II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 13 July 1994

relating to a proceeding under Article 85 of the EC Treaty

(IV/C/33.833 — Cartonboard)

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

(94/601/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty [1], as last amended by the Act of Accession of Spain and Portugal,

Having regard to the Commission decision of 21 December 1992 to open a proceeding on its own initiative,

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

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

Whereas:

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

PART I

THE FACTS

A. SUMMARY OF THE INFRINGEMENT

(1) This Decision imposing fines for an infringement of Article 85 arises out of investigations carried out by the Commission in April 1991. Acting under Article 14 (3) of Regulation No 17, Commission officials visited the premises of a series of producers of cartonboard or their subsidiaries and selling agents in the Community. By means of the said investigations and subsequent enquiries under Article 11 of Regulation No 17, the Commission discovered documentary evidence showing that an infringement of Article 85 had been committed by the following undertakings:

— Buchmann GmbH,

— Cascades SA,

— Enso-Gutzeit Oy,

— Europa Carton AG,

— Finnboard — the Finnish Board Mills Association,

— Fiskeby Board AB,

— Gruber & Weber GmbH & Co KG,

— Kartonfabriek 'De Eendracht' NV (trading as 'BPB de Eendracht'),

— NV Koninklijke KNP BT NV (formerly Koninklijke Nederlandse Papierfabrieken NV),

— Laakmann Karton GmbH & Co KG,

— Mayr-Melnhof Kartongesellschaft mbH,

— Mo Och Domsjö AB (MoDo),

— Papeteries de Lancey SA,

— Rena Kartonfabrik AS,

— Sarrió SpA,

— SCA Holding Ltd (formerly Reed Paper & Board (UK) Ltd),

— Stora Kopparbergs Bergslags AB,

— Enso Española SA (formerly Tampella Española SA),

— Moritz J. Weig GmbH & Co KG.

(2) The infringement consists of participating from about mid-1986 until at least April 1991 (in most cases) in an agreement and concerted practice by which the producers supplying cartonboard in the Community in concert and complicity and contrary to Article 85:

— met regularly in a series of secret and institutionalized meetings to discuss and agree a common industry plan to restrict competition,

— agreed regular price increases for each grade of the product in each national currency,

— planned and implemented simultaneous and uniform price increases throughout the Community,

— reached an understanding on maintaining the market shares of the major producers at constant levels (subject to modification from time to time),

— took concerted measures to control the supply of the product in the Community in order to ensure the implementation of the said concerted price rises,

— exchanged commercial information (on deliveries, prices, plant standstills, order backlogs, machine utilization rates, etc.) in support of the above restrictions.

B. THE CARTONBOARD INDUSTRY

1. The product

(3) Cartonboard (also known as 'paperboard') is a stiff material produced from wood fibres and used primarily for the manufacture of folding cartons for packaging food and non-food consumer goods. It is also used to produce card for graphic purposes.

Cartonboard is produced by a number of methods which involve the dispersal of fibres in water at a 1 % concentration and the subsequent casting into sheets by draining the water and drying the resulting fibre deposit.

A large variety of product qualities has been developed to meet the differing requirements of end users. The quality of the material depends to a considerable extent on the choice of fibre used and its treatment during the production process. Cartonboard is usually manufactured and sold as sheets combining layers of material made from different types of pulp. It is commonly coated or laminated on its white side with various materials to enhance its appearance or make it suitable for particular applications. The basic distinction is between cartonboard produced from primary wood fibres and cartonboard made from recycled wastepaper.

(4) The main qualities of cartonboard produced in western Europe are:

— folding boxboard (FFB) manufactured with a top layer of whiteliner made from bleached chemical pulp, a middle layer of mechanical or semi-mechanical pulp, and frequently a thin bottom layer of bleached chemical pulp. FBB is usually used for the packaging of food, cosmetics, cigarettes, pharmaceuticals, etc.,

— white-lined chipboard (WLC), also known in continental western Europe as Duplex, or Triplex, and based on secondary or recycled fibres. This product is produced with bleached chemical pulp on the topside and backlayers of wastepaper and is normally used for packaging of non-food products,

— solid bleached sulphate board (SBS), a multi-layered product made from bleached chemical pulp and white throughout. It is mainly used as a premium grade for the packaging of food, cosmetics, pharmaceuticals and cigarettes.

Certain other board products (e.g. 'greyboard' which is made entirely from wastepaper) may also be produced on cartonboard machines but they do not fall within the definition of 'cartonboard' as used by the producers themselves and are not the subject of the present proceedings.

The standard product designation and abbreviations used in Germany are commonly employed in the cartonboard industry throughout western Europe.

— The coated and uncoated FBB grades are designated 'GC' and 'UC' respectively.

— Coated and uncoated 'duplex' grades of WLC are designated 'GD' and 'UD' while 'triplex' grades are known as 'GT' and 'UT'.

— Coated and uncoated SBS grades are designed 'GZ' and 'UZ' respectively.

Inside these categories there are further subdivisions: for instance, GC1 is distinguished from GC2 by virtue of the different backing layer used, GD1 from GD2 by their different specific volume, etc. For convenience, the whole of the virgin fibre sector is often referred to as the 'GC grades', and all recycled qualities as 'GD grades'. This usage will be adopted where appropriate in this Decision.

2. **Market size and value**

(5) As a result of *inter alia* overlapping product definitions, estimates of the size of the cartonboard market differ.

For the purposes of this procedure, the Commission has followed the classification used for the purposes of their own statistical exchange system (see recital 61) by the producers involved in the present proceedings.

Total production of cartonboard by Western European producers in 1990 (the last full year during which the infringement is known to have continued) amounted to almost 4,2 million tonnes, of which about one-sixth was exported to overseas markets.

Some 2 400 000 tonnes were produced in the Community, 70 % of which consisted of GD grades. The output of the Nordic countries was 1 300 000 tonnes (almost all GC and SBS) while in Austria some 340 000 tonnes of GD grades were manufactured.

West European (EC and EFTA) consumption of cartonboard (all grades) in 1990 was some 3,5 million tonnes. Of this total, GC grades accounted for 1,3 million tonnes (37 % by tonnage), GD grades 1,9 million tonnes (54 %) and SBS 0,3 million (9 %).

Cartonboard consumption in the Community in 1990 was some 3 090 000 tonnes, of which 1 150 000 tonnes were GC and 1 700 000 tonnes GD grades. France, Germany, Italy and the United Kingdom accounted for over 80 % of Community consumption.

Imports from EFTA countries, principally Sweden and Finland, took 30 % of the Community market.

Details of production, sales and consumption for 1990 are shown in Table 1.

The Community market for cartonboard was worth approximately ECU 2 500 million in 1990.

(6) The west European market for cartonboard over the past 30 years was characterized by strong growth. The annualized rate of growth in Europe for cartonboard was normally greater than that for industrial production in general: during the 1980s, for example, cartonboard growth in western Europe averaged 3 % annually compared with only 1,5 % growth in industrial production.

In the four-year period from 1987 to 1990 cartonboard consumption increased by 18,6 %. In 1991 however there was a downturn and demand fell by 2,2 %.

During the second half of the 1980s, demand for GC (virgin fibre) grades increased at almost three times the rate for GD (recycled) grades.

The trend to GC grades was reversed during 1990 with GD sales in the Community increasing by some 11 % over 1989, while GC sales fell by 1 %.

The significant switch back to GD in 1990 was attributed to several factors: greater public awareness of environmental concerns; an increase in the price differential between GC and GD grades in late 1989 when GC prices were increased but GD prices were not; and improvement in the appearance of some GD grades so as to make the product appear more like the GC grades.

3. **The producers**

(7) The Community market for cartonboard is supplied to a considerable extent by European producers of GC grades located outside the Community and particularly in Sweden and Finland.

The GC sector is dominated by several large Nordic forest product groups, which following recent industry restructuring and acquisitions now in fact have a substantial part of their cartonboard production capacity located inside the Community. The largest European producer of GC grades is the Swedish Stora group, with annual production of

some 450 000 tonnes. Two-thirds of Stora's GC production comes from its Kopparfors factories in Sweden and the remainder from the former Feldmühle operation which Stora acquired in 1990 (Feldmühle also produced GD grades). Another important Swedish producer, the MoDo group, produces 200 000 tonnes of GC grade cartonboard, virtually all of this in its United Kingdom mill located at Workington in Cumbria; MoDo's production in Sweden consists almost entirely of SBS. The four (in 1991) Finnish GC board producers — Metsä-Serla, Kyro, Tampella and United Paper Mills — together account for almost 500 000 tonnes (all produced in Finland) and market the product in the Community and other export markets exclusively through their commonly-owned sales organization Finnboard [1].

(8) In the GD area, two major producers, Mayr-Melnhof (M-M) and Sarrió, now account for half the west European production capacity. M-M is based in Vienna but also owns or controls cartonboard mills in Germany, Switzerland (66 % holding), the Netherlands and (since 1991) the United Kingdom. In 1990, the M-M group already had over 600 000 tonnes of production capacity in GD and 90 000 tonnes in GC. A new GD machine (160 000 t/year) was added in Germany (and an existing machine reportedly close) in 1991. M-M acquired another German producer in late 1992 so that its total capacity is now over 850 000 tonnes. Sarrió (part of the Italian Saffa group) is the second largest European producer of recycled grades with plants in Italy totalling 400 000 tonnes GD (as well as 26 000 tonnes GC) capacity. It also has two mills in Spain (Sarrió, Prat). Other important GD producers in the Community include Stora (the former Feldmühle operation), Cascades, Weig and Buchmann. Europa Carton is not only a cartonboard producer but also the largest converter in Germany. Fiskeby of Sweden is the only Nordic producer of recycled board.

(9) Some groups, including principally Stora, M-M and Cascades are important producers of both GC and GD grades.

The two important European producers of SBS (GZ, UZ) are MoDo (via Iggesunds Bruk in Sweden) with a production of around 225 000 tonnes in 1990 and Enso-Gutzeit of Finland with 125 000 tonnes.

According to one study (based on capacity) [2], the Stora group had some 14 % of total west European capacity in 1990, followed by M-M (13 %), the Finnboard mills (11 %), MoDo/Iggesund (10 %), Sarió/Saffa (8 %), Cascades (7 %), Enso-Gutzeit (3 %) and Weig (2 %). 10 producers thus accounted for 70 % of cartonboard capacity (all grades).

For 1991, after further acquisitions and capacity increases, another study (based this time on total output) [3] put M-M in first place with 19,3 %, followed by Stora (14,2 %), Finnboard (12,4 %) and Sarió/Saffa (10 %).

4. The customers

(10) The main customers for cartonboard in the Community are the producers of folding cartons ('converters'), who account for approximately 60 % of cartonboard consumption. A few cartonboard producers have a downstream converter activity integrated in the undertaking.

The converters purchase cartonboard in sheets and produce folding boxes (cartons) to the specifications of their customers who are mainly manufacturers of food and non-food consumer goods.

End users of folding boxes in western Europe are divided about 54:46 between food and non-food categories. There are about 1 500 converters in the major Community countries. The 10 largest produce about one-quarter of the total output, a reflection of the somewhat fragmented nature of the market on the customer side although it should be said that in recent years there has been a tendency towards greater concentration.

Other important customers for cartonboard include the printing industry which uses the product for graphic purposes.

5. Cartonboard industry restructuring

(11) In the last decade the cartonboard industry has undergone substantial structural change. In 1980 the vast majority of European cartonboard production came from independent 'one-product' companies which were involved only in the cartonboard industry. By contrast in 1990 only half the available capacity was accounted for by specialist board companies, the rest being owned by large paper industry conglomerats with diversified interests.

[1] Finnboard which has legal personality as a registered 'yhdistys' (trade association) in Finnish law had six member companies (two did not produce cartonboard) in 1991, each of which provided a member of its board of directors. The commercial organization is headed by a Managing Director to whom the different marketing units are responsible. It employed 135 staff in Finland and had representatives in 43 countries of which 17 were Finnboard's own sales offices.

[2] Finnboard study, 16 May 1990.

[3] EIU Paper and Packaging Analyst, November 1991.

— In 1990 Stora, Sweden's largest forest products group and the owner of Kopparfors, one of the major carton producers, acquired the German paper group Feldmühle-Nobel. Feldmühle had already acquired 50% of the leading French cartonboard producer Papeteries Beghin-Corbehem in 1988 and the remaining 50% in 1989. The total combined turnover of the new Stora/Feldmühle group is in the region of ECU 6 500 million. The former 'Kopparfors' and 'Feldmühle' cartonboard operations have now been integrated to form the Billerud Division of Stora.

— M-M, originally a medium-sized producer located in Austria, is now the largest west European producer of GD grades, having acquired first FS-Karton in Germany in 1984 and late KNP-Vouwkarton in the Netherlands and a controlling interest in Deisswil in Switzerland. In October 1991 M-M acquired the Colthrop Board Mill, the only United Kingdom producer of GD grades and formerly part of the Reedpack group. It also took over the German producer Laakmann in late 1992.

— AB Iggesunds Bruk, one of the major European producers of SBS, acquired Thames Board Mill ('TBM'), a major GC grade producer located in Workington, United Kingdom, as of 1 January 1988, and at the end of that same year was itself fully integrated into the MoDo paper group which had until then owned just under 50% of its equity. (A 'new MoDo' group was formed from three formerly independent groups, MoDo, Iggesund and Holmen.)

— The Cascades group of Canada acquired two French cartonboard mills in 1985 to 1986 (Blendeques and La Rochette) and later Duffel, the only Belgian producer (now closed down) and Djupafors (Sweden) in 1989.

— Reedpack Ltd, formed in 1988 in a management buy-out of the manufacturing interests of Reed International plc (which included Reed paper & Board (UK) Ltd ('Reed P & B') owner of the Colthrop Board Mill), was itself acquired in July 1990 by SCA, a major Swedish forest industry group. SCA retained most of the former Reedpack operations including Reed P & B but sold the Colthrop Mill to another management buy-out (the Field Packaging group) in May 1991. Field in turn sold the Colthrop Mill to M-M in October 1991.

— Saffa, the leading Italian producer, merged its cartonboard division with the Spanish producer Sarrió in 1990 (and changed the name of the cartonboard division to Sarrió) and acquired another Spanish producer, Prat Carton, in 1991.

— Aussedat-Rey, one of the leading French paper groups and owner of Papeteries de Lancey, was itself acquired by International Paper, the world's largest pulp and paper company, in June 1989.

— Enso Gutzeit, the second largest Finnish forest products group and a major producer of SBS grade cartonboard acquired the sawn products, paper and board interests of Tampella Oy, another Finnish industrial corporation producing GC grades and one of the members of Finnboard in early 1993.

— Fiskeby AB, the only Skandinavian producer of GD grades, was acquired by the US corporation Manville Forst Products on 1 June 1990.

— KNP (Koninklijke Nederlandse Papierfabrieken), a large Dutch paper manufacturer, acquired the German packaging producer Herzberger Papierfabrik Osthushenrich GmbH (including Badische Kartonfabrik) with effect from 31 December 1986. Subsequently KNP sold its cartonboard operation in the Netherlands, KNP Vouwkarton, to M-M, the sale taking effect on 1 Janury 1990.

— KNP itself merged with two other Dutch paper companies in early 1993 to form Koninklijke KNP BT NV.

