II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 8 December 1977

relating to a proceeding under Article 86 of the EEC Treaty
(IV/29.132 — Hugin/Liptons)

(Only the English text is authentic)

(78/68/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 86 thereof,

Having regard to Council Regulation No 17 of 6 February 1962 [1], and in particular Articles 3, 15 and 16 thereof,

Having regard to the application submitted to the Commission on 28 October 1975 pursuant to Article 3 of Regulation No 17 on behalf of Liptons Cash Registers and Business Equipment Ltd of London in the United Kingdom,

Having regard to the decision of the Commission of 22 April 1977 to initiate a proceeding against Hugin Kassaregister AB of Stockholm in Sweden and Hugin Cash Registers Ltd of London in the United Kingdom,

Having heard the undertakings concerned in accordance with Article 19 of Regulation No 17 and with Regulation No 99/63/EEC of 25 July 1963 [2],

Having regard to the opinion of the Advisory Committee on Restrictive Practices and Dominant Positions delivered pursuant to Article 10 of Regulation No 17 on 19 October 1977,

Whereas :

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

I. THE FACTS

A. The undertakings

The Hugin Group

Hugin Kassaregister AB of Stockholm (hereinafter referred to as 'Hugin AB') is a major manufacturer of cash registers and similar equipment. Hugin AB is wholly owned by the Federation of Swedish Consumers, Köoperativa Forbundet, which is a very large financial and commercial unit, with 31 927 employees and an annual turnover in 1976 of SKr 12 159 000 000.

Köoperativa Forbundet has extensive contacts with other cooperative organizations in the world. It is a member of the International Cooperative Alliance which has 160 member organizations in 63 countries. These member organizations comprise 657 800 societies having a total membership of 321 500 000 consumers.

Hugin AB was founded in 1928 in order to manufacture economical and practical cash registers for Köoperativa Forbundet's shops and stores throughout Sweden. It was, however, quickly realized that in order for the manufacture of cash registers to be economical, it was necessary to export. Today, about 97 % of Hugin AB's production are sold outside Sweden.

Hugin AB has itself the following subsidiaries established within the EEC (hereinafter referred to collectively as 'Hugin companies') which are are responsible for the distribution of Hugin products in their respective territories :

Subsidiary	Country of incorporation	Percentage ownership
SA Hugin Belgium NV	Belgium	99
A/S Hugin	Denmark	100
Caisses Enregistreuses Hugin	France	88
Hugin Data Vertriebgesellschaft MbH	Germany	100
Hugin Cash Registers Ltd	United Kingdom	100

NB : The Belgian subsidiary's territory includes Luxembourg.

Hugin AB has other subsidiaries in the United States of America, Mexico, Norway and Venezuela.

In Ireland, Italy and the Netherlands where Hugin AB has no subsidiaries, it has appointed general agents or main distributors to sell and service Hugin cash registers under agreements made or renewed between 1971 and 1976.

The aggregate annual turnover for all products for the whole Hugin Group in 1975 was SKr 246 000 000 of which the sale of cash registers accounted for SKr 184 000 000. In addition the value of spare parts for cash registers delivered is estimated at about SKr 7 000 000. In 1975 the turnover for the sale of cash registers by Hugin companies in the EEC was SKr 47 200 000, and the value of spare parts supplied is estimated at SKr 2 300 000. In the United Kingdom turnover was SKr 13 800 000 and the value of spare parts supplied is assessed at SKr 700 000. In the United Kingdom the value of maintenance services, other than spare parts, was SKr 7 500 000. The service and repair of Hugin cash registers is therefore substantial business, accounting for 34 % of Hugin UK's total turnover, compared with the value of spare parts supplied representing about 3 %.

Turnover in spare parts is only an estimate as spare parts are not normally available for sale, being supplied either free under guarantee or as part of a service contract provided to customers.

Liptons Cash Registers and Business Equipment Ltd

Liptons Cash Registers and Business Equipment Ltd (hereinafter referred to as 'Liptons') is a small company, established in London over 25 years ago, which specializes in business machines, particularly cash registers. Liptons services, repairs, reconditions, sells and rents out cash registers of most makes both new and reconditioned and has, as a result, acquired considerable experience and expertise in this field. The company employs technical staff skilled in the maintenance, repair and reconditioning of all the well-known makes of cash register and other business machines. Liptons state that they undertake the service, repair, overhaul and rebuilding of all leading makes of mechanical and electro-mechanical cash registers, including the latest electronic machinery.

Liptons, which started business in the 1950s by trading in new and secondhand cash registers and other business machines, first started purchasing Hugin spare parts from Cash Machines Ltd, the importer of Hugin cash registers, in the late 1950s. This relationship continued until 1969, when Cash Machines Ltd, which had previously sold Hugin cash registers only to outlets within the cooperative movement, extended its activities to customers outside the movement and changed its name to Hugin (Great Britain) Ltd (hereinafter referred to as 'Hugin GB'). It remained, however, a wholly owned subsidiary of the Cooperative Wholesale Society.

Liptons established a satisfactory reputation for servicing and maintaining Hugin machines over these years and a good relationship with the management of the Hugin importers as a result of which Liptons was, in 1969, appointed the 'main agent' to sell Hugin cash registers in England, Scotland and Wales with the right, during the initial period of such agency, to service and repair Hugin cash registers in its capacity as main agent. Under the agreement Hugin GB agreed to sell Hugin cash registers to Liptons for resale within the agreed territory to customers outside the cooperative movement. This agreement was confirmed in a letter of 23 April 1969. Liptons continued to carry on previous lines of business during this time, although to a lesser extent, and continued to purchase Hugin cash registers and spare parts which it purchased for its own use from the importer until early 1972. Thereafter it continued to obtain its requirements from the newly created Hugin subsidiary until October 1972 when supplies ceased, following the termination of the agreement in May 1972.

