Appendix to Accompany

"Cartels as Two-Stage Mechanisms: Implications for the Analysis of Dominant-Firm Conduct"

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Text from European Commission Decisions

COMMISSION DECISION
of 21 November 2001
relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement
(Case COMP/E-1/37.512 . Vitamins)
(notified under document number C(2001) 3695)

(257) By late 1992 the effect of competition from Chinese products was being felt, and the producers were debating whether to .ignore. this competition as they had done in the past, or to absorb the Chinese production. By June 1993 the producers had decided to compete on price at specific customers who used Chinese products.

(322) According to Daiichi, BASF and Roche had another strategic incentive to raise the price of calpan and indeed of other vitamins used for animal feed. Both have a strong market position in pre-mixes by virtue of their integrated production of the vitamins used. By increasing the prices of the vitamins used in pre-mixes, they would put a price squeeze on their competitors in this downstream activity, and over time drive the smaller pre-mixers from the market.

(714) As suppliers of a wide range of vitamin products these companies enjoyed a number of advantages. In particular their position in relation to their customers was stronger than companies selling a single or limited number of products, since they were able to provide a range of products and accounted for a greater proportion of their business. In addition, they enjoyed greater flexibility to structure prices, promotions and discounts and had a much greater potential for tying. They were also able to realise greater economies of scale and scope in their sales and marketing activities. Finally, any implicit (or explicit) threat of a refusal to supply would have been much more credible.

(287) In 1993, the parties realised that a US producer, Coors, had a larger production capacity for vitamin B2 than they had estimated in 1991. In order to prevent Coors from disrupting their arrangements by the export of its production surplus, Roche and BASF agreed that the former would contract to purchase 115 tonnes of vitamin B2 (representing half of Coors's capacity) in 1993. BASF in turn would purchase 43 tonnes from Roche; the burden was thus to be shared in the same 62:38 proportion as their quotas.

(431) The Chinese manufacturers of vitamin C, which had made substantial investment in new production facilities, began at about this time to make incursions into the world vitamin C market. Their low prices and increasing volumes disrupted the cartel arrangements of the other producers. One short-term solution canvassed by the cartel was to buy up Chinese products.

(447) After the usual exchange of information on the 1993 results, with each company explaining the reasons for any deviation from target, Takeda proposed that the four producers should purchase Chinese products in accordance with their shares so as to remove it from the market. Since there would be implications for the shares fixed in the 1990 .basic agreement., which Roche insisted were immutable, the Takeda proposal was rejected. As in previous years, the planning for 1994 therefore excluded Chinese material from the estimate of total demand. The price policy for Europe was confirmed but it was finally decided to go for DEM 25,50 instead of DEM 26,00 on 1 April 1994.

(322) According to Daiichi, BASF and Roche had another strategic incentive to raise the price of calpan and indeed of other vitamins used for animal feed. Both have a strong market position in pre-mixes by virtue of their integrated production of the vitamins used. By increasing the prices of the vitamins used in pre-mixes, they would put a price squeeze on their competitors in this downstream activity, and over time drive the smaller pre-mixers from the market.

(288) Later Coors sold its vitamin B2 plant to Archer Daniels Midland (ADM). In 1995, Rhône-Poulenc and ADM contracted for Rhône-Poulenc to market in Europe the riboflavin produced by ADM in the United States of America. BASF noted Roche's .ambivalent. attitude at times giving priority to price, at others to volume. BASF saw no point in raising price levels which would simply facilitate ADM's entry to the market. The market share of ADM in Europe rose from only 2 % to 9 %, mainly at the expense of Roche. The price level began to decline. Roche claims it had already become aware that Takeda was cheating by underdeclaring its sales by up to 20 %.

(29) Over the years, the Morgan Group has expanded in size, in particular through acquisitions of other companies. In the area of electrical and mechanical carbon and graphite products, Morgan acquired: - the Italian company EBN SpA in 1972; - the UK company Nobrac Carbon Ltd in 1973; - the Dutch and UK companies National Electric Carbon BV and National Electric Ltd in 1986; - the US company Pure Carbon Inc. and its UK subsidiary Pure Industries Ltd in 1995; - the French company Cupex SA in 1997; - the German company Rekofa and its German subsidiary Rekofa Wenzel GmbH and French subsidiary Graphite et Métaux SA in 1998.

(147) The same report further proves that "*according to the western suppliers, an average 8% price increase has been implemented in EDM, CC and GP applications. However, French and Southern European markets, such as the Italian and Spanish ones, were still a problem.*" It was concluded that:

"*(1) The pricing levels for distributors in North America and Europe shall be achieved136 to the minimum target levels within 1994*

(2) The pricing to end customers (EU) and distributors (DB) shall be increased from March 1, 1995 by 5% (10% for EDM Group II)137.

(3) (…)

(4) Local meetings shall be organised in the US, Germany, France, Italy and Spain to discuss the details.

(5) Confirmed "Share freeze concept" again.

In Europe, compensation due to share movement shall be discussed at the European local Meeting".

(…)

Outstanding issues in EDM and CC+GP were the same as at the previous meeting.

Cut-to-size premium and round bar premium are the same as the previous confirmation".

The report also shows that there was exchange of shipment records.