— Europa Carton AG, itself owned by Stone Container Corporation of the United States, included in its activities the manufacture of cartonboard as well as the production of folding boxes. On 17 February 1993 Europa Carton AG agreed with the major French converter FCP to merge their boxmaking activities in a jointly owned holding company. As part of the operation Europa Carton AG placed its boxmaking activity including its cartonboard factory in a new company Europa Carton Faltschachtel GmbH which is owned by the joint venture.

6. Trade between Member States

(12) Although the majority of the cartonboard imported into the major Community markets comes from Nordic countries, there is a considerable trade in cartonboard between the Member States themselves. In 1990, out of 2 400 000 tonnes of cartonboard produced in the common market 620 000 tonnes (25%) was traded in the form of direct sales from one Member State to another by the cartonboard manufacturers. There is also a substantial inter-State trade in cartonboard by merchants and as the larger converters have become more integrated on a pan-European basis

they have tended to look for group supplies to wherever the most favourable terms can be obtained. Imports into the Community from the Nordic EFTA countries (Sweden, Norway, Finland) were 770 000 tonnes, consisting almost entirely of GC and SBS. A substantial tonnage (135 000 tonnes) of GD material was imported into the Community from Austria.

At the level of the main finished product (folding boxes), 11 % of west European output is shipped across national borders.

7. Capacity utilization

(13) Cartonboard production is a highly automated and capital intensive process. In order to be viable, a large new cartonboard mill would need to have a capacity of 150 000 to 200 000 tonnes and would cost around ECU 250 million to build. This was in fact the case of the new M-M/FS-Karton mill which came on stream in Germany at about the end of 1990.

The cartonboard producers consider that the ideal method of operation is to run their machines at full capacity 24 hours a day and 350 to 355 days per year. To operate economically, large machines require long production runs with the minimum of product changes. Each production run is tailored to suit the requirements of the individual customer or of several customers grouped together. Virtually all the cartonboard manufactured in western Europe is produced for specific orders; it is not generally practicable to manufacture for stock. The number of days or weeks of orders in hand (order backlog) is thus a good indicator of the strength of demand. In the event that the order backlog falls below two to three weeks, the larger producers will generally consider it advisable to halt production temporarily ('take downtime') in order to improve the production programme and ensure the maintenance of product quality. Smaller mills have somewhat more flexibility.

(14) For several years up to 1983 the operating rates of the machines in western Europe were considered unsatisfactory by the producers (1980: 83 %; 1981: 85 %; 1982: 84 %; 1983: 91 %).

In 1984 demand again improved and capacities were judged 'well-utilized' at a 96 % occupacity. Demand fell slightly in 1985 resulting in a slightly lower utilization rate.

1986 was considered a reasonably good year by the cartonboard industry with a 2 % increase in consumption and lower costs for raw materials and energy.

(15) Between 1983 and 1986 substantial capacity increases resulting from machine rebuilds and de-bottlenecking were made by the Finnish producers (the Finnboard mills in GC grades and Enso-Gutzeit in SBS) which added some 150 000 tonnes to the west European production capacity. However the substantial increase in demand for cartonboard during the 1980s balanced out the increase in capacity.

During 1987 a new methodology was adopted by the producers for calculating capacity utilization and it became apparent that there was in reality no overcapacity in the cartonboard industry.

For the next three or four years the cartonboard industry was running at, or close to, full capacity, although during 1990 it became increasingly necessary for the larger producers to take downtime.

8. Costs, prices and profitability

(16) The principal raw material cost element in the production of cartonboard is the price of wood pulp (for GC grades) and waste paper (for GD).

The woodpulp for GC grades is usually purchased from Scandinavian or North American sources and typically accounts for some 30 % of the cost of the cartonboard. (In the case of some major GC producers, their cartonboard mills are located next to their woodpulp plants and are to a large extent supplied by internal transfer.) The vast majority of pulp production in fact goes to make paper, and only an estimated 5 % of total pulp consumed is for GC cartonboard.

The price paid for pulp by cartonboard producers is therefore said to be determined largely by the state of the paper industry in general rather than by the condition of the market for GC cartonboard. In the case of recycled wastepaper, however, some 70 % is used for boards and only 30 % for paper; for GD grades the link between the board price and the price of the raw material may be more direct than in the case of GC and woodpulp. Ultimately, however, a rise in the woodpulp price also feeds through to the price of recycled waste material.

According to the producers, raw material costs for the cartonboard industry generally followed woodpulp prices on the international market and rose by almost 30 % between 1986 and 1989 before faling back during 1990 and down almost to 1986 levels by 1991. However the other individual cost components show varying trends and from 1982 onwards labour and energy costs (which account for 20 to 25 % of total costs) continued to rise and to some extent offset the fall in raw material costs.

Over the period 1986 to 1991 the real per unit revenues of the cartonboard industry rose by approximately twice the amount of their production costs.

According to a market study commissioned by several of the producers for the purpose of these proceedings (see recital 110), the average operating margin earned by the west European producers on their cartonboard operations in the period 1986 to 1991 was ECU 162 per tonne in 1991 prices (= about 20 %) [1].

(17) There is a substantial price differential between GD grades and GC material; typically GD recycled board sells at some 70 % of the price of GC2. (As a rough approximation and taking GC2=100, the comparative price levels are GD: 70, GT: 80, GC 2: 100, GC 1: 110 and SBS: 120).

However, for many applications GD and GC are readily substitutable. There have been considerable improvements in the aesthetic aspect of recycled board which makes it acceptable for some higher-quality usages. On the other hand, using GC instead of GD for some purposes can result in a saving of up to 20 % in the weight of the board used, thereby considerably offsetting the price advantage of recycled board.

(18) The cartonboard producers' usual practice up to 1990 was for price increases to take place twice a year, in April and October. Price increases are invariably announced several months in advance. Producers normally send a circular letter to the customers (mainly manufacturers of printed cartons or 'converters') informing them of the amount of the impending increase. The sector has been noteworthy for the phenomenon of industry-wide price initiatives, with all the producers notifying identical or nearly identical increases in each West European national market due to come into effect on the same date. The large producers all announced their increases within a few days or weeks of one another. Although it was often the Nordic producers which first announced an increase, the pattern was not the same each time and other producers — for example Feldmühle and M-M — might also 'lead' a price initiative. The smaller producers invariably applied the same list price increases as the major groups.

Besides a general price list, most large producers have special individual price lists for their large customers which might involve a lower basic price. (The basic price is usually that for 10- or 15-tonne lots of the same substance/'grammage'). In addition, quantity discounts or tonnage rebates are available. The standard procedure is to notify all customers of the same flat rate price increase (for example, DM 13 per 100 kg for GC and DM 11 per 100 kg for GD grades) and to inform individually those for which special arrangements are in place of the effect the general increase in basic prices will have on their own final price.

(19) Producers of cartonboard have usually attempted to justify a proposed price increase to their customers by reference to increases in the costs of raw material, energy, transport, etc. Generally speaking, the converters' own customers (who are mostly in the food sector) would expect their suppliers themselves to absorb any small increase in the cartonboard price. For the converters to be able to pass on to their customers an increase in the cartonboard price it would therefore have to be at least 5 %. There is on the other hand an upper limit in practical terms on the amount of any price increase that could be imposed unilaterally by the cartonboard producers on the converters. The converters have on some occasions resisted a proposd price increase for cartonboard on the ground that their own customers would in their turn refuse to accept a price increase for packaging; the cartonboard itself represents the largest cost factor (some 50 %) in the final price of a printed box. The usual scale of the list price increase contemplated by the cartonboard producers on each occasion was therefore in the region of 6 to 10 %.

9. Price initiatives

(20) At the beginning of 1986 the cartonboard producers announced price increases for both GC and GD grades in all west European markets of about 8 % (DM 120 and 100 per tonne) but the move had only limited success. From about the last quarter of 1986 market price levels were steady or even in decline, with GC net prices actually falling in most national markets during 1987. (There was however a price increase of 9 % in the United Kingdom at the beginning of 1987, sterling being then low as against CWE (continental western European) currencies and this move brought United Kingdom prices more into line with the rest of the Community).

By contrast, from 1988 onward cartonboard prices were regularly increased across western Europe by all producers in a series of so-called 'price initiatives'. Usually the price initiatives involved increases in all national markets for both virgin fibre and recycled cartonboard grades, with SBS

[1] Operating margin is defined as invoiced turnover less rebates and all production, sales and administrative costs excluding capital costs, i.e. depreciation and interest payments. It should be noted however that for the integrated GC producers the profitability of their overall operations from pulp to final product is substantially higher.

usually (but not always) going up in line with GC grades.

— The first price initiative of 1988, effective between February and April, involved an increase for GC, GD and SBS of 7 to 8 % (in some cases 10 %), with the new prices to remain in force until 30 September.

— A second price increase for 1988 of about 7 % came into effect on 1 October, again for GC, GD and SBS, and was due to last until February 1989. The United Kingdom was excluded from this increase since its prices at the time were already some 10 % above CWE levels.

— In 1989 prices were again increased twice for GC grades and SBS but only once for GD.

The first increase involved an increase of some 10 % for GC grades and 6 % on GD and came into effect on 1 April.

— The second price increase of 1989 (on 1 October in most countries) applied only to GC and SBS and again was in the order of 8 to 10 % on list prices. This resulted in an increased differential between GC and GD and a consequent shift in demand back to GD.

— In April 1990 a price increase was implemented for GC, GD and for SBS involving a rise of between 6 and 10 % according to country. It was due to be followed by a second increase on 1 October 1990 but as a result of new production capacity coming on stream at the same time as an expected reduction in economic growth, the second increase was postponed until January 1991.

— The increase of 6 to 7 % came into effect in January 1991 but was further postponed in some markets until April for large customers which had opposed the timing of the increase.

(21) On the producers' own figures, the series of price initiatives between 1988 and 1991 brought west European basic list prices (in national currencies) up by an average of 42 % in absolute terms. Average net actual prices paid (i.e. after all discounts and rebates) also rose but by somewhat less. According to the market study commissioned by several producers actual net prices for cartonboard in domestic currencies increased by 33 % (in absolute terms) on average before falling off in mid-1991.

In real terms and converted into ecu so as to take account of fluctuations due to exchange rate changes, the increase in announced price during this period averaged 26 % in western Europe while actual prices went up 19 % before dropping somewhat in the second half of 1991.

There are of course some variations between the different producers, grades and national markets. GC prices increased more than those of the recycled grades (see recital 20).

As an indication, for one major producer the net price of GC grades in Germany went up from around DM 1 500 per tonne in January 1988 to DM 2 000 per tonne in mid-1991 (+ 33 %), while GD material rose from DM 1 200 per tonne to DM 1 450 per tonne in the same period (+ 21 %). The price increases achieved in Belgium over the period were substantially greater than the west European average and in Italy rather less than average.

C. PROCEDURE

1. Unannounced investigations under Article 14 (3) of Regulation No 17

(22) On 23 and 24 April 1991 Commission officials acting pursuant to Article 14 (3) carried out simultaneous investigations without prior notice at the premises of a number of undertakings and trade associations involved in the cartonboard sector. In some cases, owing to the fact that the headquarters of the suspected participant in the infringement were located outside the Community, the investigation was made at one or more of its subsidiaries or agents.

The investigations followed the receipt of an informal complaint (i.e. not one made under Article 3 of Regulation No 17) from the British Printing Industries Federation (BPIF), a trade organization representing the majority of carton printers in the United Kingdom.

In its letter dated 22 November 1990, the BPIF alleged that the producers of cartonboard supplying the United Kingdom had introduced a series of simultaneous and uniform price increases and requested the Commission to investigate whether any infringement of Community competition rules had occurred.

At the same time (but without informing the Commission) the BPIF issued a press release which ensured that its initiative received publicity in the specialized trade press. A report of the complaint appeared in 'This Week', a newsletter of 10 to 14 December 1990 produced by Pulp and Paper International.

Copies of the press release (or even of the BPIF complaint itself) were discovered at a number of the cartonboard producers or their agents: Cascades; MM Pegg (M-M), who had obtained it from Feldmühle; Finnboard and SCA.

On 12 December 1990 the Fédération Française de Cartonnage, a trade organization representing the French cartonboard customers, also made an informal complaint to the Commission making allegations in relation to the French cartonboard market which was in similar terms to the BPIF complaint.

(23) It was apparent from documentation found by the Commission at a number of the undertakings or associations visited that the cartonboard industry was fully aware of the posssibility of an investigation under Article 14 (3) following the complaint by the BPIF. In one case at least external lawyers had been engaged to carry out a mock investigation or 'dummy run' at the undertaking's premises, and reported subsequently that certain documentation had been removed from the premises 'for further examination' (although both the undertaking in question and its lawyers denied to the Commission that documents had in fact been removed).

Notwithstanding the advance warning, the Commission officials discovered a number of highly incriminating documents during the investigations (in particular at Cascades and at M-M's subsidiary FS-Karton) which showed the existence over several years of arrangements to fix prices and restrict or control the supply of cartonboard under the cover of a body known as the 'Product Group Paperboard' or 'PG Paperboard'.

These documents will be described in detail in Part E of this Decision.

2. **Requests under Article 11 of Regulation No 17**

(24) Following its investigations under Article 14 (3), the Commission addressed requests for information under Article 11 to all the producers of cartonboard to which this Decision is addressed.

The requests concerned the activities of the PG Paperboard and the participation in its meetings and committees of each of the undertakings.

In addition, requests for information relating to specific references in the documentation which had been found at their premises (or those of their subsidiaries) were addressed to Cascades and to M-M.

All the undertakings involved in the present proceedings were also requested to provide any documentation in their possession relating to meetings of the PG Paperboard. Most of them provided the official minutes of meetings but except for Rena no privately kept notes or memoranda were produced apart from those already found during the investigations.

The Commission also requested certain relevant documentation from Fides, the Swiss-based organization which provided technical services for the PG Paperboard (see recital 27), as well as from the trade association of the Scandinavian producers, but the documents in question were not forthcoming.

3. **The statement of objections and the hearing**

(25) The statement of objections in the present case was sent to the undertakings by letter dated 21 December 1992 together with:

1. for each different addressee, a statement of individual particulars indicating its role in the suspected cartel and describing the principal evidence implicating it in the infringement;

2. appendices of documentary evidence cited in the statement of objections numbered 1 to 157;

3. full documentation on each of the seven identified price initiatives (A to G) including all the relevant internal price instructions of each producer and a recapitulative table;

4. all relevant Article 11 requests and replies thereto;

5. all documentation found at producers or their subsidiaries or agents relating to the complaint made by the BPIF;

6. all price instructions emanating from competitors found at or provided by producers, etc.;

7. all press extracts in the possession of producers, etc. relating to price increases;

8. an inventory of the files in the possession of the Commission together with an explanatory note on the identification and origin of documents.

In addition, the Commission made available for inspection by each addressee of the statement of objections:

1. all documentation which had been obtained from it or its subsidiaries or agents under Article 11 or 14;

2. the full set of minutes and other records of the PG Paperboard.

Further, undertakings which were represented via subsidiaries or agents in either of two United Kingdom trade associations (the PAA and ACBM, see recitals 94 to 99) were allowed to consult any material obtained by the Commission relating to the organization in which they were represented

which had not been annexed to the statement of objections.

(26) The time limit for filing written observations on the objections raised by the Commission was set at 14 weeks from the date of receipt of the statement of objections. All addressees submitted written observations, although only about half of them requested the opportunity to put forward their arguments orally. An oral hearing was held on 7 to 9 June 1993 at which the following undertakings presented their case: Enso-Gutzeit; Europa Carton; Gruber & Weber; Kartonfabriek de Eendracht; Laakmann; M-M; MoDo; SCA Holding and Weig.