Liptons' total turnover in 1968/69 was £65 523 rising, in 1970/71, when it was concentrating on the sale of Hugin cash registers, to over £ 285 000. Liptons' total turnover in 1974/75 had, however, reduced to £ 48 207, but has since recovered from this downward trend due to the expansion of its business outside the field of Hugin products.

As Hugin UK state that they do not supply independent firms in the United Kingdom and as Liptons knows of no other independent firm dealing in the repair or maintenance of Hugin cash registers, Liptons would appear to be the only competitor of Hugin UK in the United Kingdom.

Other producers

The market for the supply of cash registers in the common market is rather oligopolistic. The largest producer supplying the market is the National Cash Register company of the United States with an overall market share of about 36 %. The next largest manufacturer is the German firm Anka with 15 %, followed by Sweda, another American company, with 13 %. Hugin lies fourth with about 12 %. Japanese producers are now entering the market and they hold together a market share of approximately 13 %, all other producers, including the United Kingdom company Gross, accounting for approximately 11 %.

In the United Kingdom National Cash Register has approximately 40 % of the market, Sweda 18 %, Gross 16 % and Hugin 13 %. Anka has about 4 % and all other producers together have about 9 %.

The figures for market shares are approximate as no accurate statistics are available.

Even if Gross is included because of the size of its share in the United Kingdom, there are, therefore, only five major producers of cash registers which supply the common market.

B. **The product**

Cash registers are still largely mechanical or electromechanical. However, the sale of electronic cash registers is rapidly increasing. The price of mechanical cash registers usually lies between SKr 4 000 to 5 000.

Cash registers for commercial use are technically complicated and sophisticated machines. Most cash registers record transactions by printing the necessary details on rolls of paper and can break down the overall total into anything up to 18 sub totals. A cash register can have up to 2 000 different parts, although for the purposes of meeting different customer requirements, up to 5 000 parts may be manufactured to cover the variations possible in any one model.

C. **After-sales service and repair**

Hugin cash registers are well made and known to be reliable and have a long life. There is, therefore, a market for second-hand and reconditioned Hugin cash registers which are competitive with new Hugin cash registers.

It is essential that cash registers are reliable and that, if there is a breakdown, rapid and effective repair or replacement is available since failure can cause severe problems to the user. Each producer, therefore, lays great stress on the after-sales service available in respect of its cash registers and regards it as a significant factor in the competitiveness of the machine itself.

Hugin claims that it invests large sums in the establishment of an effective service and maintenance organization in order to provide a full guarantee for 12 months on all its products which includes free maintenance, repair and replacements of faulty parts. Hugin states that other producers provide virtually the same form of guarantee.

In addition Hugin companies offer a maintenance service contract which is available after the period of guarantee expires. Under this contract Hugin provides all necessary inspection, service and repair for a fixed sum per year. Hugin claims that the competition in the sale of cash registers is extremely keen inside the entire common market and that it is essential to provide such service, which in the United Kingdom, Hugin claims is run at a loss in order to remain competitive. Hugin maintains, therefore, that to provide this service effectively and to ensure that the good reputation of its machines will not be damaged by defective or inefficient service and repair by independent and unqualified operators, it is essential for Hugin not only to offer maintenance and repair on all its machines whether new or second-hand, but also to refuse to supply spare parts to any independent operator who may wish to undertake such service or repair. In this respect, however, the practice of Hugin appears to differ from the other major producers which, in the United Kingdom in any event, are all prepared to supply qualified independent operators with the spare parts they require.

D. **The association between Liptons and Hugin**

One of the main reasons for Hugin GB appointing Liptons as agent was the fact that the United Kingdom has decided to introduce the decimal system. This meant that all cash registers in the United Kingdom had to be decimalized prior to 15 February 1971. The decision to introduce the decimal system resulted in a boom on the cash register market during the years 1969, 1970 and 1971. Consequently cash register manufacturers needed help in selling cash registers.

At the time of the appointment of Liptons, Hugin GB retained the sole responsibility of maintenance and service for the machines which it sold to customers, particularly for the period of guarantee. However, during the boom in 1969/71 it would have been impossible for Hugin GB to handle all the maintenance and service necessary. Therefore the letter of appointment provided that while 'maintenance and servicing of machines will eventually be the sole responsibility of Hugin GB, in the initial stages Liptons' mechanics will participate'. This sentence related to new machines supplied under the contract and consequently Liptons was aware that its participation in the maintenance and service of the machines sold by Liptons under the agreement was intended to be limited to a short period of time. Liptons continued, however, to service the machines it used for its own separate business and to obtain the necessary spare parts from Hugin GB. Nothing was ever said to suggest that either Hugin GB or Hugin AB wished to take over this business from Liptons, to bring it to an end or to refuse to supply spare parts for it.

Following the appointment Liptons established a network of some 30 commission agents throughout England, Scotland and Wales to sell Hugin cash registers and took on extra staff of specially trained salesmen to promote sales and engineers to service and repair Hugin cash registers. In particular, one engineer was sent to Sweden for special training with Hugin AB in the repair, maintenance and modification of Hugin cash registers, and another engineer was a former employee of Hugin GB who had received similar training.

