

Competition Act 1998

Decision of Director General of Fair Trading
No. CA98/04/2003

Agreements between Lladró Comercial SA and UK retailers fixing the price of porcelain and stoneware figurines

31 March 2003

(Case CP/0809-01)

SUMMARY

The Director General of Fair Trading has concluded that Lladró Comercial S.A., a producer of luxury porcelain and stoneware figurines, and each of the retailers listed at Annex 1 have infringed the Competition Act 1998 ('the Act') by entering into bilateral price-fixing agreements.

The majority of the agreements were entered into in 1999 and remain in force today. They affect trade within the UK and have as their object the appreciable prevention, restriction or distortion of competition in the UK in breach of the Chapter I prohibition imposed by section 2 of the Act.

Agreements between undertakings which have as their object or effect the fixing of prices are serious infringements of the Chapter I prohibition. This Decision requires Lladró Comercial S.A. and each of the retailers listed at Annex 1 to remove the price-fixing clauses from each agreement as appropriate within 20 working days from the date of this Decision.

For the reasons set out in this Decision no financial penalty is imposed on any party to the agreements.

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I THE FACTS

A Background

1. Following his receipt of complaints from three independent UK-based retailers, the Director General of Fair Trading ('the Director') began an investigation under the Competition Act 1998 ('the Act') to determine whether selective distribution agreements concluded between Lladró Comercial S.A. ('Lladró Comercial'), a manufacturer and supplier of porcelain and stoneware figurines ('Lladró merchandise'), and certain UK-based retailers breached the prohibition set out in section 2(1) of the Act ('the Chapter I prohibition').¹ Each of the complainants alleged that Lladró Comercial had terminated supplies upon its discovery that Lladró merchandise had been offered for sale by the retailer below recommended retail prices.
2. References in the remainder of this Decision to 'the Agreement' or 'the Agreements' are to the standard form selective distribution agreements entered into separately by Lladró Comercial with each of the retailers set out in Annex 1.

The complaints

3. On 20 March 2000, a UK retailer of Lladró merchandise informed the Director of its view that Lladró Comercial had ceased supplies of Lladró merchandise on the grounds (inter alia) that it had been discounted.² On 2 June 2000, the Director wrote to Lladró Comercial's wholly owned UK subsidiary, Lladró (UK) Limited ('Lladró (UK)'), inviting it to comment on the complaint. By letter of 14 June 2000 Lladró Comercial denied the allegation and informed the Director of the importance which it attached to maintaining the luxury status of Lladró merchandise and of the measures which it had taken to maintain that status. Lladró Comercial expressed the view that it was this preoccupation which had resulted in the termination of supplies to the retailer. At the same time, Lladró Comercial stated:

¹ Unless exempted or excluded in accordance with the provisions of Part I of the Act, the Chapter I prohibition prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade within the UK and which have as their object or effect the prevention, restriction or distortion of competition within the UK.

² In accordance with section 56(2) of the Act, the Director has decided not to disclose the identity of the retailer in this Decision on the grounds that to do so would be contrary to the public interest. The Director bases that decision on his belief that disclosure of the complainant's identity would have the likely effect of discouraging informants from coming forward in similar circumstances in the future.

'We are familiar with the prohibitions contained in the Competition Act 1998 that you mentioned in your letter... We are very aware that we cannot ask or put pressure on our retailers to sell at our suggested retail prices.'

4. On 8 May 2000, a second complaint was received by a retailer in Scotland of Nao figurines (one of two brands of figurine manufactured by Lladró Comercial).³ The complainant alleged that following the termination of supplies to him from February 2000, a sales representative from Lladró Comercial had informed him that this action had been taken on account of his having offered Nao figurines⁴ at a discount. The retailer informed the Director that he had previously been told by Lladró Comercial that it did not approve of any discounting of Nao figurines.
5. The Director subsequently received a further complaint from a third retailer, enclosing an unsigned copy of the Agreement.⁵ According to the retailer, in January 2001, following its refusal to sign the Agreement on the grounds that it amounted to an unlawful attempt by Lladró Comercial to fix the selling prices of Lladró merchandise, Lladró Comercial terminated all supplies of Lladró figurines⁶ to it.
6. The retailer subsequently met with representatives of Lladró Comercial on 15 January 2001 with a view to resolving the issue. During the course of that meeting - a recording of which was made by the retailer and has been provided to the Director - the retailer was informed that supplies of either Lladró figurines or Nao figurines would continue provided that it agreed not to offer discounts in the future.⁷ At the same time, Lladró Comercial made clear that it disapproved of

³ In accordance with section 56(2) of the Act, the Director has decided not to disclose the identity of the retailer in this Decision on the grounds that to do so would be contrary to the public interest. The Director bases that decision on his belief that disclosure of the complainant's identity would have the likely effect of discouraging informants from coming forward in similar circumstances in the future.

⁴ All references to Nao figurines in this Notice relate to figurines marketed under the Nao trademark as distinct from those marketed under the Lladró trademark.

⁵ In accordance with section 56(2) of the Act, the Director has decided not to disclose the identity of the retailer in this Decision on the grounds that to do so would be contrary to the public interest. The Director bases that decision on his belief that disclosure of the complainant's identity would have the likely effect of discouraging informants from coming forward in similar circumstances in the future.

⁶ All references to Lladró figurines in this Notice relate to figurines marketed under the Lladró trademark as distinct from those marketed under the Nao trademark.

⁷ Statement by Enrique Recatala, Lladró representative: *'We supply you if you choose one brand only and don't discount nothing.'*

discounts generally⁸ and that Lladró Comercial had entered into gentlemen's agreements with many other retailers to ensure that Lladró merchandise was not sold at a discount.⁹ On 20 February 2001 Lladró Comercial informed the retailer that all future supplies would be of Nao figurines only.¹⁰ The retailer subsequently wrote to Lladró Comercial offering to sign the Agreement and requesting the resumption of supplies of Lladró figurines.¹¹ This request was refused.

B The Director's investigation

7. In light of those complaints and of certain provisions of the Agreement which indicated that Lladró Comercial was seeking to fix retailers' selling prices of Lladró merchandise, the Director concluded that there were reasonable grounds for suspecting that Lladró Comercial and other parties to the Agreement had infringed the Chapter I prohibition.
8. The Director subsequently obtained information and documents under section 26 of the Act from Lladró Comercial, Lladró (UK), Dexam International Limited (Lladró Comercial's commercial agent in the UK until 31 December 2000), certain retailers of Lladró merchandise and various manufacturers of figurines and other ornamental ware.

C Parties to the Agreements

Lladró Comercial

9. Lladró Comercial is a private, family owned business based in Valencia, Spain. It manufactures handcrafted porcelain and stoneware¹² figurines under the brand names 'Lladró' ('Lladró figurines') and 'Nao by Lladró' ('Nao figurines'), which are supplied directly by Lladró Comercial to retailers in the UK. Lladró Comercial's worldwide turnover in 2001 was approximately 159,141,000 Euros.¹³ Its UK turnover (representing sales to UK-based retailers) in the same

⁸ Statement by Enrique Recatala, Lladró representative: '*... Lladró have tactics clear to develop in this country and Lladró don't need retailers, don't like working to discount...*'

⁹ Statement by Enrique Recatala, Lladró representative: '*We have a thousand gentlemen's agreements with retailers in this country... Gentlemen's agreements within this country, and the people respect all of the prices... and don't offer discounts...*'

¹⁰ Letter of 20 February 2001 from Lladró Comercial to the retailer refers.

¹¹ Letter of 6 March 2001 from the retailer to Lladró (UK) refers.

¹² Referred to in the Agreements as 'gres'.

¹³ Representing the consolidated turnover of all companies within the Lladró group (Lladró Comercial's written representations of 25 March 2003 refer).

period was [...] Euros.¹⁴

10. Lladró (UK) is Lladró Comercial's wholly owned UK subsidiary. Together with independent retailers it sells Lladró merchandise to the general public from a single retail outlet based in London. It has also acted as Lladró Comercial's commercial agent in the UK since 1 January 2001. In its capacity as commercial agent, Lladró (UK) employs sales representatives whose responsibilities include advising retailers on matters relating to the marketing and sale of Lladró merchandise. Lladró (UK)'s turnover in 2001 was £1,982,922.¹⁵

Retailers

11. Lladró Comercial supplies approximately [...] retail outlets in the UK, ranging from large department stores to small china and glass giftware specialists. Approximately [...] per cent by value of all retailers supplied by Lladró Comercial have, through bilateral contracts with Lladró Comercial, entered into the Agreement with Lladró Comercial.¹⁶ A list of those retailers is at Annex 1.¹⁷

D Products covered by the Agreements

12. Each Agreement relates to the sale of figurines sold under either the Lladró or Nao trademarks, not both. With the exception of an additional clause in the Agreement pertaining to the sale of Lladró figurines (relating to the sale of figurines manufactured specifically for members of the Lladró Collectors Society¹⁸), the provisions in all the Agreements concluded with the retailers listed in Annex 1 are identical.
13. In 2001, Lladró Comercial's range of merchandise offered to UK retailers comprised approximately one thousand Lladró figurines and three hundred Nao figurines.¹⁹ In relation to both brands Lladró Comercial requires retailers to sell each as luxury products. Lladró figurines are nonetheless generally recognised to be the more prestigious and collectable brand of the two.
14. Lladró Comercial provides recommended retail prices each year to UK retailers in

¹⁴ Letter to the OFT of 9 December 2002 from Lladró Comercial's legal representatives refers.

¹⁵ Letter to the OFT of 12 December 2002 from Lladró Comercial's legal representatives refers.

¹⁶ Letter of 29 November 2001 to the OFT from Lladró Comercial's legal representatives refers.

¹⁷ Note that the list of retailers at Annex 1 does not include those which have entered into the Agreement but which the Director believes are no longer in existence.

¹⁸ Clause 7.1 of the Agreement pertaining to the sale of Lladró figurines refers.

¹⁹ Figures derived from Lladró Comercial's recommended retail price lists (2001) for Lladró and Nao figurines respectively.

respect of both Lladró and Nao figurines. In 2001, recommended retail prices for many Lladró figurines fell within a range of between £100 and £400, and of those that did not a significant number were priced well in excess of that range, often at over a thousand pounds each and up to a maximum of £19,750. Recommended retail prices for Nao figurines fell generally within a range of between £50 and £100. As with Lladró figurines, however, recommended retail prices for certain Nao figurines were significantly higher, reaching a maximum of £385.