The salient features of the infringement are described in the following Parts (D and E) of this Decision.

D. THE ORGANIZATION, STRUCTURE AND OBJECT OF THE VARIOUS WORKING GROUPS OF THE PRODUCT GROUP PAPERBOARD

1. The PG Paperboard

(27) In 1955 the cartonboard producers then supplying the west European market set up an association known as the 'Section Cartonboard' ('Section Carton'/'Sektion Karton') which apparently operated under the aegis of the Fides Treuhandgesellschaft (Trust Company). Fides is a fiduciary company located in Zurich which (amongst other activities) manages information exchange systems for various industries. Few details are, however, available of the activities of the Section Cartonboard.

In 1980 to 1981 the cartonboard producers decided to reconstitute the Section Cartonboard as a special product group of the European Paper Institute ('EPI'), an organization set up primarily for technical and statistical purposes [1]. The group was to be known in future as the 'Product Group (or PG) Paperboard'.

The PG Paperboard held its first annual general meeting on 12 June 1981 at Wolfheze in the Netherlands.

(28) The membership of the PG Paperboard consisted of the various national associations of the cartonboard manufacturers in western Europe as well as individual producers from Belgium, France, Germany, Italy, the Netherlands, the United Kingdom, Austria, Spain and Switzerland. The Scandinavian producers participated individually, together with their trade association Scanpapp (later known as the Nordic Paperboard Institute or 'NPI').

[1] In 1991 the EPI was merged with Cepac, another trade association representing the pulp, paper and board industries, to form Cepi ('Confederation of European Paper Industries').

The product to which the activity of the PG Paperboard related was defined as:

'All kinds of coated and uncoated machine boards of 200 g/m^2 and more.'

(Liquid packaging board, wallpaper base and certain other board products were expressly excluded from the scope of the PG Paperboard. A few high grade GC types with a 'substance' as low as 160 g/m^2 have been developed for graphic usage but sales are negligeable.)

There was a separate 'Greyboard' group in the PG Paperboard covering grey board (GK) grades which are not considered to be cartonboard proper and are not the subject of this Decision.

Fides Trust Company, which had already been involved with the Section Cartonboard, was appointed as the secretariat of the new PG Paperboard.

2. The committees of the PG Paperboard before 1986

(29) Under the PG Paperboard there operated a number of different committees or groupings; originally these bodies included, apart from the annual General Assembly, a so-called President Conference, an Economic Committee and a Technical Committee. A 'Marketing Committee' was set up in 1984.

The President Conference met some three to six times each year, as did the Economic Committee.

Membership of the President Conference was open to the chief executives or commercial directors of all member companies of the PG Paperboard.

The Economic Committee was attended by marketing and/or sales managers and reported to the President Conference on the market situation in the various countries.

The Marketing Committee was set up later to analyse the information provided by the Economic Committee and to communicate its assessment of the market to the President Conference. It met some three to five times each year.

(30) The official minutes of both the President Conference and the Economic Committee were kept by Fides and are available for the whole of the period under consideration. They show that discussions took place in these bodies on such matters as the state of incoming orders, capacity utilization, the supply and demand balance and proposed machine standstills. The official minutes however give the impression that any such discussions were always conducted in general terms

and as an exchange of information without the individual producers disclosing their own positions or reaching any agreement or decision.

No minutes at all were however available of the Marketing Committee, the producers claiming that none were ever drawn up.

3. **The modifications in the structure of the PG Paperboard in 1986 to 87**

(31) The structure of the PG Paperboard underwent a substantial modification in 1986 and 1987. First, a restricted 'Presidents' Working Group' (PWG) consisting of senior representatives from the eight or so largest cartonboard producers was set up in mid-1986. Its function was ostensibly to 'prepare' the President Conference on matters such as cost trends, the evolution of demand and sales forecasts. The PWG met regularly with between five and eight meetings annually.

With the institution of the new PWG, the President Conference itself now met less frequently; there was a spring meeting on the occasion of the Annual General Meeting of the PG Paperboard at which virtually all the producers were present, and a winter session in November with usually only one or two producers attending from each country.

(32) Somewhat later — in 1987 — the Marketing Committee was reformed (the precise details are not clear) and from then on was known as the 'Joint Marketing Committee' or JMC. All the producers to which the Decision is addressed (with the sole exception of Enso-Gutzeit) attended meetings of this body, although some did so more frequently than others. Finnboard seems to have represented the NPI as well as its own four member mills, Kyro, Metsä-Serla, Tampella and United Paper Mills. The JMC began to meet under its new designation in late 1987 or early 1988.

At the beginning it met about a dozen times or more a year, and although this was reduced in 1989 to some eight or so meetings, these involved separate sessions for GC and GD grades. The JMC apparently took over some unspecified functions of the Economic Committee. This latter body, however, continued to meet until the beginning of 1991, providing information to the JMC on the market situation in the different countries.

4. **The absence of minutes or other documentary record**

(33) Despite the fact that detailed minutes were always taken of the President Conference and the Economic Committee and distributed to participants, there was no official record whatever of any of the meetings of the PWG before February 1990 or of the JMC until after the date of the Commission's investigations. There were not even any invitations or attendance lists. In response to detailed and persistent Article 11 requests from the Commission, the participants for the most part claimed that owing to the 'informal' nature of the meetings no record was ever kept. Similarly, almost all the undertakings insisted that their representatives had neither kept contemporary personal notes during the meetings nor produced any subsequent reports for the purposes of informing others inside their own organizations of what had occurred. Fides, which provided the secretariat for the PG Paperboard, was present at all its meetings. The Commission does not accept that in this capacity Fides did not keep some record of both the PWG and JMC in the same way as it did for the other committees, but Fides has never produced any minutes or other documentary record in response to the Commission's repeated requests.

5. **The Stora statements**

(34) In response to the requests for information addressed to them under Article 11, almost all of the undertakings gave only a vague and anodyne description of the purpose and the functioning of the various committees of the PG Paperboard.

These corresponded in the main to the official description of their activities as set out in the annual reports of the PG Paperboard.

However, Stora, the Swedish forest product group which already included Kopparfors and had also recently acquired Feldmühle, wrote to the Commission on 19 August 1991 accepting that '... the companies within the Stora group have engaged in certain policies and practices that are likely to constitute infringements of the competition rules'.

Stora subsequently provided (on 30 August 1991) a detailed response to the Commission's request for information concerning the PG Paperboard and its activities which was amplified in further responses provided by Stora under Article 11, in particular that of 28 October 1991 ('the second Stora statement').

6. **The objectives and activities of the PG Paperboard and membership of its various committees**

(a) *The PG Paperboard up to 1986*

(35) According to Stora (second statement, p. 2) the Cartonboard producers had 'attempted to bring

order to the ... market since 1975. Members of the PG Paperboard or its predecessor (prior to 1981) have met to discuss pricing and market shares during that period'. Before 1986 to 1987, the President Conference had discussed — albeit apparently in fairly general terms — various proposals and had made various attempts to increase prices and deal with overcapacity. The Marketing Committee, set up in 1984, examined whether or not the market would accept a price increase and reported to the Presidents. Stora claimed that efforts in this direction had for the most part been unsuccessful owing to endemic overcapacity in the industry during that period.

The attempts of the President Conference during this period to bring discipline to the cartonboard market were also apparently hampered by a lack of sufficiently detailed technical information. This perceived obstacle to effective collusion was to a large extent removed by the creation in 1986 of the PWG, the efficacity of which was further improved with the setting up of the new JMC in late 1987 or early 1988.

(b) *The PWG*

(36) The PWG consisted of representatives of the eight or so leading cartonboard producers and its members held the position of chief executive, commercial director or the equivalent in their respective undertakings.

The members of the PWG were Cascades, Papeteries Béghin-Corbehem and Feldmühle (both now part of Stora), Finnboard, KNP (up to mid-1988), M-M, Saffa (later known as Sarrió), TBM (now part of MoDo), and from 1988, Weig.

The PWG meetings were chaired by the elected chairman of the PG Paperboard: during the relevant period this office was held successively by senior directors of KNP, Finnboard and M-M.

Between them the original PWG members represented almost all GC production capacity and two-thirds (a proportion which later increased as a result of acquisitions) of GD capacity in western Europe.

(37) The annual 'activity reports' of the PG Paperboard represented at the General Assembly give the impression that the function of the PWG was to prepare the ground for the President Conference by discussing general matters such as cost trends, developments in supply and demand, and forecasts of the sales situation.

In reality its secret terms of reference were altogether more specific.

According to Stora, the 'PWG met from 1986 to assist in the introduction of discipline in the market'. Its true purpose included 'discussions and concertation on markets, market shares, prices, price increases and capacity' (second Stora statement, pp. 4 to 5).

From soon after its inception, the PWG 'reached agreement and took broad decisions on both the timing and the level of price increases to be introduced by cartonboard producers' (second Stora statement, p. 6).

In connection with the moves to increase prices, the PWG held detailed discussions on the market shares in western Europe of the national groupings and of individual producer groups. As a result, certain 'understandings' were reached between the participants as to their respective market shares, the object being to ensure that the concerted price initiatives were not jeopardized by excess of supply over demand. The large producer groups in effect agreed to maintain their market shares at the levels disclosed for each year by the annual production and sales figures and available in definitive form through Fides in March of the following year. Market share developments were analysed in each meeting of the PWG on the basis of the monthly Fides returns and if significant fluctuations emerged, explanations would be sought from the undertaking presumed responsible.

(38) The PWG reported to the full President Conference. Its role included:

'assessing and explaining to the President Conference the precise state of supply and demand on the market and the measures to be taken to bring order to the market' (second Stora statement, p. 5).

The PWG invariably met before each scheduled President Conference, and since the same person was in the chair at both meetings, it was no doubt he who communicated the result of the PWG deliberations to others among the so-called 'Presidents' who were not members of the inner circle.

If there was no President Conference immediately after the PWG session, the participants would inform the smaller producers in their national grouping of what had been decided; (Stora reply under Article 11 of 17 September 1991). For Germany, there was no real need to adopt this procedure for GC since virtually all production was accounted for by members of the PWG. For GD, on the other hand, the independent producers like Buchmann and Laakmann were from time to time informed by Feldmühle or M-M. Buchmann admits that it was 'fairly often' given details by Feldmühle (country, date and amount) of intended price increases.

The Scandinavian producers (all members of the NPI) were usually told of the outcome by

Finnboard. This was how Kopparfors was kept informed before the merger with Feldmühle in 1990. Stora's belief that the same practice was followed for Rena and Enso-Gutzeit is largely corroborated by Rena's account (recitals 79 to 80). It is also in line with Finnboard's position in the PWG as a representative of the NPI as well as a participant in its own right (see also recitals 58, 79 and 83).

For France, it was Cascades or Béghin Corbehem (CBC) which informed Papeteries de Lancey of what the PWG had decided.

These channels of communication were not, however, formalized, since apart from Enso-Gutzeit the producers in question were all members of the JMC, which met regularly, and in the normal course of events they were informed by the chairman of that body of what had been decided in the last PWG meeting (which he had also attended).

(39) The PWG met on several occasions each year. In the period June 1986 to May 1987 it met four times; in 1987 to 1988, eight times; 1988 to 1989, five times, and on at least 10 occasions in 1989 to 1991.

As far as is known, the dates on which meetings of the PWG were held included the following:

10 November 1986	Zurich
12 December 1986	Zurich
18 March 1987	Zurich
20 May 1987	Graz
12 October 1987	Zurich
4 December 1987	Zurich
10 March 1988	Zurich
25 May 1988	Barcelona
17 November 1988	Zurich
10 February 1989	Zurich
5 April 1989	Zurich
17 May 1989	Nice
18 October 1989	Zurich
28 November 1989	Zurich
6 February 1990	Zurich
23 May 1990	Helsinki
26 November 1990	Gothenburg
1 February 1991	Zurich
12 April 1991	Zurich
27 May 1991	Zurich
5 June 1991	Montreal

(not all the dates of meetings are known).

(40) A KNP representative was chairman of the President Conference from 1984 to 1988 and in that capacity officiated also at the PWG meetings. When he retired from the chair in 1988, KNP did not remain a member of the PWG.

The French producer Béghin Corbehem (CBC) continued however to participate separately in the PWG after Feldmühle — already a half-owner — acquired the remaining 50 % of its shares in 1989.

The first PWG meeting attended by Weig was in May 1988 and thereafter it did not start coming regularly until Spring 1989.

Apart from Cascades and Weig, the members of the PWG have given few details of their participation in individual PWG meetings before the end of 1989 or beginning of 1990. The attendance of each producer from 28 November 1989 onward is shown in Table 2.

(c) *The President Conference*

(41) President Conferences, by now held only twice each year, were always preceded by a PWG meeting. As Stora has explained one of the PWG's functions included explaining to the President Conference the measures which were necessary to bring order to the market (recital 38). In this way, the managing directors attending the President Conferences were informed of the decisions taken by the PWG and of the instructions to be given to their sales departments to implement the agreed price initiatives. It also meant that the marketing managers attending the JMC and implementing agreed price increases (recitals 44 and 45) knew that their managing directors would support the PWG's decision. The official minutes of the President Conference do not record these contacts with the PWG. Nor is any mention whatever made in the official minutes of its discussions on pricing or price initiatives.

On the contrary, they continued to give the entirely misleading impression that any discussions which took place on sensitive matters such as the market situation, capacity utilization, order backlog, standstills, etc. were of a fairly general nature, so that particular producers' data were never disclosed.

Corroboration of Stora's admission that the President Conference did in fact discuss collusive pricing is provided by an internal note found at M-M's United Kingdom sales agent (MM PEGG) of a President Conference of 10 November 1986:

'United Kingdom pricing

Recent Fides meeting included the representative of Weig stating that they thought 9 % [1] too high for the United Kingdom and were settling at 7%! Great disappointment as it signifies a "negotiating level" for everybody else.'

(42) All the undertakings to which this Decision is addressed were represented in the President Conference. Although some of the smaller producers attended relatively infrequently, the major producers (who were also all members of the PWG) were almost invariably present at every President Conference.

Officials of the NPI attended all but one of the President Conference during the period 1986 to 1991. Finnboard representatives (who had also been to the PWG meetings held just before) took part separately from the NPI in all the President Conference meetings. Occasionally individual member companies of Finnboard attended as well; Metsä Serla went each year to the Spring plenary meetings (but not the Winter meetings) and United Paper Mills went to one meeting in May 1989.

(43) President Conferences from 1986 onwards were held on the following dates:

Date	*Location*
29 May 1986	Alghero (Sardinia)
10 November 1986	Zurich
20 May 1987	Graz
4 December 1987	Zurich
25 May 1988	Barcelona
17 November 1988	Zurich
17 May 1989	Nice
28 November 1989	Zurich
23 May 1990	Helsinki
26 November 1990	Gothenburg
5 June 1991	Montreal.

Details of the attendance of each undertakings are shown in Table 3.

(d) *The Joint Marketing Committee*

(44) The Joint Marketing Committee or 'JMC' was set up in late 1987 and was considered far more effective than its predecessor, the Marketing Committee. The JMC reported to the PWG. Officially its purpose was to prepare for that body a detailed analysis of market conditions and a sales forecast. For that purpose it received information from the Economic Committee.