In January 1970 Hugin GB informed Liptons that the sales objective for each year should amount to £ 75 000 at retail prices and undertook to allow quantity rebate on sales above that figure. In fact Liptons, due no doubt, in part, to the boom in cash registers brought about by decimalization, succeeded in selling Hugin cash registers far in excess of that figure. Liptons' total turnover including the sale of Hugin cash registers and rental of cash registers from the date of appointment to the termination of the agreement in May 1972 was as follows:

Accounting years (July 1969 to June 1972)	Gross turnover £	Hugin sales £	Miscellaneous sales £	Rental £
1969/70	177 237	159 299	17 938	—
1970/71	285 000	254 237	27 263	3 500
1971/72	112 008	90 125	16 383	5 500

During the period April 1969 to May 1972, Liptons purchased the following amounts of spare parts for Hugin cash registers from Hugin GB for use in the maintenance and repair of cash registers sold under the agreement and also for the maintenance and repair and reconditioning of new and second-hand Hugin cash registers purchased by Liptons on its own account for renting and resale.

1970	£ 5 777
1971	£ 2 303
1972	£ 1 886
	£ 9 966

In 1970 Liptons entered the business of renting out cash registers. This business developed rapidly and has become, since the termination of the distribution agreement, the major part of Liptons' business, accounting for nearly 80 % of its present turnover.

In January 1972 Hugin AB founded a subsidiary in the United Kingdom called Hugin Cash Registers Ltd (hereinafter referred to as 'Hugin UK'). An agreement was reached between Hugin GB and its parent company on the one hand and Hugin AB and Hugin UK on the other, whereby Hugin UK took over some of the assets and liabilities of Hugin GB with effect from 8 January 1972. The agreement was completed on 22 March 1972. Hugin UK did not, however, agree with Hugin GB to take over the rights and obligations of Hugin GB relating to the agreement with Liptons, but Liptons was not informed of this fact until April 1972 when Hugin UK offered Liptons a new distributorship agreement. Liptons refused the offer in view of the fact that the terms of the new agreement were less wide in scope than those of the previous agreement with Hugin GB.

On 26 May 1972 Hugin GB repudiated its agreement with Liptons. Hugin GB thereafter changed its name to Century Cash Registers Ltd and has become a non-trading company.

Hugin UK however continued to supply Liptons with cash registers and spare parts it required for its separate business in the service, repair and reconditioning of Hugin cash registers.

Between 1 May 1972 and 23 October 1972 Hugin UK supplied Liptons with cash registers and spare parts to the value of £ 25 970·64 of which the value of the spare parts was £1 031·44.

E. The refusal to supply spare parts

From 23 October 1972 Hugin UK refused to supply Liptons with any more cash registers at wholesale price or any spare parts other than minor parts not related to maintenance or repair, such as keys, handles and pins, which the operator of the machine can install himself and which were also sold at the retail price.

On 31 October 1972 Liptons commenced proceedings in the High Court in London against Hugin GB for breach of the contract made in 1969. This Decision is, however, not concerned with the merits of the litigation between the parties in so far as they relate purely to matters of domestic law which fall within the province of the High Court of Justice in England to resolve.

Following the refusal by Hugin UK to supply Liptons with spare parts, Liptons endeavoured between February 1973 and July 1975 to obtain these parts from sources in other countries without success. Not only did Hugin AB itself refuse to supply the parts to Liptons direct, referring Liptons back to Hugin UK, but so also did its subsidiaries in Belgium. France and the subsidiary which then existed in Italy stating that they were not permitted to export such products. AB Electrolux of Stockholm, which manufactures the motors for Hugin cash registers, also refused to supply Liptons, referring Liptons to Hugin UK and to Hugin AB. In addition, an independent distributor in Germany stated that it was unable to supply the parts as it was not permitted to export and again referred Liptons back to Hugin UK.

On 21 July 1975 Liptons wrote again to Hugin UK asking Hugin UK to review the position and now to supply spare parts. In its reply dated 28 July 1975 Hugin UK stated 'We ... must point out that the policy of this company remains unchanged. In order to protect our customers and to ensure that they receive the correct service and that any guarantees that are promised can be met we reserve the right to ensure that all service work is carried out by employees of our company'.

In answer to a request for information from the Commission dated 11 June 1976, Hugin UK, after consulting its parent company Hugin AB, replied on 11 October 1976. This letter contained the following statements :

(a) 'All cash registers sold by the group are assembled in our factories in Sweden. All cash register parts are produced by approximately six hundred suppliers located mainly in Sweden, Switzerland and the USA and the majority of these parts are produced to Hugin's design and with tools belonging to Hugin and they are therefore exclusive to Hugin.'

(b) 'We impose no restrictions on trade between our subsidiaries in different countries but in practice such trade is rare. This is because customers normally arrange guarantee and technical service under contract in the country where the register will be in use. It is therefore convenient and natural for customers to deal with their nearest Hugin branch office or authorized dealer. Should such sales occur, the Hugin subsidiary in the customer's country is reimbursed the cost of guarantee, installation, training, etc., by the Hugin subsidiary which sold the equipment.'

(c) 'Cash registers are technically complicated products and are frequently built and adapted to suit the requirements of individual customers. If a customer's cash register does not function correctly the consequences will be serious. For example manual payment routines will have to be adopted and this may result in lower sales, increased employee dishonesty and inferior analysis of sales figures.'