(137) In this regard Tokai states[119]:

"Prices for machine shops (MS) in Europe were discussed at length during this meeting. SGL and LCL advocated a strict enforcement of minimum prices while the Japanese suppliers were not in favour of such drastic approach. SGL and LCL favoured eliminating a separate MS price for CC and CP and to have a price only for large end users. The Japanese suppliers which depended heavily on selling to independent machine shops disagreed with the arguments of the European producers.

The difference in the distribution methods of the respective producers appeared to be the major

[119] TCSS, p.10

reason for this disagreement. SGL and LCL distributed its products through own subsidiaries throughout almost all of Europe and often directly to large end users with machining capability. Toyo Tanso distributed its products through subsidiaries in some countries and through distributors/machine shops in countries where they did not have subsidiaries. Tokai Carbon and Ibiden relied on sales to independent distributors and machine shops.

No conclusion was reached120. It was agreed that the subject was to be discussed again at the next meeting."

(178) The contemporaneous report prepared by Mr *[…]* of Toyo Tanso describes in detail the content of the meeting:

"1- General situation:

(…) Nippon Steel renamed Isomoulded div. as NSCC Techno Carbon.[176] *They are still increasing market share by just lowering price. Nippon Steel should control their area to prevent lowering price level.*

2- Major Decision

2.1- In Europe no price increase was made in the last 12 months. However, first of all, before deciding new price increase extreme low price levels should be adjusted to minimum price level by end Feb 1998. Then, next price increase of 5% should be discussed at the next summit meeting in end Feb.1998.

2.2- (…)

3- Information:

SGL: (…) SGL are purchasing machining companies recently to kill the competition.

LCL: In France, target prices are applied for EDM and General purpose since Sept.97 (…)

T.T.: In Italy, UCC machined dies for concast is still too low. SGL should take action to talk to them. (…) In Portland Oregon, SGL and Ibiden decided to build plant. All people should agree not to lower price levels in Portland area (SGL, TC, Ibiden, LCL, all agreed)

IBI: (…) IBI wants to maintain price level in Portland as TT said. (…)

NSCC: Company structure changed. (…)

TC: (…) During last European meeting, IBI promised to increase price of ET-10, 33 to 45DM/dm3. But no result. IBI will check.

Next meeting will be Feb 27."[177]

(305) The Commission considers that the facts in Chapter IV, and in particular section 10.2, show that Conradty's role in the cartel was not exclusively passive. It is true that Conradty's participation in the cartel was less active than other companies for products that it did not sell or hardly sold. This does not, however, mean that Conradty was exclusively passive in the cartel. Firstly, Conradty regularly participated in cartel meetings throughout the infringement period. Secondly, Conradty complained when on one occasion it had not been invited to a Technical Committee meeting and

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[176] N.B.: Mr […], NSCC's representative at this meeting, and Mr […] ceased as NSC employees in June 1997 (file, p. 6398).

[177] TTS, p.7, app.8

Summit374. Conradty also promised to instruct its subsidiary in Ireland to follow the cartel's prices375. Finally, price information and other sensitive commercial information from Conradty regularly appeared in the hands of competitors376. These are not indications of an exclusively passive role.

(138) In its reply to the Statement of Objections, UCB denies that it ever engaged in a global agreement, whether at the Ludwigshafen meeting or at any time before or after. This claim cannot be upheld. All the other undertakings participating at the Ludwigshafen meeting have expressly recognized that one or more agreements were reached among all of the parties present at this meeting[202]. In support of its argument that there was no agreement at the global level, UCB refers to testimony by a Chinook representative. The testimony in question reads as follows:

"Q. What came out of the [Ludwigshafen] meeting?

A. An agreement came out of the meeting in which BASF agreed to end their relationship with [its US distributor]….

Q. What came out of the meeting about any other subjects?

A. There was agreement by the - by Chinook and by Bioproducts to at the same time frame, July of '93, stop exporting choline chloride to western Europe. There was a further agreement to stop exporting choline chloride to eastern Europe but it was at a later date, either the end of '93 or perhaps even the end of '94.

There were also agreements relative to Chinook and Bioproducts having access to try to grow their markets in the Pacific Rim faster than the other competitors. The other competitors were supposed to maintain a market share in the Pacific Rim while Chinook and Bioproducts were allowed to grow theirs.

There were also decisions made to try to increase prices in virtually all export markets"[203].

(69) It is apparent from the meeting reports and descriptions of meetings supplied by Bioproducts[69], BASF[70], Akzo Nobel[71], Chinook[72], UCB[73] and Ducoa[74] that the arrangements at the global level concerned essentially four related anti-competitive activities[75]:

(a) **The setting and increase of worldwide prices.** Staggered world-wide price increases were agreed for the period between January 1993 and January 1994.

(b) **The allocation of worldwide markets.** In particular, the North American producers agreed to withdraw from the European market in exchange for the European producers' withdrawal from

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202 See section 9.3 of this Decision.

203 UCB's reply to the Statement of Objections, page 8, including footnote 18 and annex 3, page 662.

69 Bioproducts' submission of 7 May 1999 [1827-1833, 1956-1957, 2005-2006, 2011-2017, 2088, 2090].

70 BASF's submission of 15 June 1999 [2900-2902].

71 Akzo Nobel's submission of 26 July 1999 [2421-2422, 2426-2474].

72 Chinook's submissions of 3 December 1998 [1295-1298, 1300—1301], 26 July 1999 [1233-1235,] and 14 December 1999 [1376-1377].