From the outset however the main task of the JMC was:

— to determine whether, and if so how, price increases could be put into effect and to report its conclusions to the PWG,

— to work out the details of the price initiatives decided by the PWG on a country-by-country basis and for the major customers with the aim of achieving an equivalent (i.e. uniform) price system in Europe (first Stora statement, p. 17, second statement, p. 8 *et seq.*).

(45) Stora has given a detailed account in its second statement (pp. 8 to 9) of how the JMC operated. This committee discussed market-by-market how the price increases agreed by the PWG were to be implemented by each producer. The practicalities of bringing proposed price increases into effect were addressed in 'round table' discussions, with each participant having the chance to comment on the suggested increase.

Difficulties in the implementation of price increases decided by the PWG, or the occasional refusal to cooperate, were reported back to the PWG, which then (as Stora put it) 'sought to achieve the level of cooperation considered necessary'. Separate reports were made by the JMC for GC and GD grades. If the PWG modified a pricing decision on the basis of the reports it had received back from the JMC, the steps necessary to implement it would be discussed at the next meeting of the JMC.

No official invitation or minutes were available for any of the meetings of the JMC. It is, however, obvious that owing to the complexity of its tasks it could not have functioned without the participants making their own calculations and proposals and a detailed record being kept by the chairman or secretariat of its proceedings. A report had to be made to the PWG. During the oral hearing one of the participants (Gruber & Weber) in effect admitted that there was a general rule against keeping incriminating notes.

However, not all those who attended the meetings of the JMC were as meticulous as they ought to have been as regards destroying or not keeping notes; detailed personal notes of what had occurred at a number of JMC meetings were obtained during the investigation from M-M and from the small Norwegian producer Rena (see recitals 80, 82, 84 and 87).

(46) The JMC was throughout the relevant period led by the same person, a senior director of Feldmühle

[1] At the date of the note most of the producers had just announced a price increase of 9 % in the United Kingdom effective in January 1987.

(now retired); its success was largely attributed to his personal efforts. He also took part in the PWG and acted as the conduit between the two bodies. Meetings were attended by representatives of all or virtually all, the European cartonboard producers. The four Finnish GC producers were always represented in the JMC by Finnboard, which claims, however, to have attended not in its own right but only on behalf of the NPI (see the Article 11 reply of Finnboard). The NPI was not separately represented in the JMC, although this was the case for the President Conference. (Fiskeby admitted that 'on a few occasions' a representative of the NPI gave Fiskeby information over the telephone about matters dealt with at JMC meetings at which it was not represented). Some producers — particularly the majors who were also in the PWG — attended JMC meetings more frequently than others but in the complete absence of official records it is not possible to ascertain the attendance list of each meeting. However — with the exception of Enso-Gutzeit — all the undertakings to which this Decision is addressed took part in at least some meetings of the JMC. Separate meetings were held for GC and GD grades, usually on consecutive days.

According to the documentary evidence, including the annual reports of the PG Paperboard, the JMC met with the following frequency:

June 1987 to May 1988	15 meetings
June 1988 to May 1989	11 meetings
June 1989 to May 1990	8 meetings (including several two-day sessions)
June 1990 to May 1991	8 meetings (including several two-day sessions).

(47) The last known meetings of the JMC were held in Vienna on 3 and 10 July 1991, 10 weeks after the date of the Commission's investigations.

Details of the admitted or identified participation of each undertaking in the JMC are set out in Tables 4 and 5.

Table 4 shows for each undertaking the dates of JMC meetings which it either admits attending or is proved to have attended. (This list cannot be taken as exhaustive).

Table 5 shows the participants at regular meetings as identified by each producer.

(48) In most cases the producers claimed in answer to repeated requests under Article 11 to have no recollection as to when they began attending Marketing Committee or JMC meetings, limited their answers to the most recent years, or otherwise provided evasive answers.

It was therefore not possible (with limited exceptions) to establish with certainty the dates of the meetings attended by individual producers particularly before 1989. Laakmann (which did not distinguish between the JMC and its predecessor the Marketing Committee) stated in a reply under Article 11 that Cascades, Europa Carton, KNP, FS-Karton, M-M, Deisswil, Feldmühle, CBC, Saffa and itself took part in GD meetings from the beginning, i.e. 1984. According to Laakmann, Buchmann, Gruber & Weber, Prat Carton, Tampella Española and Weig began attending this type of meeting somewhat later than the other producers, which could indicate that they only started coming when the new JMC was set up in late 1987 or early 1988.

(e) *The Economic Committee*

(49) The 'Economic Committee', which despite its title was attended not by economists but by marketing and/or sales managers, discussed *inter alia* price movements in national markets and order backlogs and reported its findings to the JMC (or its predecessor the Marketing Committee before the end of 1987).

Although according to Stora the order backlog of individual producers was not discussed in great detail in the Economic Committee (as opposed to the JMC where it clearly was), from time to time individual producers compared their positions with the industry average.

Stora expressly states that in the course of 1987 the exchange of information in the Economic Committee revealed that all the producers had full order books, a fact which confirmed the growing belief in the cartonboard industry that a balance between capacity and consumption had emerged.

(50) The 'central theme' of the discussions of the Economic Committee was the analysis and assessment of the cartonboard market in the various countries. The information provided to the Economic Committee on market conditions in each Member State appears to have come from national committees on which there were represented the local producers and the main importers (minutes of President Conference, 10 November 1986). The discussions on market conditions were not unfocused; talks on the state of each national

market must be seen in the context of the planned price initiatives, including the perceived need for temporary plant shutdowns to support price increases.

A private note made by the FS-Karton representative of the 'highlights' of the Economic Committee held in Zurich on 3 October 1989 and sent to the managing director of M-M shows that in addition to a detailed survey of demand, production and orders inhand in each national market, the meeting was concerned with:

— perceived strong customer resistance to the last GC price increase, effective on 1 October,

— the respective state of the order backlog of the GC and GD producers, including individual positions,

— reports on downtime taken and planned,

— the particular problems of implementing the price increase in the United Kingdom and its effect on the necessary price differential between GC and GD grades,

— the comparison against budget of incoming orders for each national grouping.

These matters are not adverted to in the official minutes of the meeting.

The details of the attendance at meetings of the Economic Committee from late 1986 are shown in Table 6. The only addressees of this Decision which did not attend any meetings of the Economic Committee were Enso-Gutzeit, Europa Carton, Gruber & Weber and Weig. (Enso-Gutzeit was a member of the NPI which attended every meeting of the Economic Committee. The other three were members of the JMC).

E. THE MECHANISM FOR PRICE AND VOLUME CONTROL

1. Volume control

(a) *The 'price before tonnage' policy*

(51) The key to the success of the price initiatives from 1988 onwards (as the producers realized) was maintaining a near balance between production and consumption. All members of the PWG were concerned that the relaunched price initiatives should not be undermined by substantial increases in the volume sold. This was referred to by Stora as a 'price before tonnage' policy (Stora Article 11 reply of 14 February 1992).

It meant the major producers could agree price increases in the PWG with some certainty that they would be successful.

(52) The agreement reached in the PWG during 1987 included the 'freezing' of the west European market shares of the major producers at existing levels, with no attempts to be made to win new customers or extend existing business through aggressive pricing.

According to Stora (second statement, p. 11), the understanding on market shares between the major producers related to the shares in western Europe as a whole of each of the major producer groups. It did not make much sense (Stora says) to discuss their shares in individual national markets: as a result of cross-border mergers by the large converters, the cartonboard producers often did not even know for certain the final destination of their deliveries.

(53) Documentation found by the Commission at FS-Karton (part of the M-M group) confirms that at the end of 1987 agreement had been reached in the two Presidents' groups on the linked issues of volume control and price discipline.

An internal report of 28 December 1988 headed 'Vertrauliche Aktennotiz' ('confidential file note') and sent by the marketing manager responsible for M-M group sales in Germany to the managing director of M-M in Vienna reviews in considerable detail the steps which had been taken by the European cartonboard producers at the Presidents' level since late 1987 to ensure so-called 'price discipline'.

(54) The M-M note confirms that a new consensus had emerged during 1987 which implemented the 'price before tonnage' policy. The author of this note considered, however, that there had been both 'winners and losers' in this exercise.

All participants had gained in that the continuous downward price spiral which had been a feature of the market had been reversed and turned during 1988, in two clearly defined steps, into an upward trend. (The mention of the two 'steps' is evidently a reference to the two price 'initiatives' during 1988).

On the other hand, M-M had — in the author's opinion — lost out in relative terms, as had Feldmühle. For its part, having increased its market share during summer 1987, M-M had been required by other producers — no doubt as the price for a comprehensive agreement — to make certain 'sacrifices':

— its market share was frozen at the 1987 level and assurances had clearly been given to the other producers that it would not seek to gain new business by means of promotional pricing,

— firm instructions had been given by M-M to the sales force in Germany and Austria and to its sales agents in other countries which reflected

this rigid pricing policy. Previously the only objective had been to increase sales: now it was 'absolute price discipline' with the danger of having to stop machinery in order to reduce production.

(55) M-M had been one of the first producers to implement the March 1988 price increase (already announced in December 1987) as well as the second increase of that year which took effect in October. It had made the sacrifices required of it and lost tonnage in high price markets. M-M's firm attitude on price had made some regular customers unhappy. On the other hand, the marketing manager suspected that not all the other producers had been such firm supporters of the price initiatives as had M-M. Their sales personnel behaved in the market place in a manner different from that which had been agreed at the top level. Citing an example of where another producer had underquoted M-M at a major customer by DM 150 per tonne, he asked rhetorically how such behaviour could fit into the 'agreed system'. He therefore urged his superior (who attended the PWG meetings) to 'swear in' the other producers to abide by the same rigid rule as that imposed on M-M, i.e. turn away business rather than break the agreed price.

The Commission attempted to obtain from M-M further details of the precise circumstances of the agreement which had been made between the cartonboard producers in 1987.

In its reply under Article 11 M-M claimed that there was no agreement 'in the strict sense' and that the repeated use in the memorandum in question of this term (and similar expressions) by its marketing manager should not be 'taken literally'.

(56) The basic understanding between the major producers on maintaining their respective market shares continued throughout the period covered by this Decision.

Originally, the main concern of the PWG in this direction had been to restrict the increase in market shares being obtained in the Community by the EFTA producers: M-M, Finnboard, Kopparfors and Iggesund. The Community-based producers wished to protect their home territory while the Nordic producers (and M-M) regarded it as their natural export market. Discussions took place with these EFTA producers as to the level of market share at which they would be prepared to stop. It was made clear to them that increasing their market share at the expense of others would upset the production/consumption balance and undermine the concereted efforts to increase prices. Later, as the EFTA producers themselves acquired production facilities in the Community, the policy of the others to limit the market share of non-Community producers in the Community became less relevant. Increasingly the concern was to maintain a balance between the major corporate groups so as not to jeopardize the price initiatives (Stora Article 11 reply of 14 February 1992).

The producers took as the basis for their calculations the total sales figures for the previous year, which were generally known by about the following March.

Knowing also the forecast percentage for market growth in the coming year each producer was able to work out the volume of additional sales which it could make during the year without increasing its market share (and thereby destabilizing the market).

The undertakings which took part in these discussions on market shares were those represented in the PWG, namely Cascades, Finnboard, KNP (until 1988), M-M, MoDo, Sarrió, the two Stora group producers CBC and Feldmühle, and (from 1988) Weig.

(57) 'Market share development' was analysed at each meeting of the PWG on the basis of provisional statistics (see recital 63). Shares for western Europe as a whole were discussed and to a lesser extent, the position in individual countries. According to Stora 'significant fluctuations in market shares would be analysed and discussed and explanations sought for major changes'. A change in sales patterns might (for example) be attributed to a special order in a particular market or to a customer beginning to source its total European requirement in one country.

It was, however, left to the producers to decide for themselves the exact measures each should take to maintain its market share at existing levels. Matters such as taking downtime or diverting excess production to overseas markets were discussed in the meetings, but implemenation of the measures discussed depended on each producer's individual circumstances.

The PWG members hoped and expected that by giving the lead in this way, they would encourage the smaller producers also to accept restraint.

(58) While the smaller cartonboard producers attending meetings of the JMC were not privy to the detailed discussions on market shares in the PWG, they were, as part of the 'price before tonnage' policy to which they all subscribed, well aware of the general understanding between the major producers to maintain 'constant levels of supply' and no doubt of the need to adapt their own conduct to it.

This is confirmed by a note originating from the then managing director of Rena of a special meeting of the NPI (see recital 28) at Arlanda airport, Stockholm on 3 October 1988. The meeting was most immediately concerned with the next price increase which was due to take place in April 1989. The stated objective was to raise prices by 15 % by the end of 1989.

The writer went on to note:

> 'In difficult times: control of production with downtime for all producers. Proposal will be worked out. Prices to be maintained.' (translated from original Norwegian)

It is not without significance that at that time the then managing director of Finnboard was both chairman of the NPI (and was at the Arlanda meeting) and chairman of the PG Paperboard presiding by virtue of that office over the President Conference and the PWG (see also recital 38).

(59) For the producers in the PWG the arrangement on freezing market shares depended upon 'voluntary restraint' and a system of mutual encouragement. Stora says that in the final analysis 'whether or not producers complied with the understandings depended on their perception that it was in their best interests to do so'.

So far as is known, there was no formal machinery of penalties or compensation to reinforce the understanding on market shares but the producers were aware of the possibility of 'retaliation' if one of them won substantial business at the expense of another in a particular market (Stora reply under Article 11 of 14 February 1992, p. 4).

There is certainly some indication that any producer which broke ranks and increased its market share at the expense of the others would be taken to task; this seems to have happened to Weig.

(60) It is accepted by the Commission that despite the understanding on market shares the share of some large individual producers did creep up from year to year. Stora has explained that producers found that their own interests and difficulties were such that steps could not always be taken to limit their sales. No doubt producers in a position to negotiate from strength would expect an increased share in the market. Certain producers were possibly regarded as less reliable than others. Each year, therefore, the discussions on market share would resume with the producers starting from a new base.

Market share levels were, however, kept under constant review in the PWG and the particular problems and needs of individual members were acknowledged and discussed. The understanding between the producers on market share was thus not static but was subject to periodic adjustment and re-negotiation.

(b) *The Fides information exchange*

(61) In the context of the successful implemenation of price initiatives, it was considered essential to develop a comprehensive system for the reporting and monitoring of production, sales volumes and capacity utilization.

Most of the members of the PG Paperboard contributed periodic (weekly, monthly, six-monthly, annual) reports on orders, production, sales and capacity utilization to Fides as follows:

— weekly order inflow reports,

— monthly production and sales reports,

— monthly production forecast (from April 1991),

— six-monthly GC and GD production reports broken down according to 'substance' (i.e. the different weight categories),

— annual capacity returns.

The Scandinavian producers did not provide the information on all these matters directly to Fides but instead sent the details via their trade association the NPI.

The Fides system covered the whole of western Europe (EC and EFTA).

(62) Under the Fides system the individual reports were colated centrally and the aggregated (and supposedly anonymized) data then sent to the participants.

The statistics sent out by Fides to the subscribers were as follows:

— weekly order inflow statistics,

— monthly consumption statistics (by country for each of 28 grades or groups of grades),

— monthly production and delivery statistics (GC, GD and SBS grades by producing country),

— GC and GD consumption summary (on a 'running 12 months' and 'projected annual' basis),

— market statistics (every six months),

— substance breakdown (every six months),

— annual capacity statistics,

— machine inventory (from time to time).