(d) 'It is therefore essential that the customer is offered a reliable and speedy maintenance and repair service and every customer is offered a maintenance contract with a Hugin company or with an authorized dealer. Hugin wishes to avoid having its products serviced by unqualified personnel as this could lead to customer dissatisfaction and therefore authorized dealers are not appointed by Hugin unless they are able to maintain Hugin's high standards of service and maintenance. Only those firms which have proved their capabilities are chosen to become authorized dealers. Any firm may apply to become an authorized dealer and if it reaches our standards it will be appointed if there is a vacancy in the area in question. In the United Kingdom all servicing is carried out by Hugin Cash Registers Ltd which have set up an extensive organization for this purpose. In no cases are spare parts sold for resale other than to authorized dealers as each Hugin company maintains only such a stock of spare parts as is necessary for its own use and that of its authorized dealers.'

(e) 'Authorized dealers are appointed in those areas where distribution is not carried out by a Hugin company. There is however no restriction on such dealers suppying Hugin products to customers in other areas. For the reasons stated above customers will obviously prefer to do business with a supplier in their area who can meet their servicing needs. For these reasons we do not consider that any company in the Hugin Group is acting in breach of Article 85 of the Treaty of Rome.'

(f) 'In view of the figures set out in the reply to question 6 we do not consider that Hugin occupies a dominant position in the EEC and certainly do not consider that it abuses the position which it holds. The market is extremely competitive and it is in the interests of Hugin customers that Hugin is not compelled to permit a firm which is not an authorized dealer to service its products.'

In reply to a further request for information from the Commission dated 2 March 1977 Hugin UK forwarded to the Commission on 12 May 1977 copies of the distribution agreements entered into or renewed with its authorized dealers in Ireland in 1971, Italy in 1976 and the Netherlands in February 1972. In each case clause 3 of the agreement includes the following under the heading 'The duties of the distributor':

'The distributor agrees not to sell or offer for sale either directly or indirectly the products outside the the territory and agrees to immediately refer to the manufacturer all inquiries concerning the products from prospective purchasers outside the territory. The distributor agrees not to sell or offer for sale either directly or indirectly the products to anybody within the territory, if he has reason to believe that the purchaser intends to bring the products outside the territory.'

Each contract also requires the distributor at its own expense to maintain a stock of spare parts and to provide an expert organization to service and repair all cash registers sold in the territory. It is not stated that this obligation is temporary. Only in the case of the Irish and Dutch distributor is there any reference to training by Hugin AB and that is limited to what is described as the 'factory training' of an experienced mechanic at reasonable intervals.

On 15 June 1977, in its reply to the statement of objections in this case, Hugin AB confirmed that it does not supply spare outside its own distribution network and that the reasons therefor are based on the practical reasons that:

(a) Hugin has never been engaged in the sale of spare parts for cash registers as a product separate from cash registers;

(b) spare parts are an integrated part of service and maintenance;

(c) there has not been a meaningful demand for spare parts separate from maintenance service;

(d) stocks of spare parts are limited to the known needs under guarantees, contracts and service arrangements.

In addition to the practical reasons, Hugin AB stated 'there are also important goodwill arrangements behind the non-delivery of spare parts to companies outside the Hugin organization'. Hugin AB stated that maintenance service and repair of any Hugin cash register requires high technical knowledge and special training. Failure to give adequate service will result in grave problems for the customer which in turn may well result in a deterioration of Hugin's reputation.

As for Liptons, Hugin AB stated that it reserves the right to perform maintenance and service on all Hugin cash registers in use in the United Kingdom and that Liptons, having not for several years had the necessary training, nor access to manuals and other technical material is not capable of providing reliable service and repairs on Hugin machines in use in the United Kingdom. The fact that Liptons in the years 1969 to 1972 performed service on Hugin cash registers does not alter this since the technical development on the cash register market is very rapid. Should Hugin UK therefore start supplying spare parts to Liptons it would have to do this at the risk of deteriorated reputation as to the quality of Hugin cash registers and their service, which might result in loss of customers.

However, at the hearing on 21 June 1977, Hugin AB agreed that, with one exception, Hugin is still supplying the same models of cash registers today as it did in 1972, although there are certain differences due to technical development and, secondly, that the complexity of Hugin cash registers is at about the same level as that of the cash registers supplied by its major competitors.

With regard to the fact that Hugin's major competitors supply spare parts outside their distribution network, Hugin AB said that Sweda and National Cash Register were in a different position from Hugin since they had reduced their activity on the cash register market and were now concentrating on computers. Thus they might not care very much about the cash register market and servicing of their cash registers. Hugin, on the other hand, is staying in the market and is more conscious about servicing and maintenance.

With regard to the prohibitions admitted by the subsidiaries and the express prohibitions on dealers to supply outside their territories, Hugin AB has stated that amounted to an export prohibition Hugin AB is prepared to send a circular letter, which Hugin AB alleges is merely a clarification to its various subsidiaries in the EEC stating that such subsidiaries, upon a request from a customer in another country, are allowed to export cash registers to such customer.

Hugin AB will also send a circular letter to its distributors in the EEC stating that it has never been its intention to prohibit exports from one Member State to another and that the distributors are free, upon request from a customer from another country, to sell cash registers to such customer.

However, even when amended, Hugin AB's instructions to its subsidiaries and distributors will still not permit the export or the sale of spare parts to independent companies outside the Hugin distribution system which may wish to service, maintain, repair or recondition such machines anywhere in the common market.