73 UCB's submission of 26 July 1999 [1805-1810, 1669-1674, 1677, 1698-1701].

74 DuCoa's supplementary submission of 31 December 2002 [54520-5446].

75 See sections 9.2, 9.3 and 9.4.

the North American market. Market sharing arrangements were made regarding other geographical areas.

(c) **The control of distributors and converters.** To ensure the effectiveness of the market allocation and price agreements, it was important for the producers to control the behaviour of distributors and converters of choline chloride in the world market. It was therefore agreed that each producer was responsible in his home market for controlling converters and distributors, in particular through "proper pricing" of choline chloride to them.

(d) **The exchange of commercially sensitive information.** Whether the agreed actions were being accomplished in practice was regularly checked. The parties agreed to meet every six months to monitor, discuss and correct any problems. In these follow-up meetings, the parties compared information on sales actually made during the last period and discussed whether the group's goals were being achieved.

(75) On **16 and/or 23 November 1992**, the six producers, DuCoa, Bioproducts, Chinook, Akzo Nobel, UCB and BASF, met again, in a meeting or meetings organised by BASF in **Ludwigshafen, Germany**[101]. Their discussion on what to do started from the following analysis of the world market situation for choline chloride at that time:

- *"All producers have excess capacities*
- *Market shares of major producers are fairly constant*
- *Intentions for a higher market share by price cutting had little success and serves no one*
- *Present profit situation in chemical companies asks for price increases in general*
- *Converters and distributors should be controlled by proper pricing*

Conclusion

- *Price cutting is nonsense when market positions are firm*
- *Choline deserves higher prices"*[102].

(99) It is apparent from the meeting reports supplied by Akzo Nobel[144] and UCB[145] and the general descriptions provided by Akzo Nobel[146] and UCB[147] of the arrangements at the European level that these arrangements concerned essentially five activities:

(a) **The setting and increase of prices**, both for the EEA as a whole[148], for particular national

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101 Bioproducts' submission of 7 May 1999 [1828], BASF's submission of 15 June 1999 [2901, 2904-2909], Akzo Nobel's submission of 26 July 1999 [2421], UCB's submission of 26 July 1999 [1806], Chinook's submission of 26 July 1999 [1233], DuCoa's submission of 31 December 2002 [5428-5432].

102 Bioproducts' submission of 7 May 1999 [2003], Akzo Nobel's submission of 26 July 1999 [2440].

144 Akzo Nobel's submission of 8 January 2002 [5654-5664].

145 UCB's submission of 26 July 1999 [1734-1741].

146 Akzo Nobel's submission of 8 January 2002 [5560-5561].

147 UCB's submission of 26 July 1999 [1813].

148 For example :

« Price increase planning for CC 50% veg :

Q4'96 at DM.1350

Q1'97 at DM.1500

markets[149] and for individual customers[150]. In this last respect, by agreeing that the other companies would offer higher price quotes than the company to which the customer was allocated, the price agreements for individual customers served not only to maintain or increase prices to those customers, and thereby ultimately to that national market, but also to maintain the agreed customer allocations and thereby ultimately the agreed market shares.

(b) **The allocation of individual customers** among the participating undertakings[151]. Customers in specific national markets were regularly allocated by agreeing that the other participating undertakings would offer higher prices than the undertaking to which the customer was allocated.

(c) **The allocation of market shares** for each undertaking for the EEA market as a whole. According to Akzo Nobel, it was understood that Akzo Nobel and UCB could claim 35% and 28% respectively, while BASF would have 15%[152]. The principle was accepted that compensation should be provided if these shares were exceeded[153].

(d) **The control of distributors and converters**. To ensure the effectiveness of the agreements regarding market shares, customer allocations and prices, it was important for the producers to control the behaviour of distributors and converters of choline chloride in the market. The control over distributors was pursued by agreeing not to sell at preferential prices to distributors, while the control over converters was pursued either by ensuring that they purchased their raw materials from the cartel members, under the right conditions, or by informing them of the price levels agreed among the three producers, in the hope that they would follow these price levels, or, if necessary, by establishing exclusive corporate ties over them[154].

(e) **The exchange of commercially sensitive information**. Whether the agreed market shares, customer allocations and prices were being achieved in practice was regularly checked by comparing information on sales actually made during the previous period. Starting from CEFIC statistics, participants would report their actual sales volumes and sales prices in national markets,

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Q2'97 at DM.1650

Q3'97 at DM.1800 ».

See Akzo Nobel's submission of 8 January 2002 [5654].

[149] For example :

« Per 1.7.96 prices in Italy will be :

Lit.1300 for CC 50% veg

Lit 1560 for CC 60% veg

Lit. 1350 for CC 75%

Lit 1800 for CC 50% min ».

See Akzo Nobel's submission of 8 January 2002 [5654]. See also UCB's submission of 26 July 1999 [1741].

[150] For example :

« Q4
Salvana : B-DM.1350, C-DM.1360, A-DM.1390 . »

See Akzo Nobel's submission of 8 January 2002 [5658]. "B" stands for BASF, "C" for UCB and "A" for Akzo Nobel.

[151] UCB's submission of 26 July 1999 [1741], Akzo Nobel's submission of 8 January 2002 [5655-5661].

[152] ICI, not a cartel member, was estimated at 15%. The agreed share of Akzo Nobel apparently included sales by Franklin Holland, while the agreed share of UCB included sales by Impextraco. See Akzo Nobel's submission of 8 January 2002 [5560, 5605, 5654, 5663-5664] and recitals (110) and (111) below.

[153] Akzo Nobel's submission of 8 January 2002 [5654].

[154] Akzo Nobel's submission of 8 January 2002 [5561, 5655-5657].

including to individual customers. They also discussed their experiences with individual customers[155].

[155] UCB's submission of 26 July 1999 [1734-1741]. Akzo Nobel's submission of 8 January 2002 [5655- 5662].

COMMISSION DECISION
of 13 December 2000
relating to a proceeding pursuant to Article 82 of the EC Treaty
(COMP/33.133-C: Soda ash — Solvay)

(49) A major plank of Solvay's commercial policy in the soda ash sector was to ensure the maintenance of the anti-dumping measures in place against the American producers of dense ash as well as the east European light ash suppliers. With the changes in exchange parities since 1984, Solvay was well aware that the American producers could sell in Europe at prices substantially below the average Community prices without being guilty of dumping: i.e. their ex-works price for exports was not below their domestic price.

(53) In spite of the express terms of the Commission's letter and of Solvay's internal circular, from 1983 onwards Solvay made increasing use both of progressive rebates and of supply contracts which effectively tied the major customers to Solvay for the whole or virtually the whole of their soda ash requirements. In the face of a fall-off in demand (up to 1987), the main concern of Solvay appears to have been to preserve its dominant position in the European market against .unrest. from smaller producers, as well as the perceived threat of imports from eastern Europe and the United States. The main measures taken by Solvay included:

> ‘improving relations with major customers (glassmakers, chemicals industry) by bringing into general use and strengthening our contracts policy, with the aim of .tying in. customers (especially Saint-Gobain which gets a group super-rebate of 1,5 % under a .master. contract). but these contracts are still relatively .open. owing to EEC rules (maximum two years' notice, contract tonnage limited to around 85 % of customer's needs to allow customer the possibility of a second supplier).’

(114) The majority of the supply contracts contained a competition clause in the following (or similar) terms:

> ‘Competition clause
>
> If X is able to prove through a certified accountant that it received an offer for soda from another supplier during the term of this contract at a better price and on comparable terms, the product originating in a country with a free market economy, and DSW does not match that price within four weeks, X shall be free to purchase soda from that supplier. DSW may in such a case cancel the contract with immediate effect.’

(115) While in theory this clause allowed the customer to obtain part of its annual requirements from another (cheaper) source, it gave Solvay the option in such a case of terminating the agreement forthwith and refusing all further supplies. In only a very few cases (for example, Granus) did the agreement allow the customer to set off purchases from the competitor against its contractual obligations vis-à-vis Solvay.

(171) In the other cases, the contractual tonnage stipulated in the main .evergreen. contract (which required two years' notice of termination) corresponded to the customer's total anticipated requirements but allowed for a margin (usually 15 %) up or down. The customer indicated to Solvay at the beginning of each year what its exact requirements would be within that range.

(116) "SANCO" is the trademark for copper plumbing tubes that are produced according to a specific technical process which was patented in 1980 by the Usines à Cuivre et à Zinc (UCZ) (.SANCO patent.)[112]. The technology was developed to produce a premium anti-corrosive plumbing tube. UCZ (and its predecessor BCZ[113]) held the original patent for the production process until its expiry on 7 February 2000[114], but it did not own the SANCO trademark for a number of European countries. The trademark, as far as it was not owned by UCZ, was owned by its German competitor KM that had filed and obtained a trademark registration in its own name for SANCO in Germany (as of January 14, 1981) and a number of other European countries[115]. Subsequently, KM(E) patented a number of improvements/developments of the original SANCO patent[116]. UCZ and KM(E) were cross-licensees for each other's patents and trademarks. For their respective licences, they did not have to pay any royalties to each other[117].

(137) SANCO producers allocated a share of the respective estimated national demand to each SANCO producer[152]. In certain markets they fixed "extremely precise quantities" to be sold to each distributor. Thus, customers were allocated (like distributors, for example, in the Netherlands). In the case of allocation of customers (distributors), the demand of certain customers was either reserved for one producer or split between several producers. In the Netherlands, for instance, BCZ was required to retain the Dutch company ROBA as a distributor for SANCO-products in the Netherlands. ROBA participated in this arrangement[153]. It is possible that other European producers such as HME also participated in these arrangements.

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112 See 32299.

113 See 24631.

114 See 32298.

115 See 32300 and 24631. KME explained that it also holds the SANCO® International trademark (since July 24, 1981) and the SANCO® Europe trademark (since 1 April 1996), 24631; see also the overview on 24661. According to the licence contract, KME is "the owner of the trademark SANCO® which has been registered and protected in the countries of the EC and various other countries", see 32379 and 24376. See also the trademark licence contract between KME and Wieland that indicates KME as the holder of the trademark rights for example in the following geographic regions and European countries: Germany, Europe, Denmark, Finland, United Kingdom, Ireland, Norway, Poland and Sweden.

116 See 24631, the expiration is between 2008 and 2014.

117 See 29656, 32052, 32299, 32300.

152 See, for example, 29671, 29672 and 29675.

153 See 29657-29659, 29672, 29692, 33420. The allocation of customers involved also agreements on the rebates to be granted.

COMMISSION DECISION
of 01.10.2003
relating to a proceeding under Article 81 of the EC Treaty
and Article 53 of the EEA Agreement
(Case COMP/E-1/37.370 . Sorbates)

(117) During the joint meetings, there was considerable discussion about new market entrants, particularly the Chinese and the Russians[81]. In the late 1980.s and during the 1990.s several potential competitors from China requested sorbates technology from the existing producers, but Hoechst and the Japanese producers decided that no technology would be provided to other sorbates producers[82]. Hoechst, in agreement with the Japanese producers, also encouraged [...]not to transfer sorbates technology to potential competitors[83].

(118) Discussions among the conspirators involved reporting on enquiries from potential market entrants and reporting on companies. individual decisions not to sell such a technology[84].

(281) The cartel has to be considered as a whole and in the light of the overall circumstances. The principal aspects of the complex of agreements and concerted practices which can be characterised as restrictions of competition are:

(a) fixing of target prices;

(b) allocating volume quotas;

(c) agreeing not to supply technology to potential market entrants;

(d) defining and applying a reporting and monitoring system to ensure the implementation of restrictive agreements;

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81 See pages 0042, 0048, 0077, 0122, 2999, 7804, especially pages 3011, 3091 and 3099 of the file.

82 See pages 0709 . 0710 of the file.

83 See page 18256 of the file.

84 See pages 0710 and 18254 of the file.

(162) The participants noted that in Europe the premix companies resold lysine causing a price drop. Ajinomoto requested that traders' activities of re-exporting the product originally imported from other regions should be blocked. He also requested Sewon to stop Sewon's distributor in Canada from selling to regions other than Canada.

(141) It sets out the agreement between Rhône-Poulenc and the Russians: Russian exports were to be limited to 6 000 tonnes committed to Rhône-Poulenc and a further 1 000 tonnes to be sold to Welding, a trader in Germany. Rhône-Poulenc were going to contact Welding asking it to 'hold any sales while we were making our current efforts to increase the market price of methionine' (p. 3).

(146) The next meeting of the cartel members was held in Hamburg on 6 September 1993 ([ ]* notes (45)). This meeting dealt with the proposed acquisition by ADM (Archer Daniels Midland) of a 25 % interest in Rhône- Poulenc's plant in Institute, Virginia. There was also a long examination of Novus's profitability, its position in the market and its objectives. The participants engaged in speculation as to what Novus could achieve by increasing prices as well as asking cryptically whether 'they need another lesson?').

COMMISSION DECISION
of 3 December 2003
relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement
(Case C.38.359 . Electrical and mechanical carbon and graphite products)
(notified under document number C(2003) 4457)

(2) The addressees of the present Decision participated in a single and continuous infringement of Article 81(1) of the Treaty establishing the European Community (hereinafter "the EC Treaty" or "the Treaty") and, from 1 January 1994, Article 53(1) of the Agreement on the European Economic Area (hereinafter "EEA Agreement"), covering the whole of the EEA territory, by which they:

1. agreed and occasionally updated a uniform, highly detailed method of calculating prices to customers, covering the main types of electrical and mechanical carbon and graphite products, different types of customers and all EEA countries where demand existed, with a view to arriving at identically or similarly calculated prices for a wide variety of products;
2. agreed regular percentage price increases for the main types of electrical and mechanical products and all EEA countries where demand existed, for different types of customers;
3. agreed on certain surcharges to customers, on discounts for different types of delivery and on payment conditions;
4. agreed account leadership for certain major customers, agreed to freeze market shares in respect of those customers, and regularly exchanged pricing information and agreed specific prices to be offered to those customers;
5. agreed a ban on advertising and on participation in sales exhibitions;
6. agreed quantity restrictions, price increases or boycotts in respect of resellers that offered potential competition;
7. agreed price undercutting in respect of competitors; and
8. operated a highly refined machinery to monitor and enforce their agreements.

(154) Apart from selling finished products made from carbon, such as carbon brushes, members of the cartel also sold "blocks" of carbon, which have been pressed but not yet cut and tooled into brushes or other products. A number of third-party "cutters" purchase these blocks of carbon, cut and work them into final products and sell them to customers. These cutters, while customers of the cartel members, also represent competition to them for finished products. Such cutters are typically located in the Middle East or Eastern Europe, but a number of them are located in the EEA[220]. The policy of the cartel consisted in fixing the prices of carbon blocks sold to cutters in such a way that competition from them for the finished products made out of those blocks would be limited[221]. As a result, cutters would usually only obtain small customers that were of no

[220] For a list of cutters located in the EEA, see MLS, EV 1, pages 72-73 [0155-0156]. Luckerath and Rekofa are examples mentioned there. Eurocarbo in Italy is an example of a cutter mentioned in a letter by Morgan of 2 July 2002 [4792].

[221] MLS EV1, page 75 [0158]: "If third parties are to be supplied by blocks, the supplier is responsible to controle the finish product price". Although blocks could be purchased from some alternative sources of supply, these were

interest to the large suppliers. Ideally, at least in the view of some members, cutters should be eliminated altogether by refusing to supply to them[222].

(157) A local meeting in Germany on 7 May 1992 records a discussion among cartel members on how best to act against EKL, a competitive East-German cutter that had entered aggressively into the West-German market after unification. Two strategies were agreed: First, none of the members of the cartel would supply any graphite to EKL. Secondly, EKL would be denied any market share by systematically undercutting it with all customers, so that it would not be able to sell anywhere[226]. EKL was taken over by SGL in 1997.

(167) According to Morgan, another way in which cartel members tried to ensure that the price levels which they had agreed could be maintained in practice in the marketplace was by exchanging information on and jointly acting against competitors[237]. Agenda's of Technical Committee meetings often had a separate point called "Competition"[238]. Under this heading the cartel's strategy to take action against troublesome competitors was discussed and coordinated. The main strategies in this respect were:

- To lure competitors into co-operation.

  The cartel members succeeded in occasionally including smaller, local producers into their local meetings. Such local producers were not, however, allowed to participate in Technical Committee or Summit meetings at the European level. They often remained troublesome, by not strictly following cartel prices, which led to further co-ordinated actions against them by the cartel.

- To pressure competitors into co-operation.

- To drive competitors out of business in a co-ordinated fashion or at least teach them a serious lesson not to cross the cartel.

- To buy up competitors. Once such companies had been taken over, the parent company would ensure that they complied with the rules of the cartel[239].

(171) Examples of co-ordinated attempts to drive competitors out of business are:

- "Gerken + Gladhill in industrial 30% below UK prices. Strong . Belgium, Spain, Sweden. Conclude to attaque where we can"[243].

- "Morganite consider Ian Watson to be an increasingly dangerous competitor. It is felt that

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either far away, in Japan or the United States, or allegedly produced blocks of lower quality: "The only reason why they buy from any of us [the cartel members] is that the application requires a much higher quality product", MLS EV1, page 108 [0194].

222 MLS, pages 19-20 [0021-0022]. Carbone Lorraine was an exponent of this view, see recital (159) below. See also the submission by SGL of 17 March 2003, page 6: "It was agreed that no semi-manufactured goods would be sold to independent machine shops" (in the German original: "Es wurde vereinbart, dass kein Halbzeug an unabhängige Machine Shops verkauft werden sollte". SGL claims that it did not comply with this agreement.

226 MLS, EV 2, pages 247-248 [0722-0723].

237 MLS, page 22 [0024].

238 For examples, see MLS, EV 1, pages 199 [0294], 167 [0260].

239 MLS, page 24 [0026].

243 MLS, EV 1, page 182 [0276].

collectively we should attack his business"[244].

- Another example concerns Topolcany, a Slovakian company that seriously undercut the prices of the cartel in the EEA market. A document agreed in 1997 between Morgan, Schunk and SGL dealing with the European market for mechanical carbon and graphite products, reads:

  "Topolcany; every member has to attack them; before attack informations to the members"[245].

- "E.K.L should under no conditions be allowed to obtain a market share in the West"[246].

(241) As their third main activity, the members of the cartel agreed to apply coordinated quantity restrictions, price increases or boycotts to re-sellers that offered potential competition[356]. They also agreed co-ordinated price undercutting in respect of competitors[357].

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244 CL11, annex 6, item 10 [7879-7880], report of meeting between Carbone Lorraine and Morgan in Birmingham, United Kingdom, 19 November 1997.

245 MLS, EV 4, page 52 [1155].

246 In the Dutch original: "E.K.L. mag absoluut geen marktaandeel in het westen verkrijgen", see MLS, EV2, page 240 [715]

356 See section 7.8.

357 See section 7.9.

(364) Whatever the subsequent denials of the two firms, the Commission concludes from this exchange of memos that Lafarge and Knauf were in contact, and did not hesitate to take concerted action over a distributor, at the request of a competitor, in order to ensure compliance with a price increase jointly determined by them.

(73) Relationships and agreements on the market were discussed once again at a meeting in Leuven on 18 April. Present were Interbrew's general manager for Belgium, marketing manager for the on-trade in Belgium, and manager for the off-trade, and Alken-Maes's general manager and managers for the on-trade and the off-trade[87]. Interbrew's marketing manager for the on-trade in Belgium drew up a preparatory document, dated 14 April, summarising the relevant sectors, ends and means[88]:

'1. Sector: tie contracts
Objective: maintain the Belgian "system"
Means: respect tie contracts
...
ask for information in cases of doubt

2. Sector: national customers
Objective: avoid an escalation of "sacrifices"
Means: respect current agreements
no attacks on each other's customers
consult on new customers

3. Sector: new business
Objective: contain the cost of doing business
Means: direct contact for all cases of overvaluation/overinvestment,
a common language for the calculation of costs, and a ceiling

4. Sector: competition
Objective: concentrate attacks on other competitors
Means: exchange market information
incentives for teams (bonuses!)'[89]

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[87] Interbrew's reply to request for information, 23.12.1999 (doc. 37614 02007-02008); Annex I.1 to Interbrew letter of 14.1.2000 (doc. 37614 02593); letter from Interbrew, 8.2.2000, and especially Annex 15 to that letter (doc. 37614 7580-7481, 7507).

[88] Annex B20 to Interbrew's reply to request for information, 23.12.1999 (doc. 37614 02094); see also statement of objections, paragraph 75.

[89] Original French: '1. Domaine: Les contrats d'obligation, Objectif: Préserver le "système" belge, Moyens: Respect des contrats d'obligation ...Demande d'info en cas de doute. 2. Domaine: Les clients nationaux, Objectif: Éviter l'escalade des "sacrifices", Moyens: Respect des accords en cours, Pas d'attaque des clients mutuels, Concertation pour les nouveaux. 3. Domaine: Les nouvelles affaires, Objectif: Contenir le "cost of doing business", Moyens: Contact direct pour tous les cas de surévaluation/surinvestissement, Language commun en matière de calcul de

Notes made at the meeting show that there was talk of a ceiling on investment costs of [...] per hectolitre. At this meeting Interbrew and Alken-Maes also discussed the status of the CBB 'Vision 2000' project (on this project see also recitals 128 et seq.)[(90)].

(89) A number of documents date from the period between the meeting of 30May and the next documented meeting on 29 June. Concerning these documents Alken-Maes states as follows[(119)]:

> 'On 11 June 1996 Interbrew wrote to all its customers, including Alken-Maes, to advise them of the introduction of new general terms and a new pricing system with effect from 1 January 1997. On 26 June a presentation memo by Martichoux referred to contacts between Alken-Maes and Interbrew, and analysed the attitude Alken-Maes ought to take to Interbrew's new terms. An internal Alken-Maes memo dated 3 July, drawn up by [Alken-Maes's marketing manager], discussing the merits of delivered-to-premises and exfactory pricing, referred to comments made by [Interbrew's manager for the off-trade] regarding Interbrew's new pricing system. On 5 July Martichoux made a presentation to Alken-Maes on the possibility of introducing an ex-factory price ... On 25 July Alken-Maes decided not to introduce an ex-factory price after Interbrew had abandoned the idea.'[(120)]

(137) The working party met on 17[(193)] and 31 January 1995. At the 31 January meeting a number of subgroups were set up to look at six practical areas, including[(194)]:

'... 4. Investment in publicity materials (glasses and beer mats)

(chairman: [Alken-Maes's on-trademanager])

Objective:

— to avoid competition in this area

— harmonisation

5. Management of delivered-to-premises and exfactory pricing

(chairman: [Alken-Maes's general manager])

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coût et fixation d'un plafond. 4. Domaine: La concurrence, Objectif: Concentrer l'attaque sur les autres concurrents, Moyens: Échange d'informations marketinges, Stimulation des equips (primes!).'

(90) Annex B19 to Interbrew's reply to request for information, 23.12.1999 (doc. 37614 02091-02093).

(119) Letter from Alken-Maes, 7.3.2000 (doc. 37614 7883-7884), with references to the following documents: inspection at the offices of Alken-Maes, documents AVW36 (doc. 37614 00235-00241) and MV8 to MV11 (doc. 00413-00459).

(120) Original French: 'Le 11 juin, Interbrew écrit à tous ses clients, dont Alken-Maes, pour leur signifier l'introduction de ses nouvelles conditions générales et de sa nouvelle tarification au 1er janvier 1997. Le 26 juin, une note de présentation de Martichoux se réfère à des contacts entre Alken-Maes et Interbrew, et analyse l'attitude qu'Alken-Maes doit adopter face aux nouvelles conditions d'Interbrew. Le 3 juillet, une note interne d'Alken-Maes, rédigée par Monsieur ... concernant les mérites respectifs d'un tarif "franco" et d'un tarif "départ", fait référence à des commentaires de Monsieur ... (Interbrew) concernant la nouvelle tarification d'Interbrew. Le 5 juillet, Martichoux fait une présentation à Alken-Maes concernant la possibilité d'introduire un "tarif départ" ... Le 25 juillet, Alken-Maes décide de ne pas introduire de tarif "base départ" suite à l'abandon du même projet par Interbrew.' See also statement of objections, paragraph 91.

(193) Annex 15 to CBB's reply to request for information, 24.12.1999 (doc. 37614 02493).

(194) Inspection at the offices of the CBB, document ROK7 (doc. 37614 01211-01213); letter from Alken-Maes, 7.3.2000 (doc. 37614 7880); see also statement of objections, paragraph 139.

Objective:

— situation in neighbouring countries

— to “finalise” the logistical charge

— to set standards for transport

(143) The Vision 2000 working party met again on 7 July 1995[202]. The meeting discussed the recommendations of subgroup 4, on investment in publicity material, and approved them unanimously. The most important recommendation was that the brewers ought to apply a standard investment of BEF 60 per hectolitre. The activities of subgroup 5, on delivered-to-premises and ex-factory pricing, were still suspended. In subgroup 6, on investment in sales outlets, there was agreement that investment ought to be rationalised jointly, but disagreement on the procedure to be followed.

[202] Inspection at the offices of the CBB, document ROK5 (doc. 37614 01200-01207).