The 'production and delivery' and 'consumption' statistics were distributed to the participants by Fides in both 'quick' and 'final' form each month. The quick statistics, which were issued pending the preparation of the final figures, were to some extent based on estimates from the previous year's averages.

Weekly order inflow figures were supplied to Fides by some 75 % of the members of the PG Paperboard. The collated statistics were sent out by Fides the following day. These statistics showed the total volume of orders outstanding for the participating producers both worldwide and for western Europe.

(63) The collated statistics sent back to the participants by Fides were broken down for each main grade on a country-by-country basis, apart from the weekly order inflow reports which were for the whole of western Europe.

The M-M note of 28 December 1988 (recital 53) had suggested that (in order no doubt to assist in monitoring the 'price before tonnage' system) each producer should declare to Fides its total production figure and then break this down into five segments: home market, rest of Community, other European, overseas and own usage. According to M-M, the Fides system was subsequently amended broadly in line with this proposal. It is not known whether or to what extent the Fides returns of individual producers were made generally available to the PWG. Even on an aggregated basis, however, the Fides statistics could be (and were) used to assist in the determination and monitoring of individual market shares and in the analysis of capacity utilization. The most accurate analysis was made when the fully preceding year's figures were available, usually in March. During the year the 'quick' statistics were normally used, although owing to fluctuations they might not accurately reflect the final year's end position and had to be treated with caution. The results of this exercise were examined at PWG meetings, charts were prepared and 'explanations' sought from any producer whose market share showed a significant increase (see recital 57).

(64) In many cases, information relevant to monitor the market shares of the various groups were available or could be worked out easily enough from the Fides reporting system itself without any additional disclosure. The 'safeguards' employed by Fides in other product reporting systems to prevent identification of the deliveries of individual producers were not incorporated in the cartonboard system. An example is provided by the 'production and delivery' statistics for Finland. Besides the tonnage of SBS and GC produced in Finland (there was no GD), they show the deliveries of each of these grades in each national market which originated in Finland; in fact they could only have come from Enso-Gutzeit and Finnboard respectively. Similarly, the same set of statistics for the United Kingdom (GC and GD) revealed the sales in each market made by Iggesund (formerly Thames Board) and Reed Paper & Board (UK) Ltd; they are, respectively, the only national producers of GC and GD grades.The same information is given in greater detail in the 'consumption' statistics.

(c) *Capacity reports*

(65) From the inception of the PG Paperboard in 1981, Fides produced an annual capacity report on a country-by-country basis as well a more detailed 'machine inventory', both covering all grades of board, i.e. including products such as greyboard produced on cartonboard machines.

In addition, the marketing manager of Finnboard presented to the PG Paperboard an annual study of capacity utilization in the market for cartonboard proper (using a more restricted product definition than the Fides capacity report and machine inventory).

Because of the different bases of assessment, the Fides capacity report and the Finnboard study were not directly comparable. Attempts were made to put the data contained in the two reports on a similar basis and from 1985 onwards the Fides report distinguished between 'cartonboard' and 'other types of board' (the 'revised Fides capacity report').

(66) In 1987 the members of the PWG became aware that demand for the product had increased so strongly that the overcapacity in the industry had disappeared.

Despite the split into 'cartonboard' and 'other board' there were still divergences between the Finnboard study and the revised Fides report. At the 1987 General Assembly Fides suggested that the revised Fides capacity report be abandoned and only the inventory of machines be retained. In the

event the General Assembly resolved to continue the revised Fides capacity report in its existing form and to complement it with a new capacity survey covering only cartonboard.

(67) The new capacity survey when it came out in 1988 (President Conference minutes 25 May 1988) confirmed what the Economic Committee had already discovered, namely that 'the often quoted overcapacity does not really exist'. The minutes continue:

> 'The clients' attention cannot be drawn to this fact too often.'

In the Annual General Meeting the following day the representative of Feldmühle (who chaired the JMC) pointed out that 'these are practical and not theoretical capacity values. Consequently, the data are extremely important for the daily routine. They can and must be used to counter the frequently prevalent opinion among clients that there are very high overcapacities in the paperboard industry'.

Following a proposal from Feldmühle that it be publicized, the report was provided to customers for the first time by the European Paper Institute in spring 1989.

According to Stora:

> 'The purpose of this publicity was to demonstrate that the industry was running at very nearly full capacity, to convince the sales/marketing managers that an opportunity existed to recoup the large losses of the previous years and to persuade customers that room for negotiation on price increases was negligible.' (second Stora statement, p. 13).

(68) The new capacity survey (which came to be known as the 'Green Book') was compiled by Fides from information supplied by the members of the PG Paperboard in September/October each year and including an estimate of their capacity for the following year.

Comparison of reported capacity with the consumption statistics for the previous year enabled the PG Paperboard to estimate the capacity utilization rate.

The report showed the annual 'practical production capacity' of each cartonboard machine in use, calculated according to a standard formula.

The actual output of each individual machine in the year was not, however, shown. The report gave the total actual tonnage produced for the preceding years in western Europe and a forecast of total production for the coming year. From these two sets of figures the percentage operating rate for the industry was calculated.

(d) *Orders in hand and machine downtime*

(69) A comparison could be made of the weekly order backlog and the available capacity, in the light of which the PWG reached an assessment of the overall state of demand in the cartonboard industry.

If a major producer's outstanding orders fall below a certain level, its production programme cannot be planned efficiently and it may have to shut down the mill temporarily in order to avoid the risk of deterioration in the quality of the material produced.

Besides the Fides procedure which gave globalized figures, it was regular practice for each individual producer to disclose its own order backlog to competitors in JMC meetings.

The information on the number of days' orders in hand was relevant for two purposes:

— deciding whether conditions were right for introducing a concerted price increase,

— determining the downtime necessary to maintain the supply-demand balance (second Stora statement, p. 14).

(70) In 1988 and 1989 the industry operated at full capacity and virtually no additional downtime was required beyond normal stoppages for holidays and maintenance.

From the beginning of 1990, however, the industry leaders were faced with increased capacity and reduced demand and considered it necessary to concert on the need for taking downtime in the forum of the PWG. The major producers recognized that they could not increase demand by lowering prices and that maintaining full production would simply bring prices down. In theory, the amount of downtime required to bring supply and demand back into balance could be calculated from the capacity reports. For example, if machine utilization rates for the year were forecast at (say) 92 %, this meant that 8 % of capacity was not going to be used. It would therefore need four weeks of downtime by the industry to bring production and demand back into equilibrium.

(71) However, the PWG did not formally allocate the 'downtime' to be taken by each producer. According to Stora there were practical difficulties in reaching a coordinated plan on downtime to cover all the producers. Stora says that for these reasons only 'a loose system of encouragement existed' (second Stora statement, p. 15).

It seems again that it was the main producers who took upon themselves the burden of reducing output so as to maintain price levels.

The unofficial notes made of two JMC meetings, one in January 1990 (see recital 84), the other in September 1990 (recital 87), as well as other documents (recitals 94 and 95) confirm, however, that the major producers kept their smaller competitors closely and continuously informed in the PG Paperboard of their plans to take additional downtime as an alternative to decreasing prices.

2. Price initiatives

(72) With the improvement in the supply-demand balance and the reorganization of its various bodies, the collusion on pricing in the PG Paperboard was to prove more effective than in the years before 1987.

Rather than allowing prices to rise naturally in accordance with market conditions, the method used to increase the price level across the whole of western Europe involved the planning and implementation of concerted 'price initiatives'. The price was raised in a series of regular and clearly defined 'steps'. It is clear from the documentary evidence found by the Commission that the issues of price increases and of volume control are two inextricably linked aspects of the same plan. On the basis of the preparatory work done in the JMC, the PWG took the decisions in principle on the timing and the amount of the increase. Given the natural ordering and consumption patterns of cartonboard customers, the normal practice was for price increases to come into effect in April and October. On occasion, and depending upon market conditions, a price increase might apply to GC grades only and not to GD; the producers were, however, concerned as a general rule to maintain the price differential (30 to 40 %) between the two grades at approximately the same level. A price increase might also be delayed or not even apply in a particular national market (e.g. the second increase of 1988 excluded the United Kingdom except for SBS).

The JMC discussed for each national market the detailed implementation of the broad decision taken in the PWG. The new 'list' prices for each category of customers ('AA', 'A', 'B', 'C' and 'D' in descending order of importance) were agreed in each national currency using a standard grade and weight as a reference. The new prices to be charged to the individual major customers were also discussed in the JMC. Separate reports were made to the PWG for GC and GD grades, and if any difficulties were foreseen the PWG would then seek to resolve the problem.

The documentation obtained by the Commission (see especially recitals 79, 80 and 83) confirms that price increases and the date they came into effect were fixed by the PG Paperboard for Belgium, Denmark, France, Germany, Ireland, Italy, the Netherlands, the United Kingdom and Spain, as well as for the EFTA countries.

One of the principal tasks of the JMC was to achieve an 'equivalent' European pricing system, i.e. a uniform price level across the Community. When the concerted price initiatives were relaunched in late 1987 to early 1988, they started from different levels in different national markets. As a result, some divergences occurred. Over the period up to 1991 those divergences were reduced.

(73) A particularly grave and disquieting feature of the concerted price initiatives from end-1987 onwards was that the major producers agreed in advance in the PWG on which one of them would 'lead' the increase (and when) and then the dates on which each of the others would 'follow' by sending out their letters. For obvious reasons they did not follow the same sequence each time.

The JMC was fully informed of the plan and the smaller producers could make their own decision as to exactly when each would 'announce' its intention to apply the increase.

Had they been challenged, the producers could as a result of this elaborate scheme of deception have attributed the series of uniform, regular and industry-wide price increases in the cartonboard sector to the phenomenon of 'oligopoly behaviour'. They could argue that it made sense for all the producers to decide of their own volition to copy an increase initiated by one or other of the market leaders as soon as it became publicly known; unlawful collusion as such would not necessarily be indicated. Customers might well suspect and even accuse them of operating a cartel; and given the relatively large number of producers, economic theory would be stretched to its limits and beyond, but unless direct proof of collusion were forthcoming — and they went to some lengths to ensure it was not — the producers must have had

hopes of defeating any investigation into their pricing conduct by the competition authorities by invoking the defence of oligopolistic interdependence.

3. **Individual price initiatives**

(a) *January 1987*

(74) While the new mechanism of the PG Paperboard was still being set up there was a concerted price initiative for the United Kingdom at the end of 1986. The exchange rate of sterling against other CWE currencies was then low; according to some producers the price level in the United Kingdom was 15 % below that in other major European markets.

In early November 1986 Finnboard and TBM announced a price increase in the United Kingdom for GC grades of £ 45 per tonne (8 to 9 %) due to take effect on 26 January 1987.

The minutes of a Feldmühle (UK) Ltd board meeting of 7 November 1986 reported that:

> 'TBM and the Fins (sic) have announced price increases of approximately 9 % to be effective from February 1987 and it would appear that most other mills will be looking for the same sort of increase.'

For GD grades, most of the producers (led by M-M) also advised customers during November of a price increase of 9 % to take effect at various dates in January and February the next year. Reed P & B, which as the sole domestic producer did not have the same currency problems in the United Kingdom of the CWE producers, announced a slightly lower increase.

GC graphic grades and SBS were increased by £ 55 by Finnboard and Iggesund in December 1986. Enso-Gutzeit, the other SBS producer, also put up its prices in December but the amount is not known.

(75) The announcement of a simultaneous and identical price increase in the United Kingdom by virtually all the producers provoked an angry reaction from the customers who accused them of a 'cynical manipulation' of the market. The allegations of collusion were of course strongly denied.

It is clear, however, from the note made by M-M's sales agent on the outcome of the President Conference of 10 November 1986 (recital 41) that the price initiative had been discussed and considered at the 'Presidents' level.

Further evidence of concertation is provided by a handwritten note in the desk diary of a Feldmühle employee on the pages covering 15 to 17 January 1987 showing that an exchange of detailed information on pricing, order backlog and downtime has been conducted between Feldmühle and several other producers in the context of the price increase.

It refers to Tako (the main Finnboard producer of cartonboard for graphic usage), Tampella ('Igerois') and UPM ('Simpele'), Enso-Gutzeit, Kopparfors, Iggesund and TBM (which last two producers were at the time still independent of each other).

The director of Feldmühle who was responsible for running the Marketing Committee is reported as being 'sceptical' of Kopparfors (it had not yet merged with Feldmühle) and he apparently also accused M-M of being irresponsible ('ohne Verantwortung').

The note says that in the United Kingdom the price increase was going through, 'TBM included'. (Feeling at the time amongst the customers had been reported as running particularly strongly against the main local producer TBM apparently since it did not have the excuse fo the CWE producers of the fall in sterling against other currencies).

The precise occasion and nature of the contacts between Feldmühle and the other producers is not apparent from the note. It is not, however, disputed by Stora (which later took over Feldmühle) that the information contained in the note came directly or indirectly from competitors.

(b) *February to April 1988*

(76) Against the background of the new 'price before tonnage' policy there were two concerted European-wide price increases during 1988.

According to the M-M report of 28 December 1988 (see recital 54) this new policy succeeded in reversing the downward price spiral of 1987.

The PWG meeting of 4 December 1987 agreed on a 7 to 8 % (in some markets, 10 %) increase for both GC and GD grades to be introduced in March 1988 and to hold until 30 September of that year.

The increase was already being notified to customers by the major producers (M-M and Feldmühle) at the end of 1987.

The first move was in the German market and was 'led' by M-M and Feldmühle. By letter dated 18 December 1987, M-M announced an increase

of DM 15 and DM 12 per 100 kg for GC and GD grades respectively for deliveries by M-M and FS Karton after 15 February 1988.

Feldmühle, in its turn, announced on 28 December 1987 that it was increasing its list price by DM 15 (per 100 kg) for GC grades and DM 12 for GD grades with effect from 15 February 1988.

Finnboard notified the increases to its customers in Germany on 4 to 5 January but in their markets it was somewhat later; in the United Kingdom, for example, it did not finally decide on the increase until 11 February 1988 and notified customers on the following day. As a result, Finnboard seems to have been chided by the others for dragging its feet. According to a minute of a Iggesund Board Sales Ltd meeting of 28 to 29 January 1988: 'Pressure has been put on the Finns from all over Europe to increase prices. Finnboard have been told we will not move on prices until they have published an increase price (sic)'.

Documentation obtained from Buchmann, Cascades, Europa Carton, Fiskeby, KNP, Kopparfors (now part of Stora), Laakmann, Deisswil (now M-M), Sarrió, Reed P & B (now SCA) and Weig show that they all implemented the price increase in Germany.

(77) For France the increase was FF 700 per tonne for GC 1 grade, FF 500 per tonne for GC 2 and FF 400 per tonne for GD. Cascades had notified the price increase for GC grades by letter of 24 December 1987 to take effect on 1 March.

The same increase was applied by the other producers: Finnboard, M-M, Deisswil, De Lancey, Saffa, Reed P & B, Feldmühle, CBC, Tampella Española and Weig.

In the United Kingdom most of the producers for which price documentation is available informed their customers of a price increase of 6 % across the range of cartonboard grades and due to take effect at various dates in April 1988. Feldmühle, Finnboard, Iggesund, M-M, Kopparfors, Djupafors, Rena, Saffa and TBM all notified increases of 6 %. Reed P & B announced an increase of £ 20 (5 %) for its GD grade cartonboard, as did Laakmann, Fiskeby, KNP and Deisswil.

