II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 2 December 1988

relating to a proceeding under Article 85 of the EEC Treaty
(IV/31.697, Charles Jourdan)

(Only the French text is authentic)

(89/94/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 6 and 8 thereof,

Having regard to the application for negative clearance and the notification submitted on 5 November 1985 by Société Anonyme des Chaussures Seducta Charles Jourdan et Fils, 1 Boulevard Voltaire, F-26017 Romans, Charles Jourdan Holding AG, Spielhof 3, CH-8750 Glarus and Société Anonyme Xavier Danaud, Zone Industrielle de Charnas, F-07100 Annonay, in respect of a network of standard-form franchise and franchise-corner distribution agreements covering or intended to cover the Member States,

Having regard to the summary of the notification published (2) in accordance with Article 19 (3) of Regulation No 17,

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas :

I. THE FACTS

A. The undertaking

(1) Charles Jourdan Holding AG is a company constituted under Swiss law whose registered office is situated at Spielhof 3, 8750 Glarus (Switzerland). It is itself owned by the Swiss holding company Portland Cement Werke (PCW). Charles Jourdan AG with its affiliates, hereinafter referred to as the Charles Jourdan Group, owns, in whole or in part, a large number of companies in France, in the rest of the Community and outside the Community. These include in particular 'Société Anonyme des Chaussures Seducta Charles Jourdan et Fils' and 'Société Anonyme Xavier Danaud', which, together with Charles Jourdan AG, have notified the agreements which are the subject of this Decision.

— Société Anonyme des Chaussures Seducta Charles Jourdan et Fils notified the franchise and franchise-corner agreements relating to the Charles Jourdan trade mark (shoes and handbags) in France,

— Société Anonyme Xavier Danaud notified the franchise agreements covering the Xavier Danaud trade marks (shoes and handbags) in France and the franchise-corner agreements covering the Xavier Danaud trade mark (shoes and handbags) in France,

— Charles Jourdan Holding AG notified the franchise agreements covering the Charles Jourdan trade mark (shoes and handbags) and the Xavier Danaud trade mark (shoes and handbags) outside France.

(2) The Charles Jourdan Group mainly manufactures and distributes shoes and leather goods (some 80 % of its turnover) and handbags (9 % of its turnover). It also distributes ready-to-wear clothing and accessories under its own trade mark, and these account for the remainder of its turnover.

(1) OJ No 13, 21. 2. 1962, p. 204/62.
(2) OJ No C 220, 24. 8. 1988, p. 2.

In 1984, the Group achieved 55 % of its turnover in France and sold 1 685 000 pairs of shoes and 136 000 handbags. In 1987 the Group sold 1,1 million pairs of shoes.

The Group's turnover amounted to FF 896 943 000 in 1984 and FF 941 774 000 in 1985. In 1987 the turnover amounted to about FF 700 000 000.

The turnover of Portland Cement Werke amounted to SwF 568 000 000 in 1985.

B. The product and the market

(3) The Group's main activity is the production and sale of shoes, in particular medium and top quality shoes. The articles in the middle of the range lie roughly within a retail price range of FF 400 to FF 700, while the top quality articles cost over FF 700. On the basis of this distinction, although approximate, articles bearing the Seducta trade mark may be regarded as top category and those bearing the Charles Jourdan, Christian Dior or Xavier Danaud trade marks as falling within the second category. A proportion of the Group's shoe production (around 10 %) is subcontracted. The shoe trade marks distributed by the Charles Jourdan Group are Charles Jourdan, Seducta, Christian Dior and Xavier Danaud.

Another of the Group's activities is the production, partly through subcontracting, and the sale of leather goods (handbags, but also belts, luggage, gloves, etc.).

The accessories marketed by the group are generally produced through subcontracting. These include umbrellas, scarves, glasses, perfumes, tights, socks, ties, hats, watches, pens and jewellery. They are designed by the Charles Jourdan Group's stylists.

Lastly, the Charles Jourdan Group distributes under its trade mark a collection of ready-to-wear clothing for men and women that is produced entirely through subcontracting.

(4) The shoe market :

Community production amounted to some 1 200 million pairs of shoes in 1986, almost half of which were manufactured in Italy and some 200 million of which were manufactured in France. In 1986, Community imports amounted to 345 million pairs and exports to 260 million pairs. In the case of France, manufacturers exported a quarter of their production, but more than one in every two pairs of shoes (54 %) worn in France is imported.