Porcelain figurines

15. Being similar in appearance, both Lladró and Nao porcelain figurines are clearly distinguishable from other makes of figurine by virtue of their distinctive pale colouring. As regards the specific differences between the two brands, the process of manufacture for Lladró figurines is more complex than that for Nao figurines in that a greater number of moulds are usually required prior to firing. A wider range of colours is also used in the finishing process for Lladró figurines.²⁰ Lladró Comercial has informed the Director that the material difference in prices between Lladró and Nao porcelain figurines is accounted for by differences in the manufacturing process of each.²¹

Stoneware figurines

16. In addition to Lladró and Nao porcelain figurines, each Agreement relates also to the sale of stoneware figurines. The Director understands that at the present time UK sales of Lladró Comercial's stoneware figurines are minimal.

E Scope and duration of the Agreements

17. According to information provided by Lladró Comercial to the Director, the Agreement has been concluded with 40 retailers in so far as it relates to the sale of Lladró figurines and 125 retailers in so far as it relates to the sale of Nao figurines.²² The overwhelming majority of the Agreements were concluded in 1999.
18. Each Agreement provides that unless terminated earlier it shall continue in force until 31 December in the year in which it is concluded, and that upon completion of that initial term it shall be renewed tacitly for annual calendar periods unless advance notice of termination is served on either party at least three months

²⁰ Letter of 30 January 2002 to the OFT from Lladró Comercial's legal representatives refers.

²¹ Letter of 30 January 2002 to the OFT from Lladró Comercial's legal representatives refers.

²² Letter of 3 October 2001 to the OFT from Lladró Comercial's legal representatives refers.

before the renewal date.²³ So far as the Director is aware, no Agreement entered into with any of the retailers listed at Annex 1 has been terminated.

General provisions

19. The recitals to the Agreement describe Lladró Comercial's intention to appoint to its selective distribution network retailers which have '*sufficient capacity to give Lladró products the treatment which their high quality image deserves*'.²⁴
20. In support of that objective, the Agreement places clear emphasis on the ability of retailers to market and sell Lladró merchandise as products with a reputation for high quality and a prestigious image.²⁵ Accordingly, the Agreement requires each retailer to declare that it possesses experience in the marketing and sale to the consumer of luxury products similar to those covered by the Agreement.²⁶
21. Furthermore, and in order to protect the quality and prestigious image of the Lladró and Nao trademarks, each Agreement prescribes in some detail the conditions under which Lladró or Nao figurines should be sold by the appointed retailer. These include conditions requiring (inter alia) that:
 - * *The Point of Sale shall be a shop containing articles considered to be luxury products, or specialised departments handling articles of this kind, or of a kind that does not detract from the prestige or image of the Trademark* (Clause 3.1.1);
 - * *The Point of Sale shall be located in an environment which is appropriate to the Trademark and which do [sic] not detract from its prestige image* (Clause 3.3.1);
 - * *The Point of Sale shall have appropriate installations and decoration suiting the prestige image of the Trademark* (Clause 3.3.2);
 - * *The trade name used by the Point of Sale shall in no way detract from or downgrade the prestige image of the Trademark* (Clause 3.3.3);
 - * *The display of products to the public [...] shall be arranged in such*

²³ Clauses 11.1 and 10.1 of the Agreement pertaining to the sale of Lladró and Nao figurines respectively refer.

²⁴ Recital IV of the Agreement refers.

²⁵ Recitals II and IV of the Agreement refer.

²⁶ Recital VI of the Agreement refers.

a way as to highlight the prestige image of the Trademark [...]
(Clause 3.4.1);

* *At the request of Lladró Comercial, the Dealer shall be obliged to devise a better presentation for the Products in such a way as to suit the quality and prestige image of the Trademark* (Clause 3.4.3).

22. Additionally, the Agreement contains provisions requiring retailers (inter alia) to purchase minimum quantities of Lladró merchandise, to maintain adequate stocks and to refrain from selling Lladró merchandise out of its original packaging. In return, Lladró Comercial commits itself to providing retailers with catalogues and price lists and, where necessary, to arrange for staff training in respect of Lladró merchandise.

Provisions relating to pricing and discounting

23. Certain other provisions of the Agreement deal with the pricing by retailers of Lladró merchandise.

24. Clause 6.3.2 of the Agreement provides:

'Lladró Comercial shall supply the dealer with recommended retail sales prices for its products. Before applying discounts or special reductions on the recommended retail selling price, the Dealer shall be obliged to notify Lladró Comercial of such intent, and Lladró Comercial shall be fully entitled to re-purchase them at cost price if it should so desire.'

25. Clauses 10.5 and 9.5 of the Agreement pertaining to the sale of Lladró and Nao figurines respectively provide:

'So as not to damage the image of the Trademark in any way, it is expressly forbidden to include any mention whatsoever to Product sales involving a discount or price reduction in any advertising materials, advertisements or promotional campaigns.'

F Notification by Lladró Comercial of the Agreement to the European Commission

26. Lladró Comercial notified the Agreement to the European Commission on 23 January 1996, seeking negative clearance under Article 81(1) (then Article 85(1)) or, in the alternative, exemption under Article 81(3) (then Article 85(3))

of the EC Treaty.

27. By letter of 26 November 1999, Lladró Comercial indicated to the European Commission that it was looking into the possibility of introducing changes to the Agreement in the short to medium term, including changes to clause 6.3.2. In the case of the latter, and in light of claims expressed by retailers in Germany that the clause was of a type that could be objected to under German competition legislation,²⁷ Lladró Comercial indicated that any change to that clause would involve the removal of the requirement that retailers notify Lladró Comercial of any proposed discounts or special reductions from the recommended retail selling price and of Lladró Comercial's entitlement to repurchase the merchandise at cost price.
28. In the event, the terms of the Agreement were not amended by Lladró Comercial along the lines indicated in its letter to the European Commission of 26 November 1999. Accordingly, clause 6.3.2 of the Agreement continues to oblige retailers to inform Lladró Comercial in the event that they intend to discount Lladró merchandise, while Lladró Comercial continues to retain the right to repurchase at cost price the merchandise in question.
29. On 30 March 2000 a comfort letter was issued in respect of the Agreement by the European Commission's Directorate-General for Competition ('DG Competition'). DG Competition has confirmed to the Director that the comfort letter was issued because it considered that the Agreement did not substantially affect trade between Member States and therefore did not fall within the scope of Article 81(1) of the EC Treaty.²⁸ At the same time the comfort letter also made reference to certain clauses in the Agreement other than those addressed in this Decision.²⁹

G Discounting of Lladró and Nao figurines: evidence from retailers

30. During the course of his investigation the Director obtained information under section 26 of the Act from 30 retailers selling Lladró merchandise, ranging from large department stores to small independent outlets. At the time of his request, 18 of the retailers contacted were known by the Director to have been party to the Agreement.

²⁷ Lladró Comercial's written representations to the Director of 5 November 2002 refer.

²⁸ Email from DG Competition to the OFT of 27 February 2003 refers.

²⁹ Specific reference was made in the comfort letter to clauses in the Agreement which provided for the quantitative selection of distributors and prohibited distributors from selling brands which could be considered to be similar to the Lladró and Nao trademarks.

31. A number of those retailers informed the Director of the approach taken by Lladró Comercial in relation to their discounting and advertising of Lladró merchandise:

Retailer A (not party to the Agreement)³⁰

'We no longer put Lladró figurines into our sales as the Lladró representative visited us after our January sale and asked us not to. It was strongly inferred that our account would be in jeopardy if we continued to discount'

'We will continue to discount Nao figurines in this way but our Lladró [representative] has visited us and requested that we drop the level of discount offered to [...] % as he feels that our discount is too high'

'... we rely heavily on advertising in general. When we have a sale [...] it is important to us to advertise these discounts'

'Although still discounting Lladró last year we agreed not to advertise the fact'

Retailer B (not party to the Agreement)³¹

'The [...] areas which cause concern are: [...] Lladró's policy allows retailers to sell their product at the recommended retail price only and not to discount'

'I do not sell either product at less than the recommended retail price for fear of repercussions from the Company'

³⁰ Letter (undated) from the retailer responding to a notice sent by the Director on 4 December 2001 under section 26 of the Act requiring the provision of specified documents and information refers. In accordance with section 56(2) of the Act, the Director has decided not to disclose the identity of the retailer in this Decision on the grounds that to do so would be contrary to the public interest. The Director bases that decision on his belief that disclosure of the retailer's identity might significantly harm its legitimate business interests (see paragraph 98 below).

³¹ Letter of 8 January 2002 from the retailer responding to a notice sent by the Director on 4 December 2001 under section 26 of the Act requiring the provision of specified documents and information refers. In accordance with section 56(2) of the Act, the Director has decided not to disclose the identity of the retailer in this Decision on the grounds that to do so would be contrary to the public interest. The Director bases that decision on his belief that disclosure of the retailer's identity might significantly harm its legitimate business interests (see paragraph 98 below).

Retailer C (not party to the Agreement)³²

'Yes we have sold Lladró [figurines] at a discount [...]. We are aware that Lladró are displeased with this but they know that we are somewhat strong opposition'

'... we do not advertise discounts on Lladró and Nao [figurines] as Lladró would regard this as baiting them'

'... we would love to be able to advertise discounts on Lladró and Nao and we would also like to sell Lladró and Nao on the Internet at a discount but Lladró would not approve of this and the result may well be that our account would be closed'

Retailer D (party to the Agreement)³³

'We do not continue to discount Lladró as it has been removed from our main store where most of the discounted sales came from. We have been told verbally that if we continue to discount Lladró we will not be allowed to stock it in the remaining store'

'We do continue to discount Nao as we have been told verbally that it is acceptable to discount Nao at this time. Long term Lladró plan to stop us discounting Nao once [their] planned brand campaign shows results'

'Discounts on branded giftware is critically important to our gifts strategy'.