F. The effect of the refusal to supply spare parts

The result of the action of Hugin UK in withdrawing the supply of spare parts was to make it impossible for Liptons permanently to continue in the business in its own right of servicing, maintaining and repairing Hugin cash registers. Liptons was, in fact, forced to turn down at least one important contract to service Hugin machines and can no longer offer its services as an independent source of service and maintenance.

The withdrawal of the supply of spare parts of Hugin cash registers created particular difficulties for Liptons in the business of renting Hugin cash registers. Liptons had naturally tended to concentrate on renting out Hugin cash registers not only because Liptons was the distributor of these machines and had a high opinion of their quality, but also because at that time Hugin also supplied a range of cash registers which provided Liptons with a wider choice to offer to its rental customers. The renting business of new and reconditioned machines was not a sound economical propositions for Liptons unless it could also maintain and repair the machines itself, and this business has accordingly been drastically reduced and only exists because Liptons dismantled Hugin cash registers to the value of £9 000 in order to use parts of these cash registers as spare parts for other machines.

The sale of reconditioned Hugin cash registers was profitable so long as Liptons had a ready supply of spare parts to recondition such machines itself. In this respect the withdrawal of such spare parts was especially damaging to Liptons since Liptons had bought a number of secondhand Hugin cash registers from Hugin UK which Hugin UK had taken in as 'trade-in' when supplying customers with new machines as is clear from the letter from Hugin UK to Liptons dated 14 September 1972 in which the managing director of Hugin UK, Mr Pope, stated :

> 'You will know that at no time has there been any agreement between us where we have sanctioned maintenance and repairs being carried out by anyone other than engineers in the employ of Hugin Cash Registers Ltd, and I therefore assume that the parts you refer to are those which are specifically needed to recondition the "trade-in" machines you have purchased from us.
>
> If you will be kind enough to send me a list of the parts you require — clearly stating the exact purpose for which they are to be used — I feel certain that we can come to some arrangement whereby we can help you to overcome the difficulties referred to in your letter.'

It is therefore clear that Hugin UK was, at least until September 1972, prepared to supply Liptons with spare parts in respect of Liptons' separate business in the reconditioning of second-hand Hugin cash registers purchased from Hugin UK but not with spare parts for the maintenance or repair of other Hugin machines.

The component parts of Hugin cash registers are not interchangeable with those of other makes so that Liptons is totally unable to maintain, repair or recondition Hugin cash registers without a source of supply of genuine Hugin spare parts. Apart from any question of copyright or other industrial property rights, Liptons state that it would not be economical to have such parts specially manufactured.

Liptons has an urgent and continuing need for spare parts for the cash registers it handles. Liptons also maintains that high standards of service, maintenance and repair are important factors in its business in respect of the cash registers it sells and also in respect of those which are hired out since the hire agreement carries an obligation for Liptons to keep the machines in good running order. This service Liptons regards as particularly essential if it is to keep those of its customers who use cash registers in their retail business in view of the disruptive effect on such business if their cash registers are not reliable.

Liptons had in 1972 invested over £25 000 in the purchase of Hugin machines and spare parts for its renting business which has proved very successful. Rental income for all makes increased from £ 3 500 in 1970 to £ 43 776 in 1975. The percentage of this income attributable to the renting out of Hugin machines, however, fell from 62 % at the outset to under 6 % in 1975 entirely due to the refusal to supply spare parts. If Hugin UK had not refused to supply spare parts, Liptons states that it would have expected to maintain a high proportion of Hugin machines on lease and to have been able to expand their renting business even more as Hugin machines were particularly suited to Liptons' type of business.

The result of Hugin UK's withdrawal of spare parts was to bring to an end the businesses of servicing and maintaining new Hugin machines as Liptons had no continued access to new spare parts with which to service or maintain these machines. The business of buying, selling, reconditioning and renting out of Hugin machines was severely restricted as, when existing stocks of spare parts were exhausted, Liptons were reduced to dismantling their Hugin cash registers to provide spare parts for their used machines. This is an uneconomical practice and Liptons have stated that they will shortly be unable even to deal in secondhand Hugin machines.

Liptons state, and Hugin does not dispute this, that they were in 1972 capable and qualified to undertake any work necessary on Hugin cash registers. Indeed, Cash Machines Ltd (later known as Hugin GB) and subsequently Hugin UK had both supplied spare parts to Liptons from the late 1960s to October 1972 for the purposes of servicing and maintaining Hugin cash registers. These supplies continued to be made by Hugin UK from May to October 1972 notwithstanding that Hugin GB had repudiated the main agency agreement in May 1972 and notwithstanding that Hugin UK had not taken over the benefit or burden of Hugin GB's contract with Liptons.

Furthermore, Liptons maintain that they are still capable and qualified in the matter of the service, maintenance and repair of Hugin cash registers. Liptons are still servicing, repairing and rebuilding used Hugin cash registers by virtue of the fact that they are dismantling some machines to produce spare parts for others. They further declare that they service all makes and types of machines including the latest electronic machines produced by other manufacturers.

II. LEGAL ASSESSMENT

A. Applicability of Article 86

Article 86 of the EEC Treaty provides that any abuse of a dominant position within the common market or a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Hugin UK and the other Hugin companies established within the common market are wholly controlled subsidiaries of Hugin AB. Hugin AB and Hugin UK, together with all all other Hugin companies, are an economic unit and therefore constitute an undertaking within the meaning of Article 86.

The majority of parts for Hugin cash registers are made to Hugin design and with tools belonging to Hugin AB and are exclusive to Hugin AB. These parts are not interchangeable with the parts of other makes of cash registers and cannot otherwise be economically reproduced. Hugin cash registers cannot therefore be properly maintained, repaired or rebuilt without the use of Hugin spare parts. Hugin AB controls the supply of all Hugin spare parts throughout the world.

Hugin AB accordingly enjoys a monopoly in Hugin spare parts throughout the world and thus, with its subsidiaries established in the common market, it holds a dominant position in the common market for the supply of such spare parts. Hugin therefore has a dominant position for the maintenance and repair of Hugin cash registers in relation to companies which need a supply of Hugin spare parts. It follows, therefore, that Hugin AB and Hugin UK hold a dominant position for these products and services in that substantial part of the common market consisting of England, Scotland and Wales. Such dominant position extends to the business, such as Liptons carried on, of reconditioning and repairing used Hugin cash registers which also depends upon a supply of Hugin spare parts. As the business of renting out Hugin cash registers depends upon a supply of spare parts in order that the owner may carry out his own maintenance and repair, Hugin AB also has a dominant position in relation to such owners.

In cases in which an undertaking holding a dominant position within the common market or in a substantial part of it for the supply of certain products, and in particular where the dominant position is a monopoly :

(a) refused without objective justification to supply those products to existing substantial customers for and users of the products, and the refusal to supply seriously injures the latter in their business by interfering with and ultimately preventing them from continuing to offer a service or to carry on a line of business, thereby ultimately eliminating all competitors independent of the dominant undertaking from the market for that service or that line of business ; and

(b) prohibits its subsidiaries and dealers from supplying those products outside its own distribution network and in particular to buyers in other Member States, thereby making the refusal to supply more effective by denying those products to the customers and users in question,

such conduct amounts to an abuse of a dominant position, where it causes competition to be substantially restricted and trade between Member States to be affected appreciably.

Hugin AB, both directly and through its subsidiaries, has abused its dominant position in the common market in each of the ways described above in a manner likely to strengthen and consolidate its dominant position.

(a) The stated policy of Hugin AB is that spare parts for Hugin cash registers are only delivered to its own subsidiaries and its own authorized dealers for their own use and are not for resale. From the moment, therefore, that a cash register user purchases a Hugin cash register, the result of Hugin's refusal to supply is to make the user in question totally dependent on Hugin AB for the supply of spare parts and, in effect, for the maintenance and repair of that machine. Purchasers and users are thereby prevented from purchasing such spare parts from any other source and are in addition thereby also deprived of their freedom to choose where they will obtain the maintenance and repair of their machines.

Liptons allege, and Hugin AB does not dispute this, that the maintenance and repair of Hugin cash registers is within the competence of anyone having the skill to maintain and repair competitive cash registers and provided that they have experience and training in the repair of such machines. No other justification has been offered for the refusal to supply spare parts. There is therefore no valid objective reason for depriving companies such as Liptons, which have the requisite skills and training, from competing with Hugin AB, its subsidiaries and authorized dealers in the maintenance and repair of Hugin cash registers nor for depriving the owners and users of such machines from having access to such independent sources of maintenance and repair. Such refusal throughout the common market therefore constitutes an abuse of Hugin AB's dominant position in that it restricts effective competition. The refusal to supply also restricts trade in reconditioned Hugin cash registers which compete with new Hugin cash registers.

(b) With regard to Liptons the conduct of Hugin AB and Hugin UK is an abuse in that Liptons was in 1972 a principal customer for spare parts and had been a customer for spare parts for over 12 years and that the refusal to supply amounted to a withdrawal of supplies which had the result of removing a major competitor in the matter of service, maintenance, repair and the supply of reconditioned machines from a substantial part of the common market. Not only had Liptons been the main distributor for Hugin GB in England, Scotland and Wales, but it had started a substantial business in its own right of renting out of Hugin cash registers in which it had invested a considerable sum of money. Liptons was also qualified to service, maintain and repair such machines, and this business as it relates to new machines has ceased as a result of Hugin's refusal to supply spare parts. Liptons is now no longer in a position to buy the necessary spare parts for the maintenance and repair of Hugin cash registers for customers requiring that service, nor to undertake that service in respect of new machines it might wish to rent to its customers, nor, to a large extent, to meet its commitments to existing customers. In addition Liptons is severely restrained in the business it had carried on for over 12 years in reconditioning Hugin cash registers for resale.

Liptons has accordingly been forced gradually to withdraw from these businesses in which it had invested time and money and had established a strong basis for profitable expansion. Without a supply of spare parts Liptons will eventually be eliminated as a competitor in all these lines of business. The fact that Liptons has ceased to be a distributor of Hugin cash registers does not in the circumstances amount to a valid objective reason for refusing to supply spare parts as the business created by the 'main agency' agreement is separate from the other business of servicing, maintaining, repairing, renting out and reconditioning Hugin cash registers which Liptons undertook in its own right both before, during and, to some extent, at least until supplies of spare parts ceased, after the agreement was in force.

(c) As a result of its policy of not supplying spare parts outside its own network, Hugin AB also abused its dominant position by prohibiting its subsidiaries in France, Belgium, Germany and the United Kingdom, and its independent distributors in Ireland, Italy and the Netherlands from supplying spare parts outside the Hugin distribution network. The letters from these companies clearly establish that such a prohibition was in force at the time Liptons endeavoured to obtain spare parts from Hugin AB itself and from the subsidiaries and the distributors referred to above. Such conduct shelters Hugin AB from all effective competition in the matter of service, maintenance and repair of Hugin cash registers and from competition from reconditioning and rented Hugin cash registers throughout the common market.

The reasons given by Hugin for its refusal to supply Liptons are not objectively sufficient to justify such refusal. Even if it were correct that a Hugin cash register was a product of such complexity as to require special training beyond that required for any other mechanical, electro-mechanical or electronic product of a similar kind which, in view of the evidence available, the Commission does not accept, it would still not justify Hugin from withdrawing supplies of spare parts from Liptons at a time when it clearly was in possession of the necessary skills. Hugin cannot, therefore, rely on the fact that because of the lapse of time since the refusal to supply Liptons may have lost those skills if such loss is the result of the deliberate act of Hugin AB. Neither can the argument that there is no market for spare parts be accepted since Liptons was supplied with such spare parts for a period in excess of 12 years at the time when the supply of spare parts was withdrawn by Hugin. Liptons has spent more than five years seeking to obtain such spare parts from Hugin UK, Hugin AB and the other Hugin companies and distributors throughout the common market.

Furthermore, the fact that the system of distribution of Hugin cash registers might be regarded as a system of selected distribution is not in itself a valid and objective reason for refusing to supply spare parts to other companies. The criteria for the selection of distributors of a product such as cash registers are not necessarily the criteria appropriate for selecting competent and qualified enterprises who wish to service the product and who need spare parts in order to do so. Also, in so far as an enterprise in the position of Liptons has rights under Community law to continued supply of spare parts, it cannot be deprived of these rights by contracts made between the manufacturers and third parties.

The absues by Hugin AB of its dominant position appreciably affect trade between Member States. The prohibition on the export of spare parts from all Member States to any firm other than an authorized dealer directly affects trade between Member States. The refusal by Hugin subsidiaries and the Hugin distributor in other Member States to supply Liptons was a result of Hugin AB's Community-wide policy and affected trade between the United Kingdom and the Member States involved. Even if the prohibition is removed in the manner proposed by Hugin AB, its policy of refusing to permit supplies of spare parts to independent companies, such as Liptons, still exists and affects trade between Member States. Hugin AB is thereby preventing Liptons from carrying on its business of maintenance, repair, renting out and reconditioning Hugin cash registers. Liptons has been prevented from continuing to expand its business within a substantial part of the common market and is unable to purchase spare parts from other Member States. Due to the size of Hugin AB's share of the overall market for cash registers, the distribution system practised by Hugin AB under which only dealers are supplied with spare parts together with the prohibition imposed on such dealers on selling spare parts outside the Hugin network, prevent the operation of independent servicing companies anywhere in the common market, and has an appreciable effect on the structure of competition within the common market.

B. **Applicability of Article** 3 (1) **of Regulation No** 17

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 Article 85 or 86 of the Treaty, require by decision that the undertakings or associations of undertakings concerned should bring such infringement to an end.

The Commission considers, on the basis of the considerations referred to above, that Hugin AB and its subsidiary Hugin UK have infringed Article 86 of the EEC Treaty. The Commission accordingly require Hugin AB to bring such infringement to an end without delay.

With regard to the manner in which such infringement should be brought to an end, the Commission considers that Hugin UK should take immediate steps to ensure that supplies of Hugin spare parts are resumed to Liptons in respect of its needs in the short term and also, in order to ensure the maintenance of effective competitive conditions, that Liptons should receive in the long term sufficient supplies of available spare parts to meet its reasonably foreseeable requirements. The price for such spare parts should be an appropriate market price between that which is currently charged by Hugin AB to Hugin UK and that which is currently charged by Hugin UK to end users in the United Kingdom and which allows to Hugin UK an adequate margin of profit and to Liptons a reasonable trade discount.

Under Article 16 (1) of Regulation 17 the Commission may, by decision, impose periodic penalties from 50 to 1 000 units of account for each day of delay from such date as may be fixed in the decision in order to compel undertakings or associations of undertakings to bring an infringement of Article 86 to an end. In order, therefore, to ensure that Hugin AB does bring the infringement in question to an end the Commission considers that it should impose an obligation on this undertaking to submit for the approval of the Commission, within one month of the notification of this Decision, proposals relating to the resumption of supplies of spare parts to Liptons and, furthermore, in order to ensure that this obligation is complied with, the Commission should impose periodic penalties for each day of delay.

C. **Article** 15 (2) **of Regulation** 17

Under Article 15 (2) of Regulation 17 the Commission may, by decision, impose on undertakings or associations of undertakings fines of from 1 000 to one million units of account 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.

In so far as the Commission considers that Hugin AB and Hugin UK infringed Article 86 of the EEC Treaty by refusing to supply Hugin spare parts to Liptons, the Commission also takes the view that Hugin AB and Hugin UK knew that, as a reasonable consequence of what they were doing, Liptons' ability to continue to service, maintain, repair, recondition and rent out Hugin cash registers would be immediately impaired and ultimately terminated. In so far as the Commission further considers that Hugin AB has also infringed Article 86 by imposing prohibitions on its subsidiaries and distributors within the common market in respect of the supply of spare parts for the cash registers of its manufacture outside its distribution network, the Commission considers that Hugin AB knew or must be taken to have known that the restrictions on the supply of its spare parts would severely restrict competition in Hugin products within the common market, particularly in the business of servicing, repairing, maintaining, renting out, and reconditioning Hugin cash registers. The undertakings concerned have, therefore, at the very least infringed Article 86 of the EEC Treaty through negligence.