The Community market, and in particular the French market, is therefore amply open to exports and imports.

There are a large number of smaller producers : out of a total of 423 French firms in 1982, only 15 employed more than 500 persons. However, the latter firms accounted for 25 % of total French production, with Eram and GEP heading the field.

Charles Jourdan's European competitors in the production of top-of-the-range shoes include Bally, Kelian, Carel, Manfield, Pinet, Clergerie, Maud Frison and Céline.

Its European competitors in the production of middle-of-the-range shoes include Mirelli, France Arno, Salamander, Heyraud, Raoul and Dressoir.

Competition from producers within the Community (Italy and Spain), though also from non-Community countries (Hong Kong, Taiwan, Singapore and South Korea), is very strong.

These comments also apply to distribution, where competition is fierce not only among sales outlets, but also among distribution networks.

In France, the bulk of footwear products is still distributed by independent retailers. Some independent retailers have formed themselves into joint buying pools (e.g. Cédaf, UCF, etc.) or operate on a franchise basis (e.g. Eram, GEP, Labelle, Charles Jourdan).

Shoes are also sold through the subsidiaries of manufacturing firms (e.g. Bata, Bally, Eram, Myris, André and Charles Jourdan) and purely distributive firms (e.g. Raoul, France Arno and Manfield).

Lastly, shoes are also sold through a number of non-specialist outlets, such as supermarkets, mail order firms and department stores.

In the case of leather goods the number of individual French and European manufacturers is even larger, since this sector includes craft industry as well as industry proper. Competition from Asian countries is very keen in the case of medium quality products. Distribution is widely scattered amongst specialized shops, bazaars, supermarkets, etc.

In the case of leather goods, the Charles Jourdan Group is the third largest French producer.

(5) The Charles Jourdan Group's share of the French shoe market as a whole is around 1 %. Its share of the Community market is negligible.

However, if one takes the market in medium and top quality shoes, the Group's market share may be estimated at nearly 10 % of the French market and around 2 % of the Community market. This market definition is not rigorous but it allows non-leather shoes and cheap shoes to be excluded.

The market share of the other products marketed by the group is insignificant both in France and at the Community level.

C. Distribution of the Group's products

(6) The distribution of the Charles Jourdan Group's products has to meet a number of requirements specific to the products and to the Group. Firstly, it is carried out by traders capable of dealing with a demanding clientele having above-average purchasing power. Secondly, close links are kept up between retailers and the Group so as to maintain a uniform style and approach to customers.

(7) Distribution is carried out through four types of shops :

— branches : these are owned and managed by the Group and display the Charles Jourdan or Xavier Danaud shop sign. They constitute the shop window of the group's activities. In general, they also market all the products in the Charles Jourdan range

— franchised shops : these are independent of the Group, but have signed a franchise distribution agreement with it, allowing them to display the Charles Jourdan or Xavier Danaud shop sign on the outside of their shop premises in respect of the whole of the shop and allocating them a specified territory,

— franchise-corner retailers : these are independent traders who have signed a distribution agreement with the Group, allowing them to represent the Charles Jourdan or Xavier Danaud trade marks within a specified territory in a separate part of the shop premises, the articles in question being in competition with those of other brands. The shop sign must be displayed within the shop and not on the outside, as in the case of franchised shops.

Because of the franchise-corner retailer's more limited commitment to the Group compared with franchised retailers, there is a difference in the rights and duties of each of the partners. The franchise-corner formula, which combines certain characteristics of franchise retailing and conventional retailing, is intended either, if chosen by the retailer, to allow the franchise-corner retailer to maintain greater independance from the group or, if chosen by the Group, to test the franchise-corner retailer's personal and professional capacity before giving him a franchise,

— traditional retailers : they have no legal link with the Group apart from agreements to sell articles bearing the trade mark. Such retailers are selected by the Charles Jourdan Group on the basis of objective considerations, namely the shop in which the activity is carried out, the quality of the products distributed and the retailer himself, his competence and reputation.