'If we were allowed to discount Lladró the advertising of this fact is

³² Letter of 20 December 2001 from the retailer responding to a notice sent by the Director on 4 December 2001 under section 26 of the Act requiring the provision of specified documents and information refers. In accordance with section 56(2) of the Act, the Director has decided not to disclose the identity of the retailer in this Decision on the grounds that to do so would be contrary to the public interest. The Director bases that decision on his belief that disclosure of the retailer's identity might significantly harm its legitimate business interests (see paragraph 98 below).

³³ Letter of 19 December 2001 from the retailer responding to a notice sent by the Director on 4 December 2001 under section 26 of the Act requiring the provision of specified documents and information refers. In accordance with section 56(2) of the Act, the Director has decided not to disclose the identity of the retailer in this Decision on the grounds that to do so would be contrary to the public interest. The Director bases that decision on his belief that disclosure of the retailer's identity might significantly harm its legitimate business interests (see paragraph 98 below).

important in getting customers into the store'

II LEGAL AND ECONOMIC ASSESSMENT

A Introduction

32. Section 2(1) of the Act prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade within the UK and which have as their object or effect the prevention, restriction or distortion of competition within the UK.³⁴ Such agreements, decisions or concerted practices are prohibited unless they are exempted or excluded in accordance with the provisions of Part I of the Act.
33. Section 2(2)(a) of the Act states that the Chapter I prohibition applies, in particular, to agreements which “... *directly or indirectly fix [...] selling prices...*”
34. Under section 60 of the Act, in the application of the Chapter I prohibition the Director is required to ensure that there is no inconsistency with the principles laid down by the EC Treaty and the European Court and any relevant decision of the European Court.³⁵ The Director must also have regard to any relevant decision or statement of the European Commission.³⁶

B The relevant market

35. There is only an obligation on the Director to define the market where it is impossible, without such a definition, to determine whether the agreement is liable to affect trade in the UK and has as its object or effect the prevention, restriction or distortion of competition.³⁷ No such obligation arises in this case because it involves a resale price maintenance agreement³⁸ which has as its object the prevention, restriction or distortion of competition.³⁹

³⁴ Under section 2(3) of the Act, subsection (1) applies only if the agreement, decision or concerted practice is, or is intended to be, implemented in the UK. Under section 2(7) of the Act the UK means, in relation to an agreement which operates or is intended to operate only in part of the UK, that part.

³⁵ Section 60(2) of the Act refers.

³⁶ Section 60(3) of the Act refers.

³⁷ Case T-62/98 *Volkswagen AG v Commission* [2000] ECR II-2707.

³⁸ See paragraphs 58 to 71 below.

³⁹ Case 243/83 *SA Binon v SA Agence et messageries de la presse* [1985] ECR 2015 at paragraph 44, in which the European Court of Justice stated:

“It should be observed in the first place that provisions which fix the prices to be observed in contracts with third parties constitute, of themselves, a restriction on competition within the meaning of Article 85(1) [now Article 81(1)] which refers to

36. Nevertheless, the Director considers that it may be useful to set out his analysis in relation to market definition.

The relevant product market

37. The relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer by reason of the products' characteristics, their prices and their intended use.⁴⁰
38. Ornamental ware is by its nature decorative. Prices range from low value items retailing at just a few pounds, to luxury items which retail at hundreds, or even thousands of pounds. At the high value end branding is very important.
39. In its notification to the European Commission in 1996, Lladró Comercial indicated that the relevant market for the purposes of its application was that for *'decorative figurines and ornaments made from porcelain, earthenware, glass, resin and other materials'*.
40. Although the Director is not in this case required to reach a final view on the precise scope of the relevant product market, he accepts that, at its widest, the relevant product market may comprise not only figurines but other types of ornamental ware as well. However, the Director takes the view that regard must also be had to the particular characteristics of Lladró merchandise, which enable them, for the purposes of product market definition, to be distinguished from certain other ornamental ware by virtue of their generally recognised status as luxury products. The Director considers luxury products to be those of superior quality which are marketed under a prestigious trademark or brand and which, by consequence, command a relatively high price. The Director notes that this view is consistent with that of the European Court, which, for the purposes of market definition, has previously drawn a distinction between goods which fall within the category of luxury products and those which do not.⁴¹

agreements which fix selling prices as an example of an agreement prohibited by the Treaty."

The Director does not consider that the Agreements produced only insignificant effects in the sense outlined in Case 5/69 *Volk-v-Vervaecke* [1969] ECR 295 on any plausible market definition (see also footnote 76 below).

⁴⁰ Notice of the European Commission on the Definition of the Relevant Market for the purposes of Community Competition Law, OJ 1997 C372/5, [1998] 4 CMLR 177, paragraph 7.

⁴¹ Case T-19/92 *Leclerc v Commission (YSL)* [1996] ECR II-1931, at paragraph 1:

'... Within the category of cosmetic products, luxury products, that is to say high quality articles sold at a relatively high price and marketed under a prestige brand name, constitute a specific market segment...'

41. In relation to luxury products, consumers regard their luxury status as an important part of their overall appeal, and are accordingly prepared to pay a premium for them. In this regard the Director agrees with Lladró Comercial's assertion (made with specific reference to Lladró merchandise) that:

'the price of luxury products is directly linked with the artistic design, the quality and 'appearance' of quality of the product and the apparent exclusiveness of the trademark under which the product is sold...'

42. In light of the above, the Director considers that in the case of products which fail to meet the criteria for luxury status, it is unlikely that suppliers would be in a position to charge a premium for them or that consumers would be prepared to pay one. He therefore takes the view, in line with that of the European Court, that there is likely to be only a low degree of substitutability between luxury and other products falling within the same product sector.⁴²
43. Lladró Comercial recognises the luxury status of Lladró merchandise in various ways, including, in particular, the explicit statements set out in the Agreement relating to the quality and prestigious image of the Lladró and Nao trademarks and the obligations imposed by Lladró Comercial upon retailers party to the Agreement to meet specified quality requirements as a pre-condition to selling Lladró merchandise.
44. The Director shares Lladró Comercial's view that Lladró merchandise falls into the category of luxury products, being products of high quality, marketed under prestigious trademarks, and which thereby enable them to attract a significant price premium over other ornamental ware not falling within that category. The Director also notes Lladró Comercial's decision to implement a selective distribution system both in and outside the UK with regard to the sale of Lladró merchandise. Given that such systems are commonly used in the distribution of luxury products, Lladró Comercial's decision supports further the Director's view that Lladró merchandise can properly be regarded as luxury products.
45. In light of the above, the Director has concluded that Lladró merchandise falls within a category of luxury ornamental ware which is distinct from other ornamental ware, and that for the purposes of market definition products in each one of those categories are not substitutable to any significant extent for products in the other. Accordingly, the Director takes the view that the relevant product market in which Lladró and Nao figurines compete extends no wider than that for the supply of luxury ornamental ware.

⁴² Case T-19/92 *Leclerc v Commission (YSL)* [1996] ECR II-1931, at paragraph 114.

The relevant geographic market

46. The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas.⁴³
47. Demand for luxury ornamental ware is driven principally by national brand preferences. Given the nature of the products and in particular the prestige value which attaches to them, consumers in the UK are unlikely to consider luxury brands of ornamental ware which are not known to them as having luxury status. The delineation of consumer brand preferences on a national basis is evidenced further by Lladró Comercial's own view of the relevant geographic market as expressed in its notification to the European Commission, in which it stated:

'... rival brands vary by country since taste and therefore [the] possibility of substituting our product with another differs in each one'

48. The notion that demand is driven principally by national brand preferences is also apparent from the limited number (if any) of direct imports into the UK of luxury ornamental ware by companies who have not already established a local UK presence to support the brand in question. In markets for luxury products, whose success depends (inter alia) on maintaining brand awareness, a local presence will often be necessary in order to establish and maintain a prestigious brand image. This in turn is likely to require significant expenditure on advertising and marketing, together with investment in a sales team whose role will be to ensure that retailers provide and are provided with the appropriate support for the products in question. The Director notes that this is the very role carried out by Lladró (UK) in respect of the UK.
49. In light of the above, the Director takes the view that the geographic market is the UK.

Conclusion on the relevant market

50. Having regard to the above, the Director has concluded that the relevant product

⁴³ Paragraph 8 of the Commission Notice on the Definition of the Relevant Market for the purposes of Community Competition Law, OJ 1997 C372/5, [1998] 4 CMLR 177. See also OFT Guideline 403 'Market Definition' (March 1999), paragraphs 4.1 to 4.10.

market extends no wider than that for the supply of luxury ornamental ware, and that the relevant geographic market is the UK.

C Market share

51. In 1999, as part of its notification to the European Commission, and based on its view that the relevant product market encompassed decorative figurines and ornaments made from porcelain, earthenware, glass resin and other materials, Lladró Comercial indicated that its market share in the UK was [*less than 10*] per cent (representing [...] per cent in respect of Lladró figurines and [...] per cent in respect of Nao figurines).
52. In light of his conclusions on market definition, the Director has sought to obtain information which would enable him to estimate Lladró Comercial's market share in the UK in relation to supplies of *luxury* ornamental ware. However, due to the absence of any available data which distinguishes sales in the UK of luxury ornamental ware from other ornamental ware, the Director is not in a position to make any informed quantitative estimate of Lladró Comercial's market share in the relevant market. Given Lladró Comercial's focus on luxury ornamental ware, however, there is every reason to believe that its share of the relevant market is significantly greater than the figures quoted in paragraph 51 above would suggest.
53. The Director has, however, sought to obtain information which provides him with a more up-to-date estimate of Lladró Comercial's share of sales of *all* ornamental ware in the UK than that submitted by Lladró Comercial to the European Commission in 1999. On the basis of that information, which relates to retail sales of all china, earthenware and glassware (including crystal), luxury and otherwise in 2000,⁴⁴ he estimates that Lladró Comercial's share of retail sales in that wider market would have been in the region of 4 per cent in 2000.⁴⁵ The Director underlines however that this figure is based on Lladró Comercial's own view of the relevant market as put forward in its notification to the European Commission, and that as such it makes no distinction between sales of luxury and non-luxury ornamental ware. It is, therefore, likely to underestimate significantly Lladró Comercial's actual market share in the

⁴⁴ Having regard to section 56(3) of the Act, the source of that information has been withheld by the Director on the grounds that its disclosure would enable third parties to estimate the total value of sales by Lladró Comercial to retailers in the UK.

⁴⁵ This estimate is based on Lladró Comercial's direct sales to UK retailers and sales by Lladró (UK) and has been calculated taking into account the standard retail mark-up on *Lladró* figurines (127 per cent). However, given that the standard retail mark-up on *Nao* figurines was significantly higher (161 per cent), the Director's estimate is likely to underestimate to some extent Lladró Comercial's actual market share in 2000.

relevant market identified in paragraph 50 above.

D The Chapter I Prohibition

Agreements between undertakings

54. Lladró Comercial and the retailers listed in Annex 1 are undertakings for the purposes of the Chapter I prohibition.⁴⁶ Furthermore, the Agreements entered into between Lladró Comercial and those retailers are agreements for the purposes of the Chapter I prohibition.

Object or effect: the prevention, restriction or distortion of competition within the UK

55. Section 2(1) of the Act prohibits (inter alia) '*agreements between undertakings [...] which [...] have as their object or effect the prevention, restriction or distortion of competition within the UK*'. In light of the specific wording of that section, the Director is not, as a matter of law, obliged to establish that an agreement has an anti-competitive effect where it is found to have as its *object* the prevention, restriction or distortion of competition.⁴⁷
56. The Director is likely to regard any agreement whose object is to restrict price competition and which does not qualify for exemption under the Act⁴⁸ as a serious infringement of the Chapter I prohibition. Even in the absence of an assessment of its effects, the Director regards any such agreement as being capable of restricting price competition for so long as it is in force to the detriment of the competitive process generally and, ultimately, of consumers. An agreement whose object is to restrict price competition is capable of restricting the freedom of distributors to offer their customers better deals on price. Moreover, price competition in the supply of products serves as an incentive for distributors to act efficiently and ensures that a fair share of any resulting cost savings are passed on to consumers. Absence of price competition means that

⁴⁶ Lladró (UK) is a wholly-owned subsidiary of Lladró Comercial and does not enjoy autonomy in determining its actions on the market. Accordingly, for the purposes of the Act Lladró Comercial and Lladró (UK) form part of the same undertaking.

⁴⁷ In relation to the interpretation of Article 81(1) (formerly Article 85(1)) of the EC Treaty, the relevant provisions of which are identical to section 2(1) of the Act, the European Court has acknowledged this principle on many occasions. In *Consten & Grundig v Commission* [1966] ECR 299, for example, it stated:

'... there is no need to take account of the concrete effects of an agreement once it has as its object the prevention, restriction or distortion of competition'.

⁴⁸ The Director takes the view that agreements to fix prices will rarely be capable of exemption under the Act.

there may be little incentive for efficient distribution and that consumers are unable to benefit from potential cost savings.

57. In considering whether an agreement has as its object the prevention, restriction or distortion of competition, the Director will consider the aims of the agreement in the economic context in which it operates. His assessment of the aims of the agreement will be determined by an objective assessment of the meaning and purpose of the agreement, rather than by any consideration of the subjective intention of the parties when entering into the agreement.⁴⁹ In this respect the Director takes the view that if the obvious consequence of an agreement is to prevent, restrict or distort competition, that will be its object notwithstanding that it may have other aims as well.⁵⁰

Agreements relating to resale price maintenance

58. Section 2(2)(a) of the Act states that the Chapter I prohibition applies, in particular, to agreements which “... *directly or indirectly fix [...] selling prices [...]*”
59. A provision in an agreement which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, has the object of restricting the buyer's ability to determine the prices at which goods or services are resold by the buyer will prevent, restrict or distort competition.⁵¹
60. A provision in an agreement allowing a supplier to provide a recommended resale price will not in itself infringe the Act. However, this will not be the case where the recommended resale price amounts to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties. The Director takes the view that any such pressure or incentive distorts free competition in that resellers become constrained by factors other than those which condition the normal competitive process.
61. To the extent that provisions of the type referred to in paragraphs 59 and 60 above have as their obvious consequence the restriction of the buyer's ability to determine its resale prices, the Director takes the view that the agreements of which they are a part have as their object the prevention, restriction or distortion of competition.

⁴⁹ Cases 29 and 30/83 *CRAM and Rheinzink v Commission* [1984] ECR 1679.

⁵⁰ Cases 96-102, 104, 105, 108, 110/92 *IAZ v Commission* [1983] ECR 3369. See also Bellamy & Child, 'European Community Law of Competition', 5th Ed., paragraph 2-097.

⁵¹ In these circumstances, the exclusion of vertical agreements from the Chapter I prohibition will not apply (see paragraphs 105 to 107 below).

62. In light of the above, the Director has considered whether the Agreements entered into between Lladró Comercial and UK retailers have as their object the prevention, restriction or distortion of competition within the UK for the purposes of the Chapter I prohibition.

Clause 6.3.2 of the Agreements

The obligation on retailers to inform Lladró Comercial of proposed discounts

63. A provision in an agreement requiring a buyer to inform the supplier in advance of its intention to sell below a recommended resale price has as its obvious consequence the restriction of the buyer's ability to determine its own resale prices, in that it amounts to pressure not to resell below and a disincentive to sell below the recommended level. Accordingly, any such provision has as its object the prevention, restriction or distortion of competition.
64. Such provisions aim to deter the buyer from reselling below the price level recommended by the supplier, in that on the one hand they facilitate retaliation by the supplier against the buyer in so far as they enable the supplier to identify those buyers who do not sell at the recommended price level and, on the other hand, they signal to the buyer that the supplier considers pricing below the recommended level as improper. Such provisions also provide a disincentive to buyers to sell below recommended levels taking into account the commercial inconvenience which they impose on buyers of having to provide advance notification to the supplier of any intention to discount.
65. The mere existence of such provisions amounts to a serious infringement of the Chapter I prohibition. Clause 6.3.2, which requires retailers to inform Lladró Comercial of proposed discounts in relation to Lladró merchandise, constitutes such a provision.

Lladró Comercial's entitlement to repurchase the products in question

66. A provision in an agreement which entitles the supplier to repurchase goods or services in circumstances where the buyer wishes to resell below a recommended price level also has as its obvious consequence the restriction of the buyer's ability to determine its own resale prices. In effect, the use of such a provision permits the supplier to reserve to itself the right to prevent sales below recommended price levels, thereby allowing the supplier the possibility to limit or prevent intra-brand price competition between buyers in the goods or services in question. Accordingly, any such provision has as its object the prevention, restriction or distortion of competition.

67. The mere existence of such provisions amounts to a serious infringement of the Chapter I prohibition. Clause 6.3.2, which entitles Lladró Comercial to repurchase Lladró merchandise in the event that retailers intend to discount such merchandise, constitutes such a provision.

Clauses 10.5 and 9.5 of the Agreement⁵²

68. Clauses 10.5 and 9.5 of the Agreement (hereafter referred to as 'the advertising restriction'), pertaining to the sale of Lladró and Nao figurines respectively, prohibit retailers from any mention of product sales involving a discount in any advertising materials, advertisements or promotional campaigns.
69. The Director takes the view that retailers must not be deprived of their commercial freedom to inform potential customers of their resale prices (including discounts), such as by the use of advertising and promotional campaigns.⁵³
70. The advertising of resale prices, including discounts, promotes price transparency between retailers and provides a significant incentive for retailers to compete on price, including the offer of discounts. In contrast, any provision which restricts a retailer's freedom to inform potential customers of discounts which are being offered removes a key incentive for, and constitutes an obstacle to, price competition between retailers. Where recommended resale prices are provided by the supplier, any such provision makes it more likely that the recommended price will not be deviated from by retailers, thereby indirectly limiting the latter's ability to compete on price.⁵⁴ Such a provision has as its obvious consequence the restriction of a retailer's ability to determine its own resale prices. Accordingly, any such provision has as its object the prevention, restriction or distortion of competition.

⁵² In respect of the Agreement relating to Lladró and Nao figurines respectively. While both clauses are identical, the different numbering is attributable to there being an additional clause in the Agreement relating to Lladró figurines dealing with sales of figurines created exclusively for the Lladró Collector's Society.

⁵³ Provided always that such advertising does not infringe the requirements of any relevant law or regulations, such as the Control of Misleading Advertisements Regulations 1988 (SI 1988/915), and subject to any territorial restrictions on advertising that may be permissible, for example, under block exemption Regulations.

⁵⁴ The Director notes that the European Court has already established that restrictions on advertising may amount to an indirect form of resale price maintenance. In Case 86/82 *Hasselblad v Commission* [1984] ECR 883, the Court upheld the Commission's finding that clauses which allowed the supplier to scrutinise the wording of dealers' advertisements as regards selling prices infringed Article 81(1) (ex Article 85(1)), on the grounds that they enabled the supplier to prevent actively competing and price-cutting dealers from advertising their activities.

71. The mere existence of such provisions amounts to a serious infringement of the Chapter I prohibition. The advertising restriction constitutes such a provision.

Protection of the Lladró and Nao trademarks

72. According to the terms of the Agreement, the advertising restriction is intended to prevent '*...damage [to] the image of the Trademark in any way.*'⁵⁵
73. The Director considers that provisions in an agreement which protect the essential function of a trademark will not infringe the Chapter I prohibition provided that they go no further than that which is necessary to afford such protection. The essential function of a trademark is to act as a guarantee of the identity of the origin of the marked product by enabling the consumer or ultimate user to distinguish, without any possible confusion, that product from others of a different provenance.⁵⁶ For a trademark to perform this function, it must offer a guarantee that all the goods bearing it have originated under the control of a single undertaking which is responsible for their quality.⁵⁷ The essential function of a trademark acts therefore as a badge of origin or source.
74. Discounts offered by retailers on trademark bearing goods, or advertisements relating to such discounts, do not impair or interfere with the essential function of a trademark, given that the identity of the origin of the goods bearing a trademark is not affected by the price at which those goods are sold.
75. The Director acknowledges that provisions in an agreement which are required to prevent damage to the reputation or image of a trademark will not infringe the Chapter I prohibition provided that they go no further than that which is necessary to prevent such damage. However, any restrictions, including (but not limited to) those on advertising, which cannot objectively be viewed as protecting the reputation or image of a trademark or which go beyond what is necessary to provide such protection are likely to infringe the Chapter I prohibition if they have an anti-competitive object or effect.

⁵⁵ Clauses 10.5 and 9.5 of the Agreement relating to the sale of Lladró and Nao figurines respectively refer.

⁵⁶ Case C-10/89 *SA CNL-Sucal NV v HAG GF AG (HAG II)* ECR I-3711, dealing with free movement and trademark issues. There is no legal requirement under the Act on the Director to determine questions arising under the Act in a manner consistent with European Court judgments dealing with free movement and pure trademark questions, as these are not 'corresponding questions arising in Community law in relation to competition within the Community' for the purposes of section 60(1) of the Act. Where appropriate, however, the Director may consider the approach taken by the European Court in such judgments, if doing so may assist him in determining questions arising under the Act.

⁵⁷ *Scandecor Developments AB v Scandecor Marketing AV and Others and One Other Action* [2001] UKHL 21.

76. The Director takes the view that restrictions amounting to resale price maintenance (whether directly or indirectly imposed), including those which restrict a retailer's ability to advertise resale prices, cannot be objectively justified on the grounds that they are necessary to protect the reputation or image of a trademark. In the Director's view, any such reputation or image derives not from the supplier's ability to control the resale price of the products or services bearing the trademark, but from other factors, including (in particular) the actual quality of those products or services and the environment in which they are sold.
77. In light of the above, the advertising restriction cannot be justified on the ground that it is necessary to protect either the essential function of the Lladró and Nao trademarks or the reputation or image of Lladró merchandise bearing those trademarks.

Representations submitted to the Director as to the existence of an infringement

78. In its written representations to the Director, Lladró Comercial contended that as a matter of law, the Director is not entitled to find that a provision in an agreement has the object or effect of preventing, restricting or distorting competition if the actual evidence is that over the relevant period the parties to the provision regarded it as a 'dead letter' which would not be enforced in any way. Lladró Comercial considers that the Agreement was so regarded both by itself and by the other parties to it since 1999. In support of that view, Lladró Comercial has indicated to the Director that, so far as it is aware, it has neither threatened legal proceedings nor made any threats of an informal nature against any retailer who signed the Agreement in order to enforce clause 6.3.2 or the advertising restriction, nor criticised any retailer for not complying with its terms.
79. Relying on those arguments, and on (inter alia) the fact that no retailer which provided information to the Director has referred to any of the disputed clauses, Lladró Comercial asserts that the evidence before the Director (including evidence of discounting by retailers) is sufficient to rebut any inference that might otherwise be drawn as to the effect on any party to the Agreement of any provision in it. Accordingly, and in the absence of any evidence that any party to the Agreement took account of clause 6.3.2 or the advertising restriction in deciding whether or not to discount, Lladró Comercial asserts that the Director is precluded from finding that Lladró Comercial has infringed the Chapter I prohibition.
80. In this respect the Director notes also the comments made by certain retailers in

their written representations to him, which indicate either that they were not aware of the specific provisions in the Agreement or, in the event that they were, that they took no account of them in deciding whether or not to discount Lladró merchandise.⁵⁸

81. The Director rejects the arguments put forward by Lladró Comercial and retailers as to the existence of an infringement. As to whether he is required to establish on a case by case basis that an agreement whose object is found to restrict competition has given rise to anti-competitive effects, it is clear that he is not from section 2(1) of the Act, which prohibits agreements which have *either* as their object *or* their effect the prevention, restriction or distortion of competition.⁵⁹ Accordingly, in light of the price-fixing *object* of the Agreement, neither the absence or presence of direct evidence that any party to the Agreement took account of clause 6.3.2 or the advertising restriction in deciding whether or not to offer discounts, nor the evidence adduced by Lladró Comercial that certain retailers party to the Agreement have discounted Lladró merchandise in contravention of the terms of the Agreement without having been criticised or threatened with legal or any other form of action, are of relevance to the finding of an infringement. Likewise, Lladró Comercial's assertion that no retailer which provided information to the Director expressly referred to any of the disputed clauses is immaterial to establishing an infringement of the Chapter I prohibition.
82. In any event, and although he is not as a matter of law required to establish that it produced anti-competitive effects in light of its price-fixing object, the Director takes the view that the Agreement must be deemed to have produced such effects in that it (inter alia) sent a clear signal to retailers that Lladró Comercial disapproved of any discounting by them of Lladró merchandise. The Agreement also purported to provide Lladró Comercial with the contractual means to terminate supply arrangements with retailers in the event of a breach by the latter of (inter alia) clause 6.3.2 or the advertising restriction.⁶⁰ In the Director's view, those factors are likely to have materially influenced retailers' policy as to whether or not to discount Lladró merchandise and, in the event that they chose

⁵⁸ 13 retailers provided written representations to the Director in relation to his assessment of the Agreement under the Act. In accordance with section 56(2) of the Act, the Director has decided not to disclose the identity of those retailers in this Decision on the grounds that to do so would be contrary to the public interest. The Director bases that decision on his belief that disclosure of the retailer's identity might significantly harm its legitimate business interests (see paragraph 98 below).

⁵⁹ Paragraph 55 and footnote 47 above refer.

⁶⁰ Clauses 11.2 and 10.2 of the Agreement relating to the sale of Lladró and Nao figurines respectively provide for termination of the Agreement by either party in the event of non-compliance by the other party with any of its terms in circumstances where the other is unable to remedy that non-compliance within sixty days from the date of written notification.

to discount, on the level of discounts offered.⁶¹ Accordingly, the fact Lladró Comercial may have adduced evidence of discounting by certain retailers is immaterial to the Director's finding in this regard.

83. Furthermore, the Director notes that by entitling Lladró Comercial to repurchase Lladró merchandise which a retailer was proposing to sell below the recommended price level, the Agreement was reserving to Lladró Comercial a *contractual right* to interfere with a retailer's pricing policy. The Director considers that any such right must be deemed to produce anti-competitive effects in that it alters significantly the conditions of competition in the market place by removing from each retailer its right to freely determine its own resale prices. Whether or not Lladró Comercial has thus far exercised that on-going contractual right is immaterial to the Director's finding of an infringement. Moreover, in this connection the question of whether or not retailers were in fact aware of the terms of the Agreement that they had signed has no bearing on establishing an infringement of the Chapter I prohibition.
84. As to whether Lladró Comercial's or retailers' perception of the Agreement as a 'dead letter' has any material bearing on the finding of an infringement, the Director considers that it does not. In the Director's view, an agreement which has an anti-competitive object is an agreement to which the Chapter I prohibition applies whether or not its provisions have ever been enforced and regardless of the views expressed by any party as to its enforceability.⁶² Accordingly, the mere fact that Lladró Comercial and/or retailers may have regarded the Agreement as a dead letter is immaterial for the purposes of establishing an infringement of the Chapter I prohibition.

Evidence provided to the Director testifying to Lladró Comercial's anti-competitive intent

85. This Decision relates exclusively to the written bilateral agreements entered into separately by Lladró Comercial with each of the retailers set out in Annex 1. It does not relate to any other agreement, written or otherwise, which may have been entered into between Lladró Comercial and retailers, the existence of which the Director has not sought to establish.

⁶¹ The Director notes that this view is consistent with that taken by the European Court in Case T-77/92 *Parker Pen Ltd v Commission* [1994] ECR II-549, in which it was held that in view of the 'visual and psychological' effect of a clause in an agreement which was intended to restrict competition, the agreement could not be removed from the prohibition in Article 81(1) (ex Article 85(1)) of the EC Treaty on the grounds that it had not been implemented.

⁶² The Director takes the view that an agreement between Lladró Comercial and UK retailers is an agreement that is, or is intended to be, implemented in the UK for the purposes of s.2(3) of the Act.

86. Nevertheless, the Director has noted the written statements provided to him by retailers testifying to the approach taken by Lladró Comercial in relation to their discounting of Lladró merchandise (paragraph 31 above refers). Those statements demonstrate clearly to the Director that Lladró Comercial actively and intentionally implemented a policy of preventing retailers, whether party to the Agreement or not, from discounting Lladró merchandise, and, in doing so, restricted retailers' freedom to determine the prices at which they were able to sell Lladró merchandise.

87. In this respect the Director notes also the various comments made by Lladró Comercial representatives in their meeting with one of the complainants on 15 January 2001,⁶³ including in particular the following statement by Enrique Recatala:

' We have a thousand gentlemen's agreements with the retailers in this country... Gentlemen's agreements within this country, and the people respect all of the prices... and don't offer discounts...'

88. Those comments support further the Director's view that Lladró Comercial pursued an intentional anti-competitive strategy intended to prevent retailers from discounting Lladró merchandise.

89. Furthermore, the Director notes Lladró Comercial's acknowledgement in its letter to him of 14 June 2000 that it was both familiar with the prohibitions contained in the Act and well aware that it could not ask or put pressure on retailers to sell at its recommended prices.⁶⁴

90. The Director does not consider it appropriate in the circumstances to impose a financial penalty on any party to the Agreements for the reasons set out in paragraphs 119 to 126 below. Nevertheless, in the event that the Director had proceeded to impose such a penalty, evidence relating to Lladró Comercial's intentional anti-competitive strategy, in terms both of the Agreements and its approach more widely, and of its familiarity with the prohibitions set out in the Act would have been taken into account by him in determining the appropriate level of any such penalty.

⁶³ Paragraph 6 above refers.

⁶⁴ Paragraph 3 above refers.

Lladró Comercial's representations as to the evidence provided to the Director by retailers

The small numbers of retailers providing evidence upon which the Director relies

91. Lladró Comercial noted in its written representations that the Director had been able to adduce evidence from only seven retailers upon which he felt able to rely in asserting that Lladró Comercial had pursued a no-discounting policy, notwithstanding the fact that its UK distribution network comprised some 965 retailers in total.
92. As regards that observation, the Director notes that the evidence upon which he relies principally to establish Lladró Comercial's anti-competitive intent is that provided under section 26 of the Act by four retailers from a random sample of 30,⁶⁵ in addition to the recorded statements made by representatives of Lladró Comercial in their meeting with one of the complainants on 15 January 2001.⁶⁶ Given that the Director obtained information under section 26 of the Act from a total of 30 retailers, he considers that the proportion of those who provided evidence of Lladró Comercial's anti-competitive intent is significant. In light of that, and given the unambiguity of the statements provided by each of those retailers with regard to the approach taken by Lladró Comercial toward their discounting of Lladró merchandise, the Director considers that evidence to be sufficiently strong and compelling to enable him to draw conclusions as to Lladró Comercial's anti-competitive intent.
93. On the basis of the evidence available to him, the Director is not in a position to dispute that Lladró Comercial might not have pursued a no-discounting policy against *all* UK retailers selling Lladró merchandise with the same vigour, and that certain retailers may have been allowed more freedom to discount Lladró merchandise without any threat of action against them than others. However, the Director takes the view that it is not necessary to establish the precise manner in which Lladró Comercial chose to enforce its no-discounting policy in each individual case in order to find that it operated such a policy.

The Director's reliance upon anonymous evidence

94. Lladró Comercial contends also that reliance by the Director upon statements from witnesses whose identities have not been disclosed to it by the Director is in the circumstances of the case contrary to the requirements of Article 6 of the

⁶⁵ Paragraph 31 above refers.

⁶⁶ Paragraph 6 above refers.

European Convention on Human Rights ('ECHR') governing criminal proceedings and in any event contravenes the requirements of natural justice. In support of that view, Lladró Comercial submits that the Director is only able to rely on such statements where the witnesses in question have a legitimate interest at stake which is worthy of protection on the one hand, and where Lladró Comercial's rights of defence can be respected notwithstanding the anonymity of those witnesses on the other. Lladró Comercial contends that neither of those exceptions applies in the present case.

95. The Director rejects those arguments. First, the Competition Commission Appeal Tribunal has affirmed that although proceedings under the Act that result in the imposition of a penalty under section 36 are criminal for the purposes of Article 6 of the ECHR, the administrative procedure before the Director is manifestly not a criminal trial and is not required to follow either the criminal rules of evidence or criminal procedure.⁶⁷
96. Secondly, the Director acknowledges the importance of ensuring that the rights of defence are adequately safeguarded during the administrative procedure. In that regard, he has complied in full with the requirements of rule 14 of the Competition Act 1998 (Director's Rules) Order 2000⁶⁸ ('the Director's Rules'), having put to Lladró Comercial and the retailers involved in the administrative procedure the matters to which he has taken objection, the actions he proposes and his reasons, and having given Lladró Comercial and the retailers involved in the administrative procedure a reasonable opportunity to inspect the file and to make written and oral representations.
97. Thirdly, in determining the extent to which information acquired by the Director may be disclosed, section 56(2) of the Act requires him to have regard (inter alia) *'to the need for excluding, so far as is practicable, information the disclosure of which would in his opinion be contrary to the public interest'*. Taking into account the particular circumstances of the present case, the Director considers that it is appropriate for him to exercise his discretion under section 56(2) of the Act to withhold from Lladró Comercial the identities of retailers which have provided evidence to him.
98. That decision is in the Director's view justified in light of the nature of the complaints made to him, which alleged that Lladró Comercial had terminated supplies to retailers following the latter's discounting of Lladró merchandise.⁶⁹

⁶⁷ *Napp Pharmaceutical Holdings-v-The Director General of Fair Trading* [2001] CAT 3 at [69], [2001] CompAR 33.

⁶⁸ SI 2000/293.

⁶⁹ Paragraphs 3 to 6 above refer.

In view of those allegations and the comments made by representatives of Lladró Comercial during their meeting with one of the complainants on 15 January 2001,⁷⁰ the Director considers that the legitimate business interests of retailers which have provided information to him (including details of their discounting of Lladró merchandise) might be harmed in the event that their identities were disclosed to Lladró Comercial.

99. In light of the above, and in circumstances where he has disclosed on inspection of the file the content of the retailers' representations to Lladró Comercial,⁷¹ the Director takes the view that he can exercise his discretion under section 56(2) of the Act to withhold retailers' identities from Lladró Comercial without breaching Article 6 of the ECHR or the requirements of natural justice.

100. The Director has also considered whether his decision to withhold retailers' identities from Lladró Comercial should prevent him from regarding the evidence provided by those retailers as strong and compelling. The Director takes the view that it should not for the following reasons: First, at the time that the information was requested, the Director had not indicated to any retailer that its identity would be withheld. In the Director's view this is likely to have reduced significantly any incentive which might otherwise have existed on retailers to exaggerate; second, the information was provided by retailers pursuant to a formal request by the Director under section 26 of the Act, and, in light of the criminal sanctions potentially applicable under sections 42-44 of the Act,⁷² the Director is entitled to presume that it was accurate and not misleading; third, the statements made by each of the retailers concerned were clear and unambiguous; fourth, each retailer provided a consistent line of evidence separately and, in so far as the Director is aware, without knowledge of any statement made by any other retailer; and fifth, the information provided by each retailer is consistent with the statements made by representatives of Lladró Comercial at their meeting with one of the complainants on 15 January 2001.⁷³

101. In its written representations to the Director, Lladró Comercial also made various

⁷⁰ Paragraph 6 above refers.

⁷¹ *Napp Pharmaceutical Holdings-v-The Director General of Fair Trading* [2001] CAT 3 at [73], [2001] CompAR 33: "We accept that under the case law of the CFI the European Commission's obligation to put to the defendant the *essential facts on which he relies* is a fundamental part of the rights of the defence..." (emphasis added). The Director acknowledges that he is under a similar obligation. It is not inconsistent with that obligation, however, for the Director to exercise his discretion under section 56(2) of the Act to withhold the identity of retailers in this case.

⁷² The Act sets out a number of criminal offences which may be committed where a person fails to cooperate when the investigation powers set out in the Act are exercised. OFT Guideline 404 'Powers of Investigation' (March 1999), paragraph 7.1 refers.

⁷³ Paragraph 6 above refers.

assertions suggesting that the substance of the evidence provided to the Director by retailers could not be relied upon by the Director on the ground that it was unsupported or otherwise unreliable. Taking account of the matters referred to in paragraph 100 above, however, the Director considers that it is appropriate for him to rely on that evidence in reaching conclusions as to Lladró Comercial's anti-competitive intent, and accordingly rejects the arguments put forward by Lladró Comercial in this regard.

E Appreciability

102. An agreement will infringe the Chapter I prohibition if it has as its object or effect an appreciable prevention, restriction or distortion of competition in the UK. The Director takes the view that an agreement will generally have no appreciable effect on competition if the parties' combined share of the relevant market does not exceed 25 per cent, although there will be circumstances where this is not the case.⁷⁴ The Director will, in addition, generally regard any agreement between undertakings which directly or indirectly fixes the resale prices of any product or service as being capable of having an appreciable effect even where the combined market share falls below the 25 per cent threshold.⁷⁵
103. The Agreements between Lladró Comercial and retailers are price-fixing agreements and there are no special circumstances to justify making an exception to the Director's general position on appreciability. Accordingly, the Director takes the view that the Agreements have the object of preventing, restricting or distorting competition to an appreciable extent.⁷⁶

F Effect on trade within the UK

104. The products which are the subject of the Agreements are sold throughout the UK. The Agreements therefore affect trade within the UK for the purposes of the Chapter I prohibition.

G Exclusion

105. The Competition Act 1998 (Land and Vertical Agreements Exclusion) Order

⁷⁴ OFT Guideline 401 'The Chapter I prohibition' (March 1999), paragraphs 2.18 and 2.19 refer.

⁷⁵ OFT Guideline 401 'The Chapter I prohibition' (March 1999), paragraph 2.20 refers.

⁷⁶ For the purposes of the object test only, the Director does not consider that the Agreements produced only insignificant effects in the sense outlined in Case 5/69 *Volk-v-Vervaecke* [1969] ECR 295.

2000,⁷⁷ ('the Exclusion Order') states that the 'Chapter I prohibition shall not apply to an agreement to the extent that it is a vertical agreement'.⁷⁸ Sale of goods agreements between manufacturers and retailers and/or distributors are considered to be vertical agreements for the purposes of the Exclusion Order.⁷⁹

106. Vertical agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have the object or effect of restricting the buyer's ability to determine its sale price fall outside the scope of the Exclusion Order. This is without prejudice to the possibility of the supplier imposing a maximum sale price or recommending a sale price, provided that these do not amount to fixed or minimum sale prices as a result of pressure from, or incentives offered by, any of the parties.⁸⁰
107. For the reasons stated above, the Director considers that clause 6.3.2 and the advertising restriction amount to resale price maintenance, and that accordingly the Agreements do not benefit from the Exclusion Order.
108. There are no other relevant exclusions from which the Agreements could benefit.

H Exemption

109. The Agreements do not benefit from any parallel exemption pursuant to section 10 of the Act. They have not been granted an individual exemption by the European Commission, and there is no EC block exemption Regulation from which they can benefit.⁸¹
110. There is no UK block exemption order from which the Agreements can benefit.
111. No application for individual exemption of the Agreements has been made to the Director. If one had been made, no individual exemption would have been

⁷⁷ The Competition Act 1998 (Land and Vertical Agreements Exclusion) Order 2000, SI 2000/310. For further information see OFT Guideline 419 'Vertical Agreements and Restraints' (March 2000).

⁷⁸ Article 3 of the Exclusion Order refers.

⁷⁹ Article 2 of the Exclusion Order and paragraphs 2.3 to 2.7 of OFT Guideline 419 'Vertical Agreements and Restraints' (March 2000) refer.

⁸⁰ Article 4 of the Exclusion Order refers.

⁸¹ In particular, the exemption provided by Commission Regulation 2790/99/EC on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices does not apply to vertical agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object the restriction of the buyer's ability to determine its sale price.

granted in respect of the Agreements for (inter alia) the following reasons:

- (i) The fixing of prices of Lladró merchandise does not contribute to improving the production or distribution of goods;⁸² and
- (ii) The Agreements do not allow consumers a fair share of any resulting benefit. Consumers are instead deprived of discounts on Lladró merchandise which might otherwise have been available, thereby obliging them to pay more than would otherwise have been the case.⁸³

112. In light of the above, the Director does not need to consider whether any of the remaining criteria for exemption under section 9 of the Act are met.