(116) The important rise in prices at the beginning of the 1990s was partially responsible for a new influx of citric acid imports from China. These more than doubled between 1991 and 1992, reaching 32 500 mt in 1992, that is to say, 14,2 % of the Community market volume. In 1994[59] they would rise to 59 448 mt, that is to say, 23,6 % of the Community market volume that year. This had an important impact on the cartel's ability to maintain the agreed prices and became an increasingly serious problem, although various means of counteracting the price-depressing effect of Chinese imports were devised and implemented. Under cover of their ECAMA membership, the undertakings composing the cartel studied the possibility of causing an anti-dumping proceeding to be initiated against the Chinese importers by the European Commission. They continued to apply this type of pressure by sending representatives of Jungbunzlauer and ADMto China, on behalf of ECAMA, to inform the local manufacturers that anti-dumping proceedings would be initiated if their pricecutting practices were not terminated. This had no perceivable effect on prices. In the meantime, the cartel members had been targeting individual customers of the Chinese producers in order to undermine their market position. The mechanics of this practice is explained below.

(119) A 'Sherpa' meeting was held in London on 14 January 1994[66] with the remit of reviewing the citric acid market situation and finding ways to encourage a growth of sales by cartel members. The increasing availability of Chinese production in the European market and the need for a more forceful stance by the cartel members to maintain their level of sales in the light of this were subjects of discussion at the meeting. Participants 'accepted that there would have to be a price war against the competition from China'[67] and that they had to 'try and regain particular accounts [lost to the Chinese producers] at whatever price was necessary with the blessing of the others'[68].'These customers were identified by name, and were allocated to individual participants, who were to make the necessary offers'[69]. This catalogue of undertakings came to be known as the 'Serbia List' and was the subject of regular monitoring and discussion at subsequent 'Sherpa' meetings, the first of which were held in London from 23 to 25 March 1994[70].

(166) Whilst it is perfectly legitimate for an industry to discuss whether an anti-dumping complaint should be filed with the Commission, it is certainly not for the main players of a given market segment to take concerted actions regarding the prices they charge to their respective customers

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[59] Hoffmann-La Roche's Article 11 reply of 28 April 1999 [4793].

[66] Participants: Hoffmann-La Roche, Jungbunzlauer, ADM, Haarman & Reimer and Cerestar Bioproducts —See ADM Statement [3854-3855]; Jungbunzlauer's Article 11 reply of 29 April 1999 [5614].

[67] Jungbunzlauer's Article 11 reply of 29 April 1999 [5614] — 'Es wurde erkannt, dass gegen die Konkurrenz aus China ein Preiskampf aufgenommen werden musste.'

[68] ADM's Statement [3858].

[69] Jungbunzlauer's Article 11 reply of 29 April 1999 [5614] — 'Diese Kunden wurden namentlich identifiziert und den einzelnen Teilnehmern für die Abgabe der entsprechenden Angebote zugeteilt.'

[70] Participants: ADMmet Haarman & Reimer and Cerestar Bioproducts in London on 23-24 March 1994 and Hoffmann-La Roche on 25 March 1994 in London. — ADM's Statement [3855].

in order to evict third parties from this market. The facts described in recitals 115 to 124 illustrate very clearly the illegal character of the practices used by the cartel participants in order to discipline the Chinese producers. The counter-offers targeted at specific companies, identified in a catalogue known as the ‘Serbia list’ and individually allocated to each of the cartel participants, clearly formed part of an overall strategy to eliminate competition in the citric acid market in the EEA.

COMMISSION DECISION
of 18 July 2001
relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement
Case COMP/E-1/36.490 — Graphite electrodes

(2) The infringement consists in the participation of the producers of graphite electrodes in a continuing agreement and/or concerted practice contrary to Article 81(1) of the Treaty and (from 1 January 1994) Article 53(1) of the EEA Agreement, covering the whole of the increasing. Electric arc furnace steelmaking is essentially Community and Norway, Austria, Sweden, Finland, by which they:

— fixed the prices of the product,

— agreed on and implemented a mechanism for implementing price increases,

— allocated markets and market share quotas,

— agreed not to increase production capacity,

— agreed not to transfer technology outside the circle of cartel participants,

— set up machinery for monitoring and enforcing their agreements.

(106) In the first 'Top Guy' meeting in London on 21 May 1992, the major producers — SGL, UCAR and the Japanese 'group' — agreed the basic principles by which they would cartelise the world market for graphite electrodes. They agreed to fix prices and to implement a price increase mechanism, to allocate national markets and market share quotas. Furthermore, they agreed not to increase production capacity and not to transfer technology outside the circle of cartel participants. A monitoring and enforcement scheme was set up (for details, see points 71 to 73 above).

This plan, to which they all subscribed, as indeed did VAW Carbon, was implemented over a period of several years employing the same mechanisms and pursuing the same common purpose of eliminating competition.

The working-out of the plan at regular meetings does not give rise to discrete 'agreements' but constitutes the implementation of the same overall and illegal scheme.

Given the common design and common objective which the producers steadily pursued of eliminating competition in the graphite electrode industry, the Commission considers that with regard to the EEA market the conduct in question constituted a single continuing infringement of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement in which each participant must bear its responsibility for the duration of its adherence to the common scheme.

(271) According to Akzo, the participants made an additional arrangement around 1993. They agreed to buy competitors which threatened the existence of the main agreement. Akzo states:

'It should be added that when Akzo rejoined the arrangements in 1992-1993, there was some serious competition from other players and new entrants in the market. The participants agreed that each of them would purchase such a (new) competitor. Akzo agreed to acquire the organic peroxide business of Nobel and Enichem. Laporte would purchase Aztec. Atochem would take over [...]. Only the latter did not occur[213] *.'*

[213] Akzo memorandum I [8676].