D. Main features of the standard-form agreements notified

(8) *Procedure for choosing the Group's franchisees and franchise-corner retailers*

The agreements are concluded *intuito personae* on the basis of the candidate's personal and professional qualities. The agreement may not be transferred to a third party without the approval of the Group. Any manager employed to run a shop must be approved in advance by the Group.

(9) *Legal independence of franchisees and franchise-corner retailers*

Franchisees and franchise-corner retailers are the owners of, and legally and financially responsible for, their businesses and fittings.

However, any change in the geographical location or in the internal or external fittings of the shop must be approved in advance by the Group.

(10) *Exclusive territory*

Each agreement defines the exact territory of the franchisee or franchise-corner retailer.

Within the franchisee's territory, the franchisee is allowed to operate his shop, under the external shop sign of one of the Group's trade marks and may distribute the relevant products only on the premises defined in the agreement.

Within the franchise-corner retailer's territory, the franchise-corner retailer is allowed to operate part of his shop under the internal shop sign of one of the Group's trade marks and may distribute the relevant products only on the premises defined in the agreement. There may be several traditional retailers and/or franchise-corner retailers within the territory of a franchisee. However, there cannot be more than one franchisee within one and the same territory.

(11) *Transfer of know-how from the Charles Jourdan Group to franchisees and franchise-corner retailers*

Franchisees receive know-how and continuous assistance from the Charles Jourdan Group in the following areas :

— purchasing (season's collection ; standard order ; trends ; colours and materials in fashion), with information being provided to the retailer on the latest fashion trends,

— supply of the general decoration concept, with help being provided on the decoration or redecoration of the shop,

— establishment and maintenance of stock and management information, with assistance being provided on the internal management of the shop,

— provision of information on the sale of products in the 'affiliates and franchisees' networks, with information being given on the business activity of sales outlets distributing the same products,

— advertising, with material help or advice being provided on the advertising policy of franchisees.

The know-how thus made available is primarily commercial although it also covers management aspects. It is substantial and gives the trader a clear advantage over competitors. It is this, in addition to the prestige of the trade mark, which prompts actual or would-be independent traders to conclude such agreements with the Charles Jourdan Group.

Franchise-corner retailers only receive information on purchasing and fashion trends from the Charles Jourdan Group. Such information is both more limited and covers fewer fields than that provided for franchisees. No provision is made for management assistance.

All the information supplied to franchisees or franchise-corner retailers is confidential.

(12) *Industrial property rights*

The Charles Jourdan Group remains the owner of its registered trade marks and of its designs, trade names, signs, emblems, symbols and other distinctive commercial marks. It alone may decide on the use made of them.

(13) *Right of inspection by the Charles Jourdan Group*

Franchisees and franchise-corner retailers must make their accounts available to the Group and must each month send in a statement of sales and quantities sold for the previous month. They must allow inspections to be carried out of their staff and business premises, including premises for storage. The inspection may also relate to whether the franchisee is meeting the quality standards associated with the name and reputation of the goods.

(14) *Financial obligations to the Charles Jourdan Group*

In exchange for the franchisor supplying the general decoration concept, the overall building plan, samples of materials, the specification, and the assistance of the decorator, the franchisee has to pay an entry fee of FF 20 000 to FF 30 000 depending on the trade mark involved. The costs of fitting out and equipping the shop are borne by the franchisee or the franchise-corner retailer. No entry fee is required from franchise-corner retailers, who have to pay only a guarantee deposit.

In return for the rights granted and the services supplied, the franchisee must also pay the franchisor, depending on the trade mark involved, a franchise fee of 1,5 or 2 % of the total amount of net sales, excluding tax, for the shop. In the case of franchise-corner retailers, the fee is set at 1 % of the shop's total sales, excluding tax. In practice, at least 50 % of such sales are accounted for by products bearing the Group's trade marks.

(15) *Non-competition clause*

In the case of franchise agreements, the non-competition clause prohibits the franchisee from operating within the allocated territory any other shop franchised by companies other than those of the Charles Jourdan Group, unless such other shop sells articles which because of their price and style cannot be regarded as competing with Charles Jourdan products.

Within the shop itself, the franchisee may distribute only products bearing the trade marks covered by the agreement and the Group's other trade marks. The franchisee may, however, be authorized by the Group to distribute other articles originating outside the Group.