Documents obtained from Cascades dating from March 1988 show that the planning of the price initiative in the JMC involved setting the 'floor prices' ('prix planchers') for GC 2 and GD 2 grades in each national currency which were to be applied after the increase to A, B and C category customers. Confirmation that these floor prices had been established in collusion and were not internal to Cascades is provided by a note made by Fiskeby's German agents of a telephone conversation with their principals on 21 March 1988 (the date of the Cascades note for GD prices) which instructs them to apply exactly the same minimum price for each category of customers, A, B and C, for GD 2 in Germany as Cascades had noted.

The drawing up of price lists in each national currency for each category of customers was in fact one of the routine tasks of the JMC (see recitals 80, 85 and 87).

According to press reports, the price increase was considered by the producers to have met with mixed success, but did result in a more consistent pricing structure; the rises had gone through when prices were lowest and the gap between the highest and lowest prices had been narrowed.

(c) *October 1988*

(78) The second European-wide price increase of 1988 was, like the first, based on a DM 15 per 100 kg increase for GC grades, but only DM 9 for GD grades. There was however no increase in the United Kingdom as price levels there were already some 10 % above those in CWE.

On this occasion it was Finnboard which 'led' the price increase. Finnboard had already warned customers in March 1988 of the possibility of a second price rise.

Stora says that the October 1988 increase was agreed for both grades in June. In fact, there was a PWG meeting in Barcelona on 25 May 1988. JMC meetings were held on 28 to 29 June. The French producers had already begun talking of a price increase of FF 50 for GC (the amount that was in fact applied) in mid-June. On 5 July 1988 Finnboard informed its European sales offices of a price increase to take effect on 1 October. The announcements had to be made at the latest by 11 July: Germany, DM 15; France, FF 50; Netherlands, Fl 15; Belgium, Bfrs 3 per kg, etc.

A few days later, Kopparfors started notifying exactly the same price increases for GC grades in each national market as Finnboard had done. Feldmühle began to announce its intention to apply the same increases on 19 July with DM 9 for GD grades. Cascades and M-M/FS Karton announced the DM 9 price increase for GD in Germany on the same day, 25 July, with Saffa two days later.

Other producers for which price documentation is available indicating that they participated in the

concerted price initiative were Buchmann, Cascades, Enso-Gutzeit, Fiskeby, Gruber & Weber, KNP (including Badische), Laakmann, Papeteries de Lancey, MoDo (Iggesund), Saffa and Weig.

(d) *April 1989*

(79) At the end of 1988 the producers agreed an increase for both GC and GD grades which was originally due to take effect in March 1989 but was postponed to 1 April (second Stora statement, p. 19).

The price initiative was based on a increase of DM 17 per 100 kg (or equivalent) for GC grades and DM 9 (or equivalent) for GD grades.

The Commission obtained at Finnboard (UK) Ltd an undated list (in Swedish) headed 'Price increase 2nd quarter 1989' which sets out price increases for each national market:

	UC/GC		UD/GD	
	Date	Amount	Date	Amount
United Kingdom	1.4.	£55 (+15)	1.5.	£25 to 30
Germany	1.4.	170	1.5.	90
Netherlands	1.4./1.5.	190	1.6./1.7.	~~100~~ (2)
Belgium	1.4.	3 500	1.5.	2 500
France	1.4.	600	1.5.	300
Italy	1.2.	120 (1)	1.1.	50 (1)
			1.4.	30 (1)
Denmark	1.4.	550	1.4.	375

(1) Per kg.
(2) The figure 100 is crossed out in the original.

(Price increases were also shown for Austria, Switzerland, Finland, Norway and Sweden).

Finnboard does not produce UD or GD grades, so the list cannot have been purely internal or relating to Finnboard's own business alone. The prices shown for GD grades and effective dates for each national market are identical with those in a Fiskeby document dated 14 February 1989. Lists in a very similar format to that found at Finnboard were also obtained by the Commission from Rena for two later price initiatives (recitals 80 and 83). Rena says it was given these lists by another producer on the occasion of NPI meetings. Not only did Finnboard represent the NPI in the PWG in which the main decisions were taken (recital 32), but its managing director was also chairman of the PG Paperboard and presided over the PWG from May 1988 onwards. He was also chairman of the NPI.

Feldmühle issued a circular informing its customers in Germany of this increase on 5 January 1989.

This increase was due to become effective for GC grades on 1 April and for GD on 1 May (in line with the Finnboard price list).

For France the corresponding price increases were FF 60 for GC and FF 30 for GD, and for Belgium, Bfrs 350 and Bfrs 250 respectively.

For Italy the GC price was to be increased slightly earlier (15 February), while the GD price was to go up in two steps (Lit 50 per kg on 1 January and Lit 30 per kg on 1 April).

CBC had announced its price increase for France for GC grade of FF 60 on 3 January 1989.

Finnboard checked with some of its sales offices that Feldmühle had in fact announced the increase (see second Stora statement, p. 17) before it informed customers of the same price increases.

M-M announced the price increase in Germany (GC DM 17 on 1 April, GD DM 9 on 1 May) by letter dated 12 January and for other markets somewhat later. The price increases and the relevant dates of M-M (and Deisswil) were again virtually identical with those in the Finnboard list.

Other producers which are shown to have taken part in the price initiative were: Buchmann; Cascades; De Eendracht; Enso-Gutzeit; Europa Carton; Gruber & Weber; KNP (including Badische); Laakmann; MoDo; Papeteries de Lancey; Reed P&B; Saffa and Weig. Their price increase notifications also correspond exactly with the list discovered at Finnboard (UK) Ltd.

(e) *October 1989*

(80) For the price initiative of October 1989, the Commission has obtained not only the price documentation of the producers but also a list of the agreed price increases in each national currency and the personal notes of several contemporary JMC and Economic Committee meetings made by the M-M and Rena representatives.

The price increase, which was agreed upon in June 1989, applied to GC and SBS grades only. The order backlog for GD grades had been consistently lower than for GC grades and the manufacturers of GD material realized that a second price increase in 1989 could not be sustained. In addition, the cost of their raw materials (waste paper) was said to be relatively stable, while the pulp price had just been increased and affected the GC producers.

A typewritten price list (in Swedish) showing the date and the amount of the increases to be applied for each grade in each national currency was obtained by the Commission from Rena. The list is in a similar format to that discovered at Finnboard (UK) Ltd (recital 79). Rena says the list (which is undated) was given to its then managing director during meetings in Stockholm with other Scandinavian producers on the occasion of an NPI meeting. The price increases shown for the Community national markets were as follows:

	GZ	GC 1	GC 2	Date
Belgium (Bfrs/t)	2 500	3 300	2 500	1. 10
Denmark (Dkr/t)	580	580	580	1. 10
Germany (DM/t)	110	150	110	1. 10
Spain (Pta/kg)	8	9	8	1. 10
France (FF/t)	400	500	400	1. 10
Ireland (£ Irl/t)	85	86	72	1. 10
Italy (Lit/kg)	120	120	90	1. 9
Netherlands (Fl/t)	170	170	130	1. 10
United Kingdom (£/t)	60	62 to 65	52 to 55	1. 10

It is clear from the circumstances that this was a list of the price increases which had been decided in the PG Paperboard for each grade in each national currency (see also recital 79 for the link between Finnboard, the PWG and the NPI).

From Rena the Commission also obtained handwritten notes of the JMC meeting of 6 September 1989 made by its then sales director. The note — nine pages long — shows details of the price increases which had been announced in each currency and assesses customer reaction and the progress already being made towards implementation in each national market. The price increases mentioned in the handwritten note for the different currencies correspond to those set out in the typewritten list referred to above.

Although GD prices were not increased, at the time a new structure for small-order surcharges had been agreed. The Rena note states as follows: 'The difference in price GC-GD is close to 40 %; no one should deliver without supplement in prices from 1/10.'

The note also shows new prices of GC 2 grade for each customer category (AA, A, B and C) in each national market due to come into force on 1 October:

	B	D	F	I	NL	UK	CH
AA		200					
A	41	202	660	1 410	227	67,20	163
B	42	206	700	1 460	232	74,80	168
C	45,5	210	720	1 560	242	77,80	178

(81) Finnboard led the 1 October initiative, having already begun to 'prepare the ground' in June by instructing its sales offices to warn the customers of an increase in the autumn and to prepare price increase letters.

On 20 June Finnboard informed its national sales offices of the amount of the price increase which was to take effect on 2 October. The customers were informed during July.

The price increases notified by Finnboard correspond exactly with those set out in the list obtained from Rena.

Cascades sent telexes to its sales agents at about the same time as Finnboard instructing them to apply the same price increase. The customers were to be informed of the new prices between 20 and 30 July.

MoDo had also informed its sales offices at the end of June of its intention to increase prices for GC material from TBM by around 8 % as from 1 October. Its internal documentation (from early July) shows that it was basing its proposed increases on those shown in the Rena list.

Feldmühle seems, however, to have wanted confirmation from its national sales offices that Finnboard had in fact sent out its price circular before it 'followed' the initiative. Feldmühle's price increases were identical with those of the typewritten price list and of the other producers.

Kopparfors notified the same price increase to its sales agencies on 13 July with the instruction that they should inform the customers at the latest during the following week.

With only a few minor exceptions, all the GC producers increased their prices by the amounts shown in the list obtained by the Commission from Rena (recital 80).

Enso-Gutzeit increased its prices for SBS grades in accordance with the list, and so far as can be ascertained from the available documents, so did the only other SBS producer, Iggesunds Bruk (MoDo).

Many customers protested at the (for GC grades) third price increase in 12 months and insisted that it would be difficult to pass it on to end users.

(82) The note found by the Commission at FS-Karton (M-M) of the Economic Committee meeting of 3 October 1989 (recital 50) underlines the importance of downtime and the order backlog for implementing the price increase. The Commission also obtained from FS-Karton a note of a JMC meeting held two weeks after the 1 October price increase had come into effect, which shows how its implementation was being monitored by the producers. Headed 'Vertraulicher Bericht' (confidential report) it contains an account of the JMC meeting held on 16 October 1989. The producers present reported on the progress in each national market of the price increase for GC grades. The state of the order backlog was clearly considered an important element in ensuring that the increase went through.

The FS-Karton note of this meeting also shows how the producers attempted in the JMC to identify and resolve difficulties in the implementation of the concerted initiative. It specifies a number of cases in which individual producers were not considered by the others to have been whole-hearted supporters of the increase. Thus Cascades (who unusually were not present at that particular meeting) were denounced for still offering 'insane prices' in the Netherlands, thereby creating difficulties for the Finns and for KNP.

The producers which acted as market leaders in particular national markets were concerned that the others should show the same firmness as they did. Thus in Belgium, Finnboard announced they were taking a hard line and expected the same from CBC, Cascades and KNP. In Italy, Saffa complained of low import prices and called on Kopparfors, Finnboard and Cascades to observe the agreed price levels.

(f) *April 1990*

(83) By the end of 1989 the objective of increasing price levels by 15 % (referred to in the Rena note of the NPI meeting of 3 October 1988, see recital 58) had been achieved. Another price increase was agreed in principle at the end of 1989 for both GC and GD grades and was due to take effect in April 1990 although the price of woodpulp was actually falling.

There were PWG meetings on 18 October and 28 November 1989 (the latter followed by a President Conference), and a JMC meeting on 29 November. The market was already being 'prepared' in December 1989 for an increase of around 8 %.

Another typewritten list in a format very similar to that of the one found at Finnboard (UK) Ltd (but this time with a date — 3 December 1989 — only a few days after the last JMC) and showing the amount of the proposed increase due to take effect for each grade in each national currency on 1 April 1990 was obtained by the Commission from Rena. It is based on an increase of DM 13 per 100 kg for GC grades, DM 11 for GT and DM 10 for GD grades. Like the other list obtained from Rena, it must also have been given to it by the NPI or one of its members (see recital 80). Again the clear inference is that it gives the price increase and dates decided by the PG Paperboard.

The price increases shown for the Community markets were as follows:

	GC	GT	GD	Date
Belgium (Bfrs/t)	2 500	2 500	2 500	1. 4
Germany (DM/t)	130	110	100	1. 4
Spain (Pta/kg)		5	5	1. 1
France (FF/t)	400	450+	400	1. 4
Ireland (£ Irl/t)	45		45	1. 4
Italy (Lit/kg)	90	70	70	1. 4
Netherlands (Fl/t)	130	110	100	1. 4
United Kingdom (£/t)	45	45+	45(1)	1. 4

(1) For imported material.

(84) A detailed note of a relevant JMC meeting was discovered by Commission officials during the investigation at FS-Karton. The note — in the handwriting of the sales manager — is dated 11 January 1990.

The meeting in question relates to the implementation by the producers of the March-April price initiative.

The note gives first the number of days' orders in hand for each of Feldmühle, FS-Karton, Finnboard, Iggesund (including TBM), Cascades and Kopparfors.

It also gives the planned dates for closures over the Christmas holiday period (see first Stora statement, p. 14, on the coordinating of 'downtime').

On the second page of the note, the names of a number of important producers are listed: Kopparfors; M-M/FS Karton; Finnboard; Feldmühle; Thames/Iggesund; Cascades and M-M Eerbeek. Against most of those named is written a date or a number of weeks.

(85) The clear implication of the note is that the producers had 'stage-managed' the announcements

by the major producers of the proposed increase in such a way that its concerted nature could be denied with some expectation of plausibility and the industry price initiative explained away as non-collusive price leadership.

— Thus Kopparfors was to announce on 12 January 1990 that it would increase its prices from 1 April.

— Similarly the dates '18/1 zum 1/3' ('18/1 for 1/3') noted for M-M meant that that producer was to announce on 18 January 1990 that it was putting prices up with effect from 1 March.

— Cascades was to announce its increase on 25 January (25/1) except for France where the announcement was due on 5 January.

— Finnboard was to make its announcement on or about 31 January.

— Feldmühle was scheduled for 29 January.

— Thames/Iggesund was to move during the fifth calendar week of the year.

A reference is made against the name of Thames/Iggesund 'GC/GZ+13' (TBM and Iggesunds Bruk did in fact put their prices for these grades up in Germany by DM 13.) Under the heading 'England' is noted the figure of £ 54 for GC 2 and £ 58 for GC 1; all the major producers later announced exactly this price increase. (A note found at Iggesund Board Sales in the United Kingdom indicates that the original plan of late 1989 for an increase of £ 45 for all grades as per the NPI price list had been revised; the £ 45 was retained only for GD grades.)

The FS-Karton note concludes with a list comparing 'old' and 'new' prices for GC 2 in Germany for the various categories of customers (AA, A, B, C and D). The new prices were to come into effect on 1 April 1990 and remain in force until 30 September. The 'old' prices shown are the same as those noted by Rena in the handwritten note of the meeting of 6 September 1989 (recital 80, *in fine*) as coming into force in Germany on 1 October 1989.

	old	new
AA	200	213
A	202	215
B	206	219
C	210	223
D	215	228

(86) Attached to the FS-Karton note was the draft of a price increase letter originating from Kopparfors, dated 12 January 1990 (the date fixed for Kopparfors' announcement) and informing customers that prices would be increased by DM 13 per 100 kg, the amount shown in the FS-Karton note.

The price announcement letter which Kopparfors actually sent to its German customers bore the same date, 12 January.

The dates given in the M-M note for the other major producers to send out their price increase notifications correspond almost exactly in every case to the actual dates of their letters to customers.