With regard to the duration of the infringements, account must be taken of the fact that, although the withdrawal of supplies of spare parts from Liptons started in October 1972 and has continued since that date despite strenuous efforts by Liptons to obtain supplies throughout the common market, the obligation of Hugin UK to ensure that it complied with the EEC rules on competition in so far as Liptons was concerned, did not commence until January 1973 when the United Kingdom acceded to the Treaty of Rome and became a Member State of the European Economic Community.

Such a consideration does not, however, apply to Hugin AB in respect of its export prohibition, by which means Hugin AB prevented the supply of spare parts to Liptons from other Member States since it has used distribution agreements with standard clauses prohibiting exports which have been in force within the common market since at least February 1972.

With regard to the gravity of the infringement, account must be taken of the effect of the refusal on Lipton's various activities both in the short and long term.

The immediate effect was to remove Liptons as a competitor from the market for the service and repair of new Hugin cash registers. Without an assured supply of spare parts Liptons was immediately prevented from entering into any arrangements for the service or repair of such cash registers and it did, in fact, have to refuse to do so.

With regard to the business of renting out both new and used Hugin cash registers, the immediate effect of the refusal was to reduce the possible volume of business as Liptons was limited to its existing stock of spare parts and to the spare parts made available by dismantling used Hugin cash registers. In the long term such business will eventually cease.

The same considerations apply to the businesses of repairing used Hugin cash registers and of reconditioning used Hugin cash registers for resale or for renting out.

In view of the fact that Liptons is Hugin's only known competitor in the United Kingdom in these various activities, the immediate effect of such refusal was to deprive consumers of any alternative to the servicing and repair of new Hugin cash registers by the Hugin servicing companies. Competition in the supply of new and used Hugin cash registers for rent and of reconditioned machines for sale and in the repair of Hugin cash registers was reduced and will eventually disappear as a result of the refusal.

The refusal has clearly caused Liptons to lose substantial sums of money for each year since January 1973 even though it may not be possible accurately to quantify such losses. The facts indicate, for example, that losses were sustained by Liptons in the business of renting out Hugin cash registers and as a result of dismantling Hugin cash registers for spare parts.

With regard to the withdrawal of supplies from Liptons, account should also be taken of the sudden and unforeseen nature of this action, particularly in view of the fact that supplies of such spare parts continued after the termination of the 1969 main agency agreement.

With regard to the prohibition on the sale of spare parts by Hugin AB's subsidiaries and distributors, account must be taken of the fact that this prohibition was imposed by means of a general export prohibition and that it is now well known that such prohibitions are normally illegal. In addition Hugin AB has so far failed to inform the Commission that such prohibition has been removed. Even when the export prohibition is removed the prohibition on the supply of spare parts outside the distribution network will remain.

D. Although Hugin AB has its registered office outside the common market, it has numerous subsidiaries within the common market, particularly in the United Kingdom. In these circumstances, for the payment of the fine the amount shall be converted from units of account to pounds sterling.

E. This Decision is to be enforceable in accordance with Article 192 of the EEC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

It is hereby declared that Hugin Kassaregister AB und Hugin Cash Registers Ltd have infringed Article 86 of the Treaty establishing the European Economic Community by refusing to supply spare parts for Hugin cash registers to Liptons Cash Registers and Business Equipment Ltd from 1 January 1973 and that Hugin Kassaregister AB has also infringed Article 86 of the said Treaty by prohibiting its subsidiaries and distributors within the common market from selling such spare parts outside its distribution network.

Article 2

A fine of fifty thousand (50 000) units of account, that is twenty thousand eight hundred and thirty-three pounds sterling (£20 833), is imposed on Hugin Kassaregister AB and Hugin Cash Registers Ltd, for which sum the said undertakings shall be jointly and severally liable. This sum is to be paid to 'Lloyds Bank, Overseas Branch, 6 East Cheap, London EC4' to the account of the Commission of the European Communities, account No 01-08-634, within three months of the date of the notification of this Decision to the undertakings to which it is addressed.

Article 3

Hugin Kassaregister AB and Hugin Cash Registers Ltd shall bring to an end without delay the infringements referred to in Article 1 hereof, unless they have already done so of their own accord. Hugin Cash Registers Ltd shall submit for the approval of the Commission, within one month of the notification of this Decision, proposals relating to the resumption of supplies of spare parts for Hugin cash registers to Liptons Cash Registers and Business Equipment Ltd.

Article 4

In respect of the obligation set out in Article 3 hereof, a periodic penalty payment of 1 000 units of account per day shall be payable by Hugin Cash Registers Ltd in respect of each day of delay from the date stated in the second sentence thereof.

Article 5

This Decision shall be enforceable in accordance with the provisions of Article 192 of the Treaty establishing the European Economic Community.

Article 6

This Decision is addressed to 'Hugin Kassaregister AB, Hammarby Fabriksväg, 19-21, Box 4180, 1062 Stockholm, Sweden' and to 'Hugin Cash Registers Ltd, Hugin House, 18-30 Clerkenwell Road, UK-London EC1M 5NN'.

Done at Brussels, 8 December 1977.

For the Commission

Raymond VOUEL

Member of the Commission