I EC comfort letter

113. As mentioned at paragraph 29 above, the European Commission issued a comfort letter in respect of the Agreement on 30 March 2000. It has confirmed to the Director that the letter was issued on the basis that the Agreement did not substantially affect trade between Member States and therefore did not fall within the scope of Article 81(1) of the EC Treaty.⁸⁴

114. The Director considers that the comfort letter is in any event not relevant to the question of whether he should proceed to an infringement decision in this case, where the Agreement contains restrictions that have a clearly anti-competitive object.

⁸² Cf. *Volkswagen* (Commission Decision 2001/711/EC) OJ 2001 L262/14, paragraph 95.

⁸³ Cf. *Volkswagen* (Commission Decision 2001/711/EC) OJ 2001 L262/14, paragraph 96.

⁸⁴ Email from DG Competition to the OFT of 27 February 2003 refers.

III DECISION

115. On the basis of the evidence set out above, the Director has concluded that Lladró Comercial and the retailers listed at Annex 1 have infringed the Chapter I prohibition by entering into Agreements fixing the retail selling prices of Lladró merchandise.

IV ACTION

116. This section sets out the action which the Director is taking and his reasons for doing so.

A Directions

117. Section 32(1) of the Act provides that if the Director has made a decision that an agreement infringes the Chapter I prohibition, he may give directions to such person or persons as he considers appropriate to bring the infringement to an end. In accordance with section 32(3) of the Act a direction may, in particular, include provisions (inter alia) requiring the parties to an agreement to modify the agreement.

118. In exercise of the powers conferred on him under section 32 of the Act, the Director hereby gives the following directions to Lladró Comercial and the retailers listed at Annex 1:

- (A) Lladró Comercial and each of the retailers listed at Annex 1 shall bring the infringement described at paragraph 115 above to an end within 20 working days from the date of this Decision, and shall, with effect from the date of this Decision, refrain from any act or conduct having the same or equivalent object or effect within the UK;
- (B) Lladró Comercial and each of the retailers listed at Annex 1 shall, within 20 working days from the date of this Decision:
 - (i) remove by written agreement the second sentence of clause 6.3.2 from the Agreement;
 - (ii) remove by written agreement clause 10.5 from the Agreement in relation to Lladró figurines where applicable;
 - (iii) remove by written agreement clause 9.5 from the Agreement in relation to Nao figurines where applicable;
- (C) Lladró Comercial shall:
 - (i) within 20 working days from the date of this Decision, inform by letter each retailer party to the Agreement of the action that Lladró Comercial will take in order to comply with the Direction referred

to in (B) above;

- (ii) within 10 working days from the date of this Decision, submit to the Director for approval the letter which Lladró Comercial intends to send to retailers in order to comply with the Direction referred to in (C)(i) above.

B Financial penalties

119. Section 36(1) of the Act provides that on making a decision that an agreement has infringed the Chapter I prohibition, the Director may require an undertaking which is party to that agreement to pay him a penalty in respect of the infringement. The Director may impose a penalty on an undertaking which has infringed the Chapter I prohibition only if he is satisfied that the infringement has been committed intentionally or negligently.⁸⁵
120. In relation to agreements notified to the European Commission for exemption under Article 81(3) of the EC Treaty, section 41(2) of the Act precludes the Director from imposing a penalty in respect of any infringement of the Chapter I prohibition after notification of the agreement but before the European Commission has determined the matter. For the purposes of the Act the European Commission is considered to have determined the matter either when it adopts a formal decision or when it issues a comfort letter in respect of the notified agreement.⁸⁶
121. Accordingly, in the circumstances of the present case, the Director is precluded under section 41(2) of the Act from imposing a financial penalty on the parties to the Agreement from 1 March 2000, being the date of entry into force of the Chapter I prohibition, to 30 March 2000, being the date upon which a comfort letter was issued to Lladró Comercial by the European Commission.
122. The Director is not, however, precluded from imposing a financial penalty on the parties to the Agreement in respect of the period post 30 March 2000, notwithstanding the comfort letter.
123. The Director has established that the Agreements supported the implementation by Lladró Comercial of an intentional price-fixing strategy and that Lladró Comercial was well aware of its obligations under the Act.⁸⁷ The Director would

⁸⁵ Section 36(3) of the Act refers.

⁸⁶ OFT Guideline 407 'Enforcement' (March 1999), paragraph 4.19 refers.

⁸⁷ As demonstrated by Lladró Comercial's letter to the Director of 14 June 2000 (paragraph 3 above refers).

therefore ordinarily proceed to impose a significant financial penalty on Lladró Comercial as the clear instigator of the Agreement.

124. DG Competition has confirmed to the Director that the comfort letter was issued to Lladró Comercial because it considered that the Agreement did not substantially affect trade between Member States and therefore did not fall within the scope of Article 81(1) of the EC Treaty.⁸⁸ However, as noted in paragraph 29 above, the comfort letter also made reference to certain clauses in the Agreement other than those addressed in this Decision. The Director takes the view that, having made reference to such clauses, the comfort letter could have led Lladró Comercial to conclude that the European Commission's decision to issue that letter was based at least in part on a substantive competition assessment of the Agreement. On that basis the Director considers that it would not have been unreasonable for Lladró Comercial to have concluded that the Agreement was not of a type that could give rise to an infringement of the Act. Lladró Comercial has made representations to the Director that this was indeed the view it took of the comfort letter.
125. In light of the above, and notwithstanding the seriousness which he attaches to price-fixing agreements, the Director does not consider it appropriate in these particular circumstances to impose any financial penalty on Lladró Comercial.
126. Given that Lladró Comercial was the clear instigator of the Agreements, and whether or not the comfort letter may have implied that the Agreement was not of a type that could give rise to an infringement of the Act, no financial penalty is or would have been imposed on any of the retailers listed at Annex 1.

John Vickers
Director General of Fair Trading

⁸⁸ Email from DG Competition to the OFT of 27 February 2003 refers.

RETAILERS PARTY TO THE AGREEMENT RELATING TO THE SALE OF LLADRO FIGURINES

Allders Department Stores Ltd	PO Box 359, Centre Tower, Whitgift Centre,	Croydon, Surrey, CR9 1NN
Bentalls Plc	Anstee House, 4 Wood Street,	Kingston Upon Thames, Surrey, KT1 1TX
Bolingbroke & Wenley	Parkway,	Chelmsford, Essex, CM2 7PX
Browns of Harrogate	38 Parliament Street,	Harrogate, HG1 2RL
Church's Glass China Stores Ltd	44-54 St Giles Street,	Northampton, NN1 1JW
Collectables	61 Western Way,	Ponteland, Newcastle Upon Tyne, NE20 9AP
Connaught House	27 Tudor Square,	West Bringford, Nottingham, NG2 6BT
Cottrill Presentations	1-2, The Bramhall Centre,	Bramhall, Stockport, SK7 1AW
Dexam Factory Shop	Unit 8, Holmbush Way, Ind Est, Midhurst,	West Sussex, GU29 9HX
Geoff Taylor	13 Bell Street,	Reigate, Surrey, RH2 7AD
Gleneagles of Edinburgh Ltd	9 Simpson Road, East Mains Industrial Estate,	Broxburn, West Lothian, EH52 5NP
H L Owen China Glass & Gifts	Paris House, 5 Short Bridge Street,	Newtown, SY16 2LW
H.R Jackson	46 Darley Street,	Bradford, BD1 3HN
Hadleigh (South) Ltd	10 Moorbrook, Southmead Industrial Park,	Didcot, Oxfordshire, OX11 7HP
Harro Services Ltd	Barry House, 20-23 Worple Road,	London, SW19 4DH
Hewitt & Company	15 West Street,	Oundle Peterborough, PE8 4EJ
James Beattie Plc	71-78 Victoria Street,	Wolverhampton, WV1 3PQ
John Lewis Plc	171 Victoria Street,	London, SW1E 5NN
John Sinclair	266 Glossop Road,	Sheffield, S10 2HS
Lewis's Ltd	4 Renshaw Street,	Liverpool, Merseyside, L1 4AD
Looses Ltd	23-25 Magdalen Street,	Norwich, Norfolk, NR3 1LP
M.M Henderson Ltd	124 Craighall Road,	Port Dundas, Glasgow, G4 9TR
Mulberry Hall	15-19, Stonegate,	York, North Yorkshire, YO1 8ZW
Neaversons of Huddersfield	4 Byram Street,	Huddersfield, HD1 1BX
Peter Jones China Ltd	22 Little Westgate,	Wakefield, WF1 1LB
Potters Wheel	188 Stamford Street,	Ashton Under Lyne, OL6 7LR
R.Havens Ltd	138/140 Hamlet Court Road,	West Cliff On Sea, Essex, SS0 7LW
Stoniers	24 Church Alley,	Liverpool, Merseyside, L1 3DD
The Crockery	5 High Street,	Camberley, Surrey, GU15
The Jewellery Store Ltd	Lower Thames Walk, Bluewater,	Kent, DA9 9SI
Treasure Galleries	21 Otley Street,	Skipton, BD23 1DY
Watsons of Salisbury	8/9 Queen Street,	Salisbury, Wiltshire, SP1 1EY
WM Watson & Sons	163-7 High Street,	Perth, PHI 5UP

RETAILERS PARTY TO THE AGREEMENT RELATING TO THE SALE OF NAO FIGURINES

A.Tullet & Sons	316 Stratford Road,	Shirley, Solihull, West Midlands, B90 3DN
Abbey Fine China	25 Cheap Street,	Sherborne, Dorset, DT9 3PU
Abbey Gold Jewellery Centre	10 The Chare,	Peterlee, CO Durham, SR8 1AE
Adagio Fine China	18/20 Milnrow Road,	Shaw, Oldham, OL2 8EQ
Aitken's Watch Repair Centre	22 Dee Street,	Banchory, Kinardineshire, AB31 5ST
Alistair Black Limited	22 Queen Elizabeth II Square,	South Woodham Ferrers, Essex, CM3 5TD
Allweis China and Crystal	George St, Bury Old Road,	Salford, M7 4PX
Avantguard Gifts	38 Scotchquarter, The Courtyard,	Carrickfrigus, BT38 7DP
Beanstalk	38 Dockhead Street,	Saltcoats, Ayrshire, KA21 5EG
Bexhill Lighting & Gift Centre	24-28 Sea Road,	Bexhill on Sea, East Sussex, TN40 1ED
The Blue Boy Gift Shop	22 Princesshay,	Exeter, EX1 1LY
Bolingbroke & Wenley Ltd	Parkway,	Chelmsford, Essex, CM2 7PX
Bunty's	61 High Street,	Evesham, Worcs, WR11 4DA
Buskers	22 St Mary's Street,	Wallingford Oxfordshire, OX10 0EW
C.J Beavis Ltd	14-16 The Arcade,	Bedford, Bedfordshire, MK40 1NS
C.M Scott	46 High Street,	Holywell, Clwyd, CH8 7LH
Caprice Gifts	8 Church Street,	Godalming, Surrey, GU7 1EH
Cards and Things	103 King Street, Stenhousemuir,	Larbert, Central, FK5 4HD
Carlton Jewellers	Unit 91, The Galleries Washington Centre,	Washington, Tyne and Wear, NE38 7RT
Carousel Fine China & Crystal	34-36 Hart Street,	Henley On Thames. Oxfordshire, RG9 2AU
Carters Capo-di-Monte	Bradford Mall, Saddler Centre,	Walsall, West Midlands, WS1 1YT
Casabella (UK) Ltd	1 Heddon Court Parade, Cockfosters Road,	Barnet, Hertfordshire, EN4 0DB
Chantry China	80 High Street,	Andover, Hants, SP10 1NG
Charles Mansfield	8 The Traverse, Bury, St Edmund's,	Suffolk, IP33 1BJ
Charles Nobel	86 Station Road,	New Milton, Hampshire, BH25 6LQ
Chelsea China Ltd	96 High Street,	Ingatstone, Essex, CM4 0BA
The China Corner (Arbroath)	225 High Street,	Arbroath, Angus, Scotland, DD11 1DZ
The China Shop	70 Halesowen Road,	Halesowen, West Midlands, B62 9BB
Church's Glass China Stores	44-54 St Gile's Street,	Northampton, Northamptonshire, NN1 1JW
Clifton Collectables of Lytham	52 Clifton Street, Lytham,	St Anne's, Lancs, FY8 5EW
Colchester & East Sussex Co-operative Society Ltd	Head Office, Victoria Place, Eld Lane	Colchester, Essex, CO1 1LR
Cole the Jeweller	28-40 Highfield Road,	Blackpool, FY4 2JA
Collectables Corner	53 Bradshawgate,	Leigh, Lancashire, WN7 4NB
Connaught House	27 Tudor Square	West Bringford, Nottingham, NG2 6BT
Cornucopia	1 Albert Street,	Mansfield, Nottinghamshire, NG18 1AE
David Morgan Ltd	The Hayes,	Cardiff, CF10 1UG
David Shuttle	9 The Braodway Penn Road,	Beaconsfield, Bucks.,HP9 2PD
De Beaufort	9b Church Street,	Troon, Ayrshire, KA10 6AU
Deacon & Son (Swindon) Ltd	11-15 Wood Street,	Swindon, Withshire, SN1 4AN
Distinction	141a Northdown Road,	Cliftonville, Kent, CT9 2QY
Dunbar The Jeweller Ltd	39 Mill Street,	Alloa, Clackmannanshire, FK10 1DW
Elphicks Ltd	10-13 West Street,	Farnham, Surrey, GU9 7DN
F.Byford	90-92 High Street,	Witham, Essex, CM8 1AS
The Finishing touch	Street,	Cumnock, Ayrshire, KA18 1LE
Fish Bros Ltd	114 High Street,	Walthamstow, London, E17 7JY
Frisson Jewellers	K2, Manor Walks Shopping Centre	Cramlington, NE23 6RT
G.Hewitt & Son	10 Victoria Street,	Grimsby, South Humberside, DN31 1DP
Gallery Gifts (Basildon) Ltd	15 East Walk,	Basildon, Essex, SS14 1HG
Garfield Snow	1 The Precinct, Lower Gungate,	Tamworth, Staffs, B79 7AD
Gift Flair	53 North Street,	Lurgan, Craigavon, BT67 9AG
Gimberts China and glass	129 Upper Mostyn Street,	Llandudno, Gwynedd, LL30 2PE
Gloucester Pottery	3 College Street,	Gloucester, GL1 2NE.
Gordon Rider	33 Douglas Street,	Milngavie, Glasgow, Strathclyde, G62 6PE
Goldcrest Collectables Ltd	Bybrook Barn Garden Centre, Canterbury Road	Ashford, Kent, TN24 9JZ
H.R Jackson	46 Darley Street,	Bradford, West Yorkshire, BD1 3HN
Henry Clarke (Hinkley) Ltd	25 Castle Street,	Hinckley, Leicestershire, LE10 1DA
Heritage in Thornbury	24 High Street,	Thornbury, Bristol, BS35 2AH

RETAILERS PARTY TO THE AGREEMENT RELATING TO THE SALE OF NAO FIGURINES

Hicks (China and Glass)	124 High Street,	Maldon, Essex CM9 5ET
House of Kent	7-9 The Kingsway,	Swansea, West Glamorgan, SA1 5JN
Hunter Simmonds Gallery	65 Seamoor Road,	Westborne, Bournemouth, Dorset, BH4 9AE
Hunters	44 High Street,	Shrewbury, SY1 1ST
Hythe China shop	21-23 High Street,	Hythe, Kent, CT21 5AD
Innovation	Stangate House, Stanwell Road,	Penarth, CF64 2AA
Inspirations	21 High Street,	Aldershot, Hants, GU11 1BH
In time	35 Park Parade, Hazlemere,	High Wycombe, Buckinghamshire, HP15 7AA
J.A Zahringer	1-3 Regent Street,	Kingswood, Bristol, BS15 8JX
James Beattie Plc	71-78 Victoria Street,	Wolverhampton, WVI 3PQ
Jarrod & Sons Ltd	1-7 London Street,	Norwich, NR2 1JF
Jeane Schubert China & Glass	31 Old Market Centre,	Taunton, Sommerset, TA1 1EN
Jaymie	43 Queen's Arcade, Queen's Street,	Cardiff, South Glamorgan, CF10 2BY
H.Jessop & Son	13-17 Dolphin Lane,	Boston, Lincolnshire, PE21 6EX
John Welsh	38 High Street,	Spennymoor CO., Durham, AL16 6DB
Joplings	John Street,	Sunderland, Tyne and Wear, SR1 1DP
Lambs	35 - 36 St Mary's Street,	Stamford, Lincolnshire, PE9 2DS
Lawfords of Burley	The Cross, Burley,	Ringwood, Hampshire, BH24 4AA
Lawson Davies Jewellers	15-17 Torquay Road,	Paignton, Devon, TQ3 3DU
Lyons & Mountford Jewellers Ltd	9 Market Walk, Town Square,	Sale, Cheshire, M33 72Z
Mackinnon of Rothesay	47 Victoria Street,	Rothesay, Isle of Bute, PA20 0AP
Manning Jewellers	1 Bath Hill,	Keynsham, Bristol, BS31 1EB
McNeil & Sons Ltd	18 John Dickie Street,	Kilmarnock, Strathclyde, KA1 2AP
Gorrills of Lancaster	63 Penny Street,	Lancaster, Lancashire, LA1 1UD
Paraphernalia	104 The Rock,	Bury, Lancs, BL9 0PJ
Paris House Gift Shop	134 Commercial Street,	Maesteg, Mid Glamorgan, CF34 9DW
Peter Crisp	7 High Street,	Rushden Northamptonshire, NN10 9JR
Pleasers The Jewellers	30a Chester Road West Shotton,	Deeside, Flintshire, CH5 1BY
Potters Wheel	188 Stamford Street,	Ashton Under Lyne, OL6 7LR
Pottery Plus	20 Maple Walk,	Chelsmley Wood, Birmingham, B37 5TS
Presentations	31 High Street,	Biggleswade, Bedfordshire, SG18 0JE
R.Havens	138/140 Hamlet Court Road,	Westcliff on Sea, Essex, SS0 7LW
Ravens of Southend Ltd	6-7 Clifftown Road,	Southend On Sea, Essex, SS1 1AB
Richard A Hynam	47 Henleaze Road,	Henleaze, Bristol, BS9 4JU
Riddick	14 Bank Street,	Kilmarnock, Ayrshire, KA1 1HA
Sandifords Gallery Ltd	78 Drake Street,	Rochdale, OL16 1PQ
Simply Gifted	5 Priory Walk , Priory Centre,	Birmingham, B4 7LJ
J.W Stringer's Department Store	Clifton Square, Lytham, St Anne's,	Lancashire , FY8 5LR
Taylors China & Glass	Richmond Road,	Taunton, Sommerset, TA1 1EN
Tempus Fugit	137 High Street,	Musselburgh, EH21 7DD
The Blue Casket	3 High Street,	Conwy, LC32 8DB
The Country Collection	1 Market Place,	Ross-on-Wye, Hertfordshire, HR9 5NX
The Crystal Shop	21 Henley Street,	Stratford Upon Avon, CV37 6QU
The House of Ashley Peake	79 Main Street,	Long Eaton, Nottingham, NG10 1GW
Last Minute	33 New Street,	Dalry, Ayrshire, KA24 5AH
Touch of Glass	4 Orange Grove,	Bath, BA1 1LP
Treasure Trove	The Green, Broadway,	Worcs, WR12 7AA
Treeby & Bolton	12 Lake Road,	Keswick, Cumbria, CA12 5BX
Triton Galleries	15 High Street,	Westbury, Wiltshire, BA13 3BN
Tubbs of Colne	82 Albert Road,	Colne, Lancashire, BB8 0AG
Turnbull Jewellers	118 Main Street , Ballieston,	Glasgow, Strathclyde, G69 6AE
Valerie Manning Jewellery	55 Main Street,	Strabane, County Tyrone, BT8 2AU
Watsons of Salisbury	8/9 Queen Street,	Salisbury, Wilts, SPI 1EY
Welsh Rare Bits	16 New Kirk Road,	Bearsden, Strathclyde, G61 3SL
Wheelers Fine China	15 Devonshire Square,	Loughborough, Leicestershire, LE11 3DW
Whitemores	8a High Street,	Market Harborough, Leicestershire, LE16 7NJ
Woodlander Ltd	Bath Street,	Ashby De La Zouch, Leicestershire, LE6 5EH
Youngs	57A Mary Street,	Laurieston, Falkirk, Stirlingshire, FK2 9PR