The price increases actually announced by the major producers in each national market also correspond with those shown in the typewritten price list obtained from Rena (see recital 83). The only difference was that instead of a £ 45 increase in the United Kingdom for all grades as originally planned, GC prices were increased by £ 54 to 58 (see recital 85).

Finnboard's letters to its customers (sent out on or about 31 January) for most markets expressed the price increase as a percentage but its internal instructions showing the minimum increases required in each market are those shown in the NPI list (but again with the United Kingdom price increase of £ 54 to 58).

Documentation is available from virtually all the other producers of cartonboard which shows that they took part in this concerted price increase. At the time, with the exception of Enso-Gutzeit (and by now of Badische) they were all attending meetings of the JMC.

The producers of SBS material seem to have increased their prices by the same amounts as the GC producers. Enso-Gutzeit's price increase letters in those markets for which documentation is available showing a price rise in April (France and the United Kingdom; in Germany it did not increase the price until 1 June) involve price rises similar to those of the other SBS producer Iggesund Bruks. Enso's announced price increase for the United Kingdom of 8,5 % is also exactly the same as that notified by Finnboard for its GC graphic grades which compete with Enso's SBS product 'Ensocoat'. There is indeed documentary evidence (see recital 97) pointing to collusion between Iggesund, Enso, Kopparfors and

Finnboard on the price increase for graphic grades in the United Kingdom on this occasion.

(g) *January 1991*

(87) Following representations from the customers who protested that the end users expected the prices of boxes to be fixed for 12 months, it was decided by the PWG that in future there would be only one price increase annually for cartonboard.

A price increase (effective on 1 October) had been agreed in June 1990 for both GC and GD grades but was postponed until January 1991.

The Commission obtained from Rena a detailed set of handwritten notes which relate to the meeting of the JMC held in Zurich on 6 September 1990.

The note begins with a comparison between 1989 and 1990 of total sales in the Community of GC 1 and GC 2 grades and a rough graph showing the development of the order backlog. There follows a table giving the number of day's orders in hand for each large mill: Béghin (Stora); La Rochette, Duffel and Djupafors (Cascades); Eerbeek and Deisswil (M-M); Feldmühle and Kopparfors (now both Stora); Kyro, Simpele, Tako and Ingerois (all Finnboard mills). Several of the mills named had only a few days' order backlog and the author notes that they were planning to take downtime in the near future.

The Rena note continues:

'Price increase will be announced *next week in September*

France	FF 40
Netherlands	Fl 14
Germany	DM 12
Italy	Lit 80
Belgium	Bfrs 2,50
Switzerland	SF 9
England	£ 40
Ireland	£ Irl 45

All grades should be increased equally GD, UD, GT, GC, etc.'

It then says:

'Only 1 price increase a year.

For deliveries from 7th Jan.

Not later than 31st January.

14 of September letter with price increase (Mayr-Melnhof).

19 Sept. Feldmühle sending its letter.

Cascades before end of September.

All must have sent out their letters before 8 October.'

The price increases were due to be confirmed in a Presidents' Meeting (presumably a PWG) scheduled for 10 September. (None of the producers have, however, given this date as the occasion of a PWG meeting).

The note then sets out the prices for GC 2 and GD 2 grades for each category of customers (AA, A, B and C) in each Community national market as they stood before the proposed price increase, i.e. in principle those fixed for 1 April 1990. It is significant that for Germany the prices listed for GC 2 are the same — AA = DM 213; A = 215; B = 219 and C = 223 — as those in the note found at FS-Karton of 11 January 1990 (recital 85). For most of the other markets, the prices shown for GC 2 similarly involve an uplift of the 1 October 1989 prices as noted by Rena (recital 80) which corresponds to the price increases scheduled for 1 April (recital 83), e.g. Belgian A customers: Bfrs 43,50 (41 + 2,5); France A customers: FF 700 (660 + 40); United Kingdom: £ 726 (672 + 54).

(88) On 7 September, i.e. the day after the JMC meeting in Zurich, M-M's marketing director telefaxed the group's sales manager for Germany (they both normally attended the meetings) instructing him to send out a price increase letter to customers on 14 September. The draft letter was attached and showed an increase of DM 12 effective on 7 January. The price increase letters originally sent out for Germany by FS and M-M in fact gave the increase as DM 14, but later M-M reduced the increase to DM 12. For the other countries, M-M's price increase was exactly as shown in the Rena note.

Feldmühle had decided to increase the price by the DM 12 referred to by Rena but wanted confirmation that M-M had publicly announced its increase before deciding on the final amount in each currency. The Feldmühle letter for Germany was indeed dated 19 September 1990 exactly as foreseen in the Rena note.

Cascades was due to inform its customers 'before the end of September'; a draft letter dated 25 September 1990 giving notice of the FF 40 price increase as of 7 January 1991 was obtained by the Commission from Cascades. In fact the Cascades letter as sent out for France was dated 3 October 1990 and was used as a model for the

announcements by the sales offices in the other national markets.

The price increases notified to customers by Feldmühle (and its associated producers in the Stora group, including Kopparfors) Cascades and M-M corresponded exactly with those set out in the Rena note, apart from M-M originally announcing DM 14 instead of DM 12.

The new price schedule of Iggesund Paperboard (Workington) Ltd (formerly TBM) giving the increase in each national market also shows a remarkable similarity with the note obtained from Rena, as does a list obtained from Fiskeby.

(89) For the other producers, a full set of price increase letters covering all national markets was not always available but in so far as price notification letters to customers and other internal pricing documents were obtained by the Commission, they show the producers applying the increases agreed in the JMC meeting.

The Rena note did not show any price rise being agreed for Spain, but the main producers supplying that market (Cascades, Feldmühle, Finnboard, MoDo and Tampella Española) all announced an increase of Pta 5 per kg.

While the majority of producers had informed customers that their price increases would take effect for deliveries from the beginning of January 1991 (2 or 7 January), Finnboard announced their increases (6 to 7 % = DM 12 or equivalent) on 5 October 1990 to come into force in all markets on 28 January.

The Iggesund increase was also to take effect in the United Kingdom on 28 January, somewhat later than in the other markets. As a result, it appeared that the price initiative would not go through until February. Subsequently, Iggesund announced that it was delaying the increase for GC grades until 1 April. The price initiative for GD was considered to have been a complete success in all European markets by mid-January. For GC, however, the deferment of the increase by Iggesund to 1 April, and widespread customer resistance in the United Kingdom and France seem to have delayed implementation until the month of April.

(90) Details of the list price increases applied by the producers or notified to customers by their sales subsidiaries or selling agents in the different national markets for each of the seven known price initiatives described in recitals 74 to 89 are shown (in so far as they are available) in the Annex to this Decision.

4. Implementation of the pricing decisions of the PG Paperboard in national meetings

(a) *General*

(91) The terms of reference of the JMC included comparative pricing for certain major customers and the working out of details for the implementation on a country-by-country basis of the pricing decisions of the PWG for both GC and GD grades (first Stora statement, p. 8).

It is not known whether, besides national meetings to prepare for the Economic Committee (see recital 50), there was also an institutionalized system throughout Europe of regular local meetings in each country to implement the increases previously agreed for each Community national market.

This was, however, certainly the case in several important national markets, with documentation being found at various producers relating to Germany, France and the United Kingdom.

(b) *Germany*

(92) A note found at FS-Karton dating from the beginning of 1991 obviously records the outcome of a meeting with other producers, although this was denied by M-M.

The note relates to the German market and covers both GD and GT grades. It purports to show the percentage market shares (in 1990) for the M-M Group, Feldmühle, Buchmann, Weig, Europa Carton, Cascades, Laakmann, Saffa, Gruber & Weber and De Eendracht.

The note goes on to show for most of the above producers the number of days' order backlog, and ends with a brief report on pricing at major customers in Germany.

(c) *France*

(93) For France, as two price tables found at Cascades show, detailed discussions took place in which the three main suppliers, namely Aussedat-Rey (De Lancey), Béghin and Cascades agreed the prices to be charged to some 80 customers on the occasion of the two planned price increases in 1988. The documents set out the 'prix planchers définis après hausse' (defined floor prices after the increase) for UC, GC 1 and GC 2 and compare the old price

with the new prices which each customer is to pay after the increase comes into force.

Another document found at Cascades — and clearly connected with the same exercise — shows the tonnage supplied by producers referred to as 'A', 'B' and 'C' to each customer in France during 1987 together with the floor price to be applied to each customer from 1 March 1988 for UC, GC 1 and GC 2 grades. (A is 'Aussedet-Rey', i.e. De Lancey; B is 'Béghin' and C 'Cascades'.)

Cascades admits that the three French producers met in Paris on 19 January and 10 May 1988, 'afin d'analyser le marché français du carton' (in order to analyse the French cartonboard market) (Article 11 reply of 19 August 1991).

Given the context and timing, the exercise must have been part of the general plan to increase the price level for cartonboard in two stages during 1988. It involves the detailed working out on a customer-by-customer basis in France of the pricing targets set in the JMC (see recital 77).

The Commission officials also discovered at Cascades tables showing the major customers of Cascades in France together with the tonnage supplied to each of them by different producers during various periods or months in 1988 compared with the result of the previous year.

The producers named in these tables are Cascades, CBC (Stora), De Lancey, Feldmühle (Stora), FS-Karton (M-M), KNP, TBM (MoDo), Kopparfors (Stora), Finnboard, Djupafors and Duffel (the last two both now Cascades).

(d) *United Kingdom*

(94) In the United Kingdom the Paper Agents Association ('PAA') representing the importers of cartonboard held regular meetings of a group called 'Section 4' which was concerned with cartonboard. On this body were represented subsidiary companies of the producers and independent selling agents. The official minutes of meetings purport to recount *inter alia* discussions on the 'State of Trade' which, although of questionable legality, are presented as being of a fairly general nature. The private notes made by three different participants of some of its meetings present a very different picture of what really transpired.

A meeting held on 23 January 1990 was particularly well attended with the price increase due in April as one of the main points of discussion. This was the price initiative planned in the JMC meeting described in the FS-Karton note of 11 January 1990 (recital 84). The private note of the PAA meeting made by Kopparfors is somewhat more informative on this topic than is the official minute. After noting that both the Iggesund (MoDo) and M-M representatives had informed the meeting of their policy of taking production downtime rather than lower prices, the memorandum continues:

> 'Prices. Iggesund have just announced a $9^1/_2$ % increase from 1 April; Finnboard said they were also moving up but declined to put a figure to it. Saffa will also move up then by £ 45 tonne.'

Iggesund's letter announcing the 9,5 % increase for the United Kingdom was dated 11 January. Finnboard instructed its United Kingdom sales office on 25 January to send letters to customers before 31 January announcing an increase of 10 % [1] for packaging grades and 8,5 % for graphic grades, while the £ 45 reportedly mentioned by Saffa in the meeting corresponds with the GD price increase in the list obtained from Rena and is in its letter to customers which was dated 22 January 1990.

The producers whose agents or subsidiaries attended the meeting were: Badische (KNP); CBC (Stora); Cascades; De Eendracht; Deisswil (M-M); Feldmühle (Stora); Finnboard; Fiskeby; Kopparfors (Stora); Laakmann; M-M; MoDo; Rena; Sarrió-Saffa and Weig.

(95) The note made by the representative of MM Pegg of the next PAA meeting of 4 April 1990 and sent to M-M in Vienna is in similar vein:

> *'Thames Board* (Iggesund) three weeks lead time. United Kingdom demand lower than some period 1989. Downtime preferred to decreasing [sic] prices. April price increase full implemented [sic].
>
> *Finnboard* 20/25 days lead time. April price increase implemented [sic]. Also agreed to downtime rather than price decrease . . .'

The author observed:

> 'These notes report how each mill replied. I would be interested to know if there are variances when compared to reports you hear from the mills themselves [2]. It would be helpful for the next (PAA) meeting 27th June'.

[1] In the instructions themselves the minimum price increase required by Finnboard for GC 1 and GC 2 was indicated as the £ 58 and £ 54 mentioned in the FS-Karton note (see recital 85).

[2] Obviously a reference to the practice in the JMC of each producer reporting its individual order backlog.

The 4 April 1990 meeting was attended by the agents or sales subsidiaries of Badische (KNP), Cascades, Deisswil (M-M), Finnboard, Fiskeby, de Eendracht, Laakmann, M-M, MoDo, Saffa and Kopparfors (Stora).

(96) Internal notes made by Iggesund Board Sales (the United Kingdom selling company for graphics grades) of the PAA meeting held on 18 September 1990 confirm that detailed discussions took place on the position of individual producers and the implementation of the price increase which had been decided in the JMC meeting of 6 September.

The producers represented at this meeting, either by sales subsidiaries or by their sales agents, included: Badische (KNP); Cascades; Deisswil (M-M); Finnboard; De Eendracht; Laakmann; M-M; MoDo; Rena; Saffa; Stora and Weig.

(97) Another note found at Iggesund Board Sales during the investigations is clearly indicative of collusion on pricing between the producers of coated board for graphics purposes (which includes both SBS and high quality GC grade) on the occasion of the price increase in the United Kingdom effective on 2 April 1990. In addition to a number of jottings relating to the amount of the price increase, two references to the 'Presidents' and a reference to 'Enso/Finnboard/Stromsdahl', the note contains a list of names of senior marketing managers or directors from Iggesund, Kopparfors, Enso-Gutzeit and Finnboard. These producers are the main suppliers of graphic grades in the United Kingdom.

In response to a request for information under Article 11, MoDo claimed that in using the word 'Presidents' the writer was innocently quoting a Swedish colleague who meant thereby to indicate senior executives from the head offices in Finland and Sweden of Iggesund's competitors whom he believed to be in the habit of accompanying the local sales staff in the United Kingdom when they visited their customers to negotiate on prices.

There is no indication in the documentation obtained by the Commission that any such practice existed.

The author of this note regularly attended meetings of the PAA. He was at the PAA meetings of 23 January 1990 and 4 April 1990, i.e. when the 2 April price increase was being planned and implemented. Iggesund places the date of the note as 3 to 14 January 1990, i.e. very close to the JMC meeting in which the planned order of the price 'announcements' by the large producers (including Iggesund) was given to the other participants in the cartel (see recital 84). The price increase letter of Iggesund for packaging grades was sent out on 11 January but according to an internal memorandum it was intended to 'let graphics wait for a week or two longer and see what happens'.

There are a number of marked similarities between the prices for the United Kingdom shown in this note, those in the M-M note of the JMC of 11 January 1990 (recital 84) and the PAA note of 23 January 1990 made by Kopparfors.

The suppliers of graphics grade cartonboard referred to in the Iggesund note all increased their list prices for the United Kingdom by similar or identical amounts.

The laborious explanations given by MoDo of what was meant by 'Presidents' and its assertion that 'the note does not contemplate, nor relate to, any contacts between Iggesund companies and any of the persons mentioned' cannot be accepted in the light of all the documentary evidence of collusion referred to in this Decision.

(98) The PAA was the trade association of the cartonboard importers. The only three manufacturers with production facilities located in the United Kingdom — TBM (later Iggesund Paperboard (Workington) Ltd), Reed P & B (later to become part of SCA), and Newton Kyme (now part of Stora) — had their own separate trade association, the Association of Cartonboard Manufacturers ('ACBM').

The official minutes of this grouping, like those of the PAA, show that it too was concerned *inter alia* with discussions on the 'market situation'; the three producers exchanged detailed information on their respective order backlogs, planned downtime and production levels.