In the case of agreements with franchise-corner retailers, there is a clause prohibiting them from displaying or selling products which, because of their trade mark, name or presentation, would be likely to detract from the Charles Jourdan Group's brand image.

Upon expiry of the agreements, the trader is not subject to any restrictions in his subsequent activities. Where a franchised shop is to be sold, the first offer must be made to the franchisor, who has a period of one month in which to decide whether to buy it.

(16) *Supply arrangements*

The trader may obtain direct supplies of products bearing the Charles Jourdan Group's trade marks either from the group itself, or from a Group branch shop, or from another member of the network, whether such a member is a franchisee or franchise-corner retailer, or even from a traditional retailer of products bearing the Group's trade

marks, whether or not such suppliers are established in the same Member State. As a general rule, cross-supplies between distributors of products bearing the Group's trade marks are allowed, provided that the principal activity of the franchisee or franchise-corner retailer is not that of wholesaler. This possibility was granted to these Charles Jourdan Group retailers at the Commission's request.

(17) *Purchase prices*

Within one and the same Member State purchase prices are the same for all franchisees, franchise-corner retailers and traditional retailers. However, quantity rebates may be granted.

Variations in purchase prices from one Member State to another are due to the costs of distribution, transit, exchange, etc. involved in export operations.

(18) *Selling prices*

The Charles Jourdan Group draws up price lists every season. The price lists are intended for guidance purposes and retailers are not required to abide by them. This freedom for retailers to determine their selling prices was expressly specified in the agreements at the Commissions's request.

(19) *Duration of the agreements*

All the agreements are concluded for an initial term of five years.

(20) *Termination of the agreements*

The Charles Jourdan Group may terminate a franchise agreement or an agreement with a franchise-corner retailer if the trader's assets are placed in the hands of the receiver or the trader goes into liquidation, if the shop is transferred to other premises or altered, or if sales are insufficient. In the event of breach of any of the clauses of the agreements, the Charles Jourdan Group or its partner, the franchisee or the franchise-corner retailer, may terminate the contract.

(21) *Effects of termination or expiry of the agreement*

Franchisees or franchise-corner retailers are not subject to any restrictions on the exercise of their future activities. They may continue to distribute similar or competing products within the same geographical area and in the same shop.

They are merely required to remove all shop signs and advertising displays from their shops, to modify the fittings associated with the activity of franchisee or franchise-corner retailer and to hand over to the Charles Jourdan Group all printed matter, labels, packing materials, etc. bearing the trade marks, excluding any supplies necessary for the disposal for remaining merchandise in stock.

(22) *Observations from third parties*

The Commission received no observations following its publication of a notice in accordance with Article 19 (3) of Regulation No 17.

II. LEGAL ASSESSMENT

A. Article 85 (1)

(23) Through the standard-form distribution agreements notified, the Charles Jourdan Group:

— grants to its franchisees and franchise-corner retailers, within a territory specified in the agreement, the exclusive right to use in a retail shop its identifications (shop signs, trade mark, business name) and its designs and models for the purposes of selling. This results in a uniform presentation of the products marketed within the network. The exclusive right applies to the shop sign on the outside of the shop and to the shop sign inside the shop in the case of franchise-corner retailers,

— transfers to its franchisees and its franchise-corner retailers know-how consisting of a body of commercial and management knowledge previously tried and tested by the Charles Jourdan Group itself and not divulged to third parties and of continuous assistance. The technical and business know-how is updated in the light of the results of the experience acquired by the Charles Jourdan Group.

(24) The Charles Jourdan Group is able to develop a coherent and efficient sales network without massive investments, while at the same time maintaining control over the activity of the sales outlets.

This formula allows franchise retailers not already experienced in the distribution of articles bearing the trade mark to benefit from the franchisor's know-how and experienced franchise retailers, in addition to this advantage, to concentrate all their efforts on marketing the products of the Charles Jourdan Group, whose reputation is enough to guarantee them a clientele.

The formula enables franchise-corner retailers to benefit from the Group's know-how and from the reputation of the Charles Jourdan Group's trade marks, while at the same time maintaining a large degree of business autonomy thanks to the distribution of competing trade marks in their shops.

(25) The standard-form franchise agreements or franchise-corner retailer agreements which the Charles Jourdan Group has signed or intends to sign with its franchisees or franchise-corner retailers are agreements between undertakings within the meaning of Article 85, the Charles Jourdan Group and each of its partners remaining independent untertakings.

(a) *Clauses not covered by Article 85 (1)*

Franchise agreements

(26) The Court of Justice in the Pronuptia judgment (1), and the Commission in the Pronuptia (2), Yves Rocher (3) and Computerland (4) Decisions, took the view that clauses which are essential to prevent the know-how supplied and assistance provided by the franchisor from benefiting competitors and clauses which provide for the control that is essential for preserving the common identity and reputation of the network, operating under the shop sign do not constitute restrictions of competition within the meaning of Article 85 (1).

(27) The clauses that are essential to prevent the know-how made available from benefiting competitors are the following:

— the clause providing for non-competition during the term of the agreement prohibits the franchisee from operating any other franchised shop within the allocated territory, unless such other shop sells products that are unrelated to the products of the Charles Jourdan Group. This clause is justified for the franchisee by the fact that the know-how provided could easily be used for the benefit of other products and other trade marks under another franchise system. The franchisee is not bound by any non-competition clause once the agreement has expired. Such a non-competition clause would not be justified first as the know-how provided includes a large element of general commercial techniques, and second, as this type of franchise is primarily granted to retailers who are already experienced in selling shoes,

— the provision prohibiting the franchisee from transferring its franchise contract, subletting its shop, setting up a sub-franchise, placing its business under management by a third party or appointing a salaried shop manager without the express approval of the Charles Jourdan Group enables the Charles Jourdan Group to ensure that the franchisee possesses the professional qualities necessary for the exercise of its functions, but also that persons not belonging to the Charles Jourdan network do not benefit from the advantages inherent in the distribution system being examined here.

(28) The clauses that provide for the control essential to preserve the common identity and reputation of the network trading under the franchisor's name are as follows:

— obligation on the franchisee to carry on his business activity from premises fitted out according to the indications and advice of the group. This makes it possible to ensure the consistency, commercial homogeneity and reputation of the sales outlets of the Charles Jourdan Group's network,

— obligation on the franchisee to cooperate with the Charles Jourdan Group. This obligation relates principally to advertising, which must be carried out in agreement with the Charles Jourdan Group so as to maintain the Group's brand image and the quality of the management of the sales outlet, so as to prevent bad management from harming the interests of the trade marks represented,

— ban on the franchisee reselling the Charles Jourdan Group's goods to traders other than franchisees, franchise-corner retailers or retailers supplied by the Group. This clause is intended to maintain the unity of the network and the link, in the consumer's mind, between the Charles Jourdan Group's product and the place where it is sold,

— obligation on the franchisee unless otherwise authorized by the Group, in view of the nature of the products concerned (fashion goods) and in order to preserve the consistency of the brand image, to order the goods connected with the essential object of the franchise business exclusively from the Charles Jourdan Group or from suppliers designated by it. The franchisee may purchase the goods in question from any other franchisee, franchise-corner retailer or traditional retailer belonging to the Charles Jourdan network,

— obligation on the franchisee to submit to checks by the Charles Jourdan Group. The Group's right of scrutiny of the management of its retailers is a counterpart to the responsibilities delegated by the Charles Jourdan Group to its partners.

(1) Case 161/84 *Pronuptia* [1986] ECR 353.
(2) OJ No L 13, 15. 1. 1987, p. 39.
(3) OJ No L 8, 10. 1. 1987, p. 49.
(4) OJ No L 222, 10. 8. 1987, p. 12.

(29) As regards retail prices, which are only recommended, it should be emphasized that the mere communication of recommended prices by the group to its retailers cannot be regarded as restricting competition, provided that it does not result in concerted practices between retailers in the network or between retailers and the Charles Jourdan Group.

(30) The lack of any obligation on the Group to define and abide by selection criteria in choosing its franchisees is due to the desire to establish an integrated and interdependent distribution network to which each trader, with his professional and personal capacities, has chosen to belong. The continuous assistance which the franchisee receives during the term of the agreement implies a significant involvement of the Group's representatives with each of the traders. The members of the distribution network must therefore be limited in number. Consequently, the Group can of its own accord choose the traders which seem to it most suitable for maintaining the cohesion of the network.

Franchise-corner retailer agreements

(31) The clauses not covered by Article 85 (1) are firstly those which provide the Group with the essential control needed to perserve the common identity and reputation of the network symbolized by the shop sign within the shop: the franchise-corner retailer must carry out his activity in the part fitted out in accordance with the Group's directives. He must also cooperate with the Group in matters of advertising and management. He cannot purchase the goods from or resell the goods to traders other than those who are already members of the Group's distribution network. Lastly, the franchise-corner retailer must submit to checks by the Charles Jourdan Group.

The franchise-corner retailer is not subject to any non-competition obligation. Nevertheless he cannot display or sell in his shop products liable to detract from the Charles Jourdan Group's brand image. He is free to market other trade marks. This clause is justified by the quality of the Charles Jourdan Group's products, necessitating proper presentation. In view of the highly competitive situation in the sector, this restriction is not likely to have any significant effect on competition.

The agreement is automatically terminated in the event of transfer, management by a third party, control of the company by a third party or appointment of a salaried shop manager without the express approval of the Charles Jourdan Group, so as to ensure that the franchise-corner retailer has the necessary qualities and the advantages of the formula do not benefit a third party.

(b) *Clauses covered by Article 85 (1)*

Franchise agreements

(32) The clauses that involve market sharing between the Charles Jourdan Group and its partners or between its partners themselves constitute restrictions of competition within the meaning of Article 85 (1). This applies to:

— the exclusivity granted to the franchisee to operate under the franchisor's trade marks in a given sales area,

and

— the obligation on the franchisee to carry on his business activity exclusively from the premises approved for that purpose.

The combined effect of these clauses is to afford each franchisee relative protection against competition from other franchisees within its sales area. However, such protection is restricted by the fact that, while there may be only one franchisee within a given area, there may be several franchise-corner retailers and traditional retailers within the area.

(33) The franchise agreements may affect trade between Member States as they constitute the basis of a network wich is bound to spread over the whole Community and as the franchisees are not allowed to become established in another Member State.

Franchise-corner retailer agreements

(34) The exclusive right to display an internal shop sign within the shop, does not, within the territory, exclude either branch shops or franchise shops, which have, in addition, an external shop sign. Nor does such exclusive right exclude the display of Charles Jourdan Group trade marks in traditional retail shops. The contracts only restrict the retailer a little and, on a highly competitive market, offer very limited protection against competition within the network.

(35) Since, in addition, the number of franchise-corner retailers was very low on the date when the agreements were notified and since the number of franchise-corner retailers is not, according to the Charles Jourdan Group, going to increase significantly, they are not likely to affect trade between Member States, or significantly to prevent, restrict or distort competition within the common market. The provisions of Article 85 (1) do not therefore apply to the franchise-corner agreements.

B. **Article 85 (3)**

(36) Commission Regulation (EEC) No 1983/83 [1] on the block exemption of exclusive distribution agreements does not apply to the standard-form franchise agreements in question, since their legal nature is different [2]. In addition to being distribution agreements they are agreements under which the franchisor grants the franchisee the right to operate a shop using an original and evolving distribution formula. It should therefore be examined whether the agreements in question are eligible for individual exemption under Article 85 (3).

(37) Through the combined effect of their provisions as a whole, the standard-form franchise agreements governing the Charles Jourdan distribution network contribute to improving the distribution of the products concerned within the meaning of Article 85 (3). They enable :

— the Charles Jourdan Group to extend its distribution network without carrying out investment in the material fitting out of new branches, investment which it would perhaps otherwise not be able to carry out, or to carry out as rapidly, since it is the prospective franchisees which are responsible for the necessary investment,

— the Charles Jourdan Group to make available to consumers a distribution network which is uniform in the business methods used and the range of products offered. Such uniformity makes it possible to rationalize business methods by standardizing them,

— the Charles Jourdan Group, given the close and direct links which it has with its partners, to be rapidly informed by them of any changes in consumers' habits and tastes and thus to be able to take account of this in its forward plans on sales and production,

— the franchisee, who enjoys exclusive rights to use the external shop sign within the allocated territory, to concentrate his sales efforts on that territory and on the Group's trade marks,

— the franchisee to enjoy the commercial benefits of the brand image of the products and the tried and tested know-how and continuous assistance of the Charles Jourdan Group.

(38) The agreements governing the Charles Jourdan distribution network allow consumers a fair share of the benefit resulting from these improvements in distribution :

— consumers can acquire products from the Charles Jourdan Group's range in a larger number of sales outlets and countries,

— the know-how transmitted and the assistance provided by the Group to its partners ensure that consumers receive high-quality service,

— the fact that the retailers remain the owners of their businesses ensures commercial dynamism and diligence on the part of the trader.

The pressure of competition within the sector and the freedom which consumers have to purchase the products at any shop within the network will tend to force franchisees to pass on to consumers a reasonable share of the advantages resulting from the rationalization of distribution.

(39) The Charles Jourdan Group's standard-form agreements do not contain restrictions that are not indispensable to the attainment of the said benefits. The restrictive clauses that provide for some territorial exclusivity may be considered, in the circumstances, to be indispensable in that few prospective franchisees would be willing to undertake the necessary investment, to pay an initial lump-sum fee or a guarantee deposit and to pay royalties in proportion to their turnover in order to belong to such a distribution system, if they did not enjoy some territorial protection against competition from other franchisees and from the Charles Jourdan Group itself. It should be noted that the franchisees are free to buy and sell the relevant products among themselves or to sell them to and buy them from other independent retailers of the trade mark.

(40) The Charles Jourdan standard-form agreements and the system resulting from their implementation are not such as to afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question. With regard to producers and distributors that are competitors of the Charles Jourdan Group, the Charles Jourdan network cannot produce any significant horizontal anti-competitive effects outside of the trade mark, given the dispersal of the supply of products both at production level and at distribution level.

(41) The production and distribution of Charles Jourdan Group shoes, which is the Group's main activity, account for only a modest share of the French market and an even smaller share of the Community market. On the submarket for medium and top quality shoes, the Charles Jourdan Group accounts for some 10 % of the French total and only around 2 % of the Community market. Its turnover, which amounted to less than FF 1 000

[1] OJ No L 173, 30. 6. 1983, p. 1.
[2] Grounds 15 and 33 of Case 161/84 *Pronuptia.*

million in 1985, is relatively modest compared with that of its European competitors. In addition, the footwear market, like the market for leather goods, accessories or ready-to-wear clothing is buoyant and very keenly competitive.

(42) The franchisees are, in addition, in competition with one another, since they are allowed to sell to any consumer resident within or outside the alloted territory and to any other franchisee, franchise-corner retailer or retailer of the trade mark, subject to the condition of not acting as a wholesaler by way of principal activity. Furthermore, they are entirely free to set their selling prices. The distribution network, which covers several different systems of marketing, creates a healthy rivalry between retailers, thus allowing the consumer the widest choice and hence the best purchasing conditions.

Lastly, there is no provision for any no-competition clause upon expiry or after termination of the agreements, and this enables any franchisee to continue to carry on his business activity in his own shop without any restriction once he has ended his relationship with the Group.

(43) All the conditions for the application of Article 85 (3) are thus met.

(44) The exemption decision will take effect as from the date on which the most recent amendments were made to the standard-form agreements, i. e. 17 December 1986. Exemption may be granted for a period of 10 years. This period seems justified given the limited restriction of competition resulting from the agreements and the competitive context in question,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 85 (3) of the EEC Treaty, the provisions of Article 85 (1) are hereby declared inapplicable for the period from 17 December 1986 to 16 December 1996 to the standard-form of retail franchise agreements which the Charles Jourdan Group concludes with its franchisees in the Community.

Article 2

Pursuant to Article 2 of Regulation No 17, the Commission hereby certifies that there are no grounds under Article 85 (1) of the Treaty for action in respect of the standard-form 'franchise-corner retailer' agreements which the Charles Jourdan Group concludes with its 'franchise-corner retailers'.

Article 3

This Decision is addressed to:

1. La Société des Chaussures Seducta Charles Jourdan et Fils,
   1 boulevard Voltaire,
   F-26071 Romans

2. Charles Jourdan Holding AG,
   Spielhof 3,
   CH-8750 Glarus

3. La Société Xavier Danaud,
   Zone Industrielle de Charnas,
   F-07100 Annonay

Done at Brussels, 2 December 1988.

For the Commission

Peter SUTHERLAND

Member of the Commission