should be low and that the amount of the fine to be imposed on each of the three undertakings concerned should be the same despite the difference in their turnover,

HAS ADOPTED THIS DECISION:

Article 1

The conclusion in September 1979 by Unichema, Henkel and Oleofina of an agreement to exchange information about their sales of oleine and stearine and the implementation of the agreement until the end of 1982 constituted an infringement of Article 85 (1) of the EEC Treaty.

Article 2

The following fines are hereby imposed on the undertakings named herein in respect of the infringement set out in Article 1:

i) Unichema:	50 000 ECU,
ii) Henkel:	50 000 ECU,
iii) Oleofina:	50 000 ECU.

These fines shall be paid into the Commission's accounts as follows:

i) by Unichema:

(a) Account No 54.16.99.369 — Commissie van de Europese Gemeenschappen Brussel — ECU (for payment in ECU),

Algemene Bank Nederland NV,
attentie de Herr F. Maane,
Vijzelstraat, 32,
Amsterdam,

(b) Account No 41.60.95.518 — (for payment in Fl),

Ambrobank,
Rembrandtplein 47,
Postbus 1220,
Amsterdam 1000,

ii) by Henkel:

(a) Account No 262.00.64910 — Kommission der Europäischen Gemeinschaften Brüssel — ECU (for payment in ECU),

Sal. Oppenheim & Cie,
Untersachsenhausen 4,
5000 Köln,

(b) Account No 260.00.64910 — (for payment in DM),

Sal. Oppenheim & Cie,
Untersachsenhausen 4,
5000 Köln,

iii) by Oleofina:

(a) Account No 426-4403003-54 — Commission des Communautés Européennes Bruxelles — ECU (for payment in ECU),

Kredietbank,
Agence Schuman,
4, Rond Point Schuman,
1040 Bruxelles,

(b) Account No 426-4403001-52 — (for payment in Bfrs),

Kredietbank,
Agence Schuman,
4, Rond Point Schuman,
1040 Bruxelles,

within three months from the date of notification of this Decision. On expiry of that period interest shall automatically be payable at the rate charged by the European Monetary Cooperation Fund on its ECU operations on the first working day of the month in which this Decision was adopted, plus 3,5 percentage points, i. e. 10,75 %.

Should payment be made in the national currency of the addressees, the exchange rate applicable shall be that prevailing on the day preceding payment.

Article 3

This Decision is addressed to :

i) Unilever NV, Burg. s'Jacobsplein 1,
Postbus 760,
NL 3000 DG Rotterdam, on behalf of Unichema,

ii) Henkel KGaA,
Postfach 1100,
D-4000 Düsseldorf 1,

iii) Oleofina SA.
15, rue de la Loi,
B-1040 Bruxelles.

This Decision is enforceable pursuant to Article 192 af the EEC Treaty.

Done at Brussels, 2 December 1986.

For the Commission
Peter SUTHERLAND
Member of the Commission