These official minutes do not record any discussions on pricing as such, although several of the company executives who attended the ACBM meetings for TBM and Reed P & B also represented them in the JMC or President Conference.

(99) When they received from the British Carton Association (or BCA, representing their customers) the minutes of a joint ACBM/BCA meeting held on 19 October 1990, the members of ACBM took strong objection to certain (relatively anodyne) passages in the minutes which referred to the

timing of price increases. The matter was discussed in the Annual General Meeting of the ACBM on 6 December 1990, at which the representatives of the Iggesund group and of SCA (which had taken over Reed P & B) included persons who had regularly attended JMC meetings. By then the members of the ACBM were well aware of the complaint made to the Commission by the BPIF. It was resolved that strong letters of rebuttal should be written to the BCA both by a TBM director to whom certain contested remarks had been attributed and by the new chairman of the ACBM (who was also a director of TBM).

The first letter insisted that:

> '... recent actions of the BPIF have, once again, reminded us that we must be meticulous in what we discuss in the presence of our competitors and how this is recorded on paper.'

The second letter from the ACBM chairman also claimed that the minutes did not constitute an accurate record of the joint discussions and he went on to make the same point as his colleague:

> 'In view of recent events the ACBM feel that it is imperative that all such meetings are, and are seen to be, strictly in compliance with European rules of competition. The ACBM were particularly concerned that at the last joint meeting the BCA raised the subject of the timing of price reviews. We feel that such discussions could be interpreted by others as not strictly in compliance with EC rules.'

The 'recent events' were obviously the complaint to the Commission of the BPIF and the publicity surrounding it. There is no direct proof that the ACBM was a forum for price fixing. However, several of its participants were represented by the very people who went to JMC meetings. It may therefore be doubted whether its members were as scrupulous in avoiding the topic of prices in its meetings as the above letters would suggest. What the episode does make abundantly clear is that the representatives of both Iggesund in the United Kingdom and Reed P&B (by then part of SCA) who went to the JMC meetings were fully aware of the provisions of Article 85.

5. The effect of the concerted price initiatives on price levels

(100) The 'internal' price instructions, price increase letters to customers and other pricing documentation of most of the cartonboard producers for the period covered by this Decision were obtained during the investigations or subsequently under Article 11. While there are some gaps in the documentation, it is apparent from their price notification letters (see Annex) that the cartonboard producers had adopted the invariable practice of implementing the price increases which had been agreed and planned in detail in meetings of the PG Paperboard.

The documentation also shows that the so-called 'equivalent' or 'pan-European' price system had been implemented, with similar list price levels being introduced simultaneously across Europe.

(101) As can be seen from their internal pricing documentation, the producers not only announced the agreed price increases but also with few exceptions took firm steps to ensure that they were imposed on the customers. For the most part the price initiatives were judged a success. If the first price rise of 1988 did not bring average net prices up by the amounts notified, it did turn round the fall in prices and eliminated very low prices and extreme price differentials.

During 1989 and 1990 the declared objective of increasing actual price levels by 15 % was achieved.

On many occasions and at many accounts the producers succeeded in making the customer pay the whole amount of the increase. This does not of course mean that the average net realization per tonne of each producer went up immediately by the full amount of the announced price rise.

It is true that in principle the price increase was normally announced as a flat rate increase (e.g. DM 15 per 100 kg) applicable to all customers whatever the actual price they might be paying. However, the pricing structure for cartonboard is complex and an increase of a particular amount to the basic price (for 10 or 15 tonne lots) might in fact involve a somewhat lesser increase on the final net price once account is taken of discounts and rebates.

Further, the practice of giving several months' notice of an increase (so that customers could in their turn pass on the price rise to end users) might equally prompt them to try to negotiate the size of the announced price increase with the producers before it became effective, although (a) the virtually simultaneous announcement of the same increase by all the producers across the whole of western Europe acted as a brake upon the ability of their customers to play one potential supplier off against another, and (b) the publicity given by

the producers to the equilibrium between supply and demand from 1988 onward underlined to customers their common resolve to implement the increases.

Even if all the producers stayed resolute on introducing the full increase, the possibilities fur customers of switching to a cheaper quality or grade meant that a supplying producer might have to make some concessions to its traditional customers as regards timing or give additional incentives in the form of tonnage rebates or large order discounts in order for the customer to accept the full basic-price increase. A price increase would therefore inevitably take some time before it worked through.

(102) There are several recorded instances of open customer 'resistance' to a proposed price increase, and while the increase went through in the end not all the producers took a firm line; some might delay implementation or reduce the amount of the announced increase.

It is apparent from the documentation that on certain occasions or in particular national markets some producers — whether by design or otherwise — were slow to follow the price leaders. A machinery was however foreseen for dealing with such cases. Indeed one of the purposes of the PWG was, in case of difficulty, to 'achieve the level of cooperation considered necessary', a euphemism perhaps for putting pressure upon the perceived laggards (see recital 45).

Thus even if a price initiative was considered a complete success by the participating producers, the average net increase achieved after all discounts, rebates and other concessions would always be less than the full amount of the announced increase.

F. THE PG PAPERBOARD AFTER THE INVESTIGATION

1. Continued meetings of JMC and PWG

(103) After the investigations by the Commission in April 1991, the PG Paperboard still continued to meet for some time. JMC meetings were held on 3 and 10 July 1991 which were attended by Finnboard, Cascades, M-M, Sarrió, and two Stora group producers, CBC and Stora Billerud division (formerly Feldmühle). None of the smaller producers attended.

For the first time official minutes were taken of the JMC meetings. However, no great reliance can be placed upon the accuracy or completeness of those minutes as a record of the discussion. At the time the participants had no reason to suspect that Stora's senior management in Sweden was about to admit participation in a serious infringement of Article 85. The Commission's investigation and its implications must have been one of the main issues of concern; no mention whatever is made of it in the minutes.

Even on the face of the JMC minutes it appears that these two meetings involved some discussions on the state of the market, although (as with the PWG minutes from February 1990 onward) they are made to look rather general.

The next meeting of the JMC was scheduled for 11 September 1991 but was abruptly cancelled, no doubt once it became known in the industry that Stora had decided to admit the infringement.

(104) However, both the President Conference and the PWG continued to meet as follows:

12 September 1991	PWG, Pres. Con.
5 November 1991	PWG, Pres. Con.
27 November 1991	PWG
8 January 1992	Pres. Con.
11 May 1992	PWG
10 June 1992	PWG, Pres. Con.

It may well be that from this time onwards (as some producers have claimed) the 'Presidents' were primarily concerned with the reorganization of the PG Paperboard and the statistics programme (see also minutes of PWG of 27 November 1991). However, the 'market situation' was again discussed and analysed in the Presidents Conference of 8 January and at an Extraordinary General Meeting held on 11 March 1992.

In the absence of direct evidence that even after they had been discovered the producers deliberately continued to operate a blatant price-fixing cartel, the Commission will for the purposes of the present case proceed on the basis that the discussions on 'market conditions' were in the terms depicted in the official meeting minutes, i.e. that the subject of price was not directly addressed and individual producer positions were not disclosed.

In the PWG meeting of 5 November 1991 it was decided to terminate the appointment of Fides as the Secretariat of the PG Paperboard as from a date to be determined. As from some future date, this function was to be exercised by the new CEPI organization due to be set up in Brussels.

2. Reorganization of the information exchange system

(105) The PWG decided on 27 November 1991, following the receipt of legal advice, to reorganize the statistical exchange as from 1 January 1992. However, Fides was to continue to operate the statistical exchange in the old form until the new office could set up its own system.

An extraordinary General Meeting of the PG Paperboard (now renamed the 'Industry Sector Cartonboard') was held in Brussels on 11 March 1992. The first General Assembly of the cartonboard group of the new organization took place on 11 June 1992. The 'founding members' of CEPI Cartonboard were Cascades, Finnboard, Iggesund Paperboard AB, Mayr-Melnhof GmbH, Stora Billerud GmbH and Sarrió SA. The other members were essentially the same producers which had been in the PG Paperboard.

(106) The reorganized statistical exchange involved certain modifications of the old Fides system.

(i) The 'cartonboard consumption summary' was to be broken down into eight grades instead of only two as before.

(ii) The 'quick statistics' for consumption, production and deliveries were to be dropped.

It had been proposed to retain the 'quick statistics' exercise but break down the statistics into 3 groups (B + NL + UK + F; D + A + CH; I + E + SCAN) instead of individual countries.

This proposal was rejected as the producers considered the information in this form to be of no interest.

(iii) The 'market statistics' for each national market showing for each national market the tonnage of each grade delivered on that market from each of the other European countries, plus the market share, were dropped for the same reason as the 'quick statistics'.

(iv) The monthly 'consumption statistics' were also abandoned for the same reason.

(v) The 'order inflow' statistics were however to be retained until further notice.

(vi) The 'substance breakdown' report (showing the production of each weight category) was to be produced once a year instead of every six months and would no longer show a breakdown by producing countries.

(vii) The 'machine inventory', last published in 1989, was to be abandoned.

(viii) The 'capacity report' was no longer to be on a machine-by-machine basis but was to show only the total capacity and the percentage operating rate for the industry as a whole.

G. ASSESSMENT OF THE FACTUAL ARGUMENTS OF THE PRODUCERS

1. The producers' defences

(107) A considerable number of the producers to which this Decision is addressed did not seek in their written submissions to contest the main factual allegations made against them in the statement of objections.

Buchmann, Europa Carton, Fiskeby, KNP, Papeteries de Lancey, Rena, Sarrió, Stora, Tampella Española and Weig fall into this category.

(108) Of the larger cartonboard producers identified by the Commission as ringleaders of the cartel by virtue of their position in the PWG, Cascades sought in its written observations to minimize the decision-making role of that body (of which it could hardly deny membership). It also claimed that 'despite all indications to the contrary' it always followed a policy of independence from its competitors.

MoDo in its written observations portrays the statement of objections as being based almost entirely on the various statements made by Stora and impugns its fellow Swedish producer's motives for providing detailed information to the Commission. According to MoDo, Stora has an interest in damaging its competitors in terms of their reputations and the impact of any fines; its evidence is therefore to be disregarded as being fatally tainted. MoDo also asserted that the Commission had not excluded mere parallel conduct without agreement or concertation as an explanation for the matters to which objection was taken. (Subsequently during the oral hearing MoDo conceded that 'some discussions concerning announced prices which infringed Article 85 (1) did take place during the period covered by the statement of objections', while denying the existence of any infringement in respect of volume control or market sharing.)

M-M denies that it was one of the ringleaders of a cartel although again it can dispute neither its

membership of the PWG nor the fact that its managing director was for part of the relevant period the chairman of the PG Paperboard. It seeks to portray the PG Paperboard as a legitimate trade association, the members of which may on occasion and without subscribing to any concerted plan have overstepped the line between a legitimate and an illegitimate information exchange. M-M insists that there was never any question of agreements or of a 'classic cartel'. Thus according to M-M the major producers did not 'stage-manage' the price initiatives by agreeing in advance the dates on which each would make its announcement; they might, however, have simply informed each other of decisions which each had already taken independently. Nor (says M-M) was there ever any real sense of commitment; producers went away from the meetings and did whatever each one wanted. Far from being a body in which anything was decided, the JMC (for example) was, according to M-M, set up as a mere talking shop ('ein Gremium, das geschaffen wurde, damit die Leute sich ausquatschen können').

(109) Kartonfabriek De Eendracht claimed that meetings of the President Conference and JMC were merely 'social occasions'. Laakmann argued that its managing director had been attracted to President Conference meetings by virtue of their conviviality and pleasant location but could follow little of the discussions owing to his lack of English. Gruber & Weber for its part admitted that the prices for large customers had been discussed in meetings but claimed the subject was of no interest to it since it only had small customers. De Eendracht also asserted that even if it had attended some meetings of the PG Paperboard, any alignment by it on the prices of competitors was solely attributable to its observations of their pricing behaviour in the market place. Other producers besides De Eendracht claimed to have learned of the price increase through reading press reports or obtaining sight at their customers of price increase letters originating from their competitors.

A number of the other smaller producers admitted that they might have been involved in discussions or agreements on price but insisted that for their part they had never subscribed to any volume control plan. They claim that whatever others might have done they themselves did not accept restrictions on their own production programme.

(110) Besides contesting the factual evidence on which the statement of objections was based, several of the producers sought to rely on an economic analysis of the cartonboard industry which was commissioned for the purposes of this procedure from a firm of consultants. Nine of the producers (including Sarrió, which later effectively dissociated itself from its findings) had subscribed to the survey, which concluded *inter alia* that

— price changes in the industry were explained by changes in unit costs and demand,

— only a loose correlation existed between announced price increases and movements in actual prices paid by individual customers.

In the opinion of the author of this study, the price announcements reflected an 'aspiration' or intention by the manufacturer to increase prices which in practice might well not be realized.

Tables were produced comparing price data for some 113 customers with the price initiatives identified by the Commission; although there were differences between the GC and GD market segments, the average mean achieved price in ecu and in national currencies was always below the list price.

The producers involved argued that the study supported their contention that whatever might have been discussed in meetings (and several of them contested the Commission's assessment of the evidence on this point; see recitals 108 and 109) there was no effect upon real price levels which were determined by the free play of natural market forces.

2. **The Commission's assessment**

(111) The different arguments of the producers have to be assessed in the light of the documentary evidence available.

It is significant that in their written observations almost half of the addressees of the statement of objections either did not contest the gist of the factual allegations against them or made substantial admissions. In each of these cases, quite apart from any admissions they may have made, the evidence against the producers concerted proves their involvement beyond doubt.

The Commission does not however rely on the fact that certain producers did not contest the case against them as proof against the others alleged to have been involved in a cartel.

Nor (as some undertakings have claimed) did it base its statement of objections solely on the statements made by Stora. There is in fact no credible reason why Stora should misrepresent the truth; indeed far from attempting to shift blame to others, Stora's own statements make it abundantly clear that the companies in its group (particularly

the former Feldmühle) were among the ringleaders. Its statements are against its own interests and as such are wholly credible.

(112) Independently, however, of Stora's statements, the documentary evidence obtained by the Commission during the investigation is overwhelming. It is well recognized in the case law of the Court of Justice and the Court of First Instance that participants in cartels liable to substantial penalties under Community competition rules will not record their unlawful agreements in formal contracts but will rely on oral assurances given in the course of secret industry meetings. Documentary records of their contact may be destroyed. In order to prove the existence and the terms of any agreement, the Commission will have to rely to a greater or lesser extent on indirect evidence. In the present case there is in fact a considerable amount of direct as well as indirect proof of express agreement between the producers. In particular, the Commission relies on the following:

— the setting up of an institutionalized system of regular meetings in the PG Paperboard which provided the structure for continuing collusion,

— the complete absence of any official minutes, invitations or other contemporary record of the deliberations of the PWG and JMC,

— the M-M document setting out full details of the 1987 agreement on market shares and price discipline (recitals 53, 54 and 55),

— the documentation found at Cascades showing the fixing of 'floor prices' for 1988 (recital 77),

— the very detailed notes of four of the JMC meetings (made in apparent disregard of the standing rule) obtained from FS-Karton and Rena (recitals 80, 82 and 84—87),

— the private note made by M-M/FS-Karton of the Economic Committee meeting of 3 October 1989 (recital 50),

— the three price lists obtained from Finnboard and Rena (recitals 79, 80 and 83),

— the notes from several different sources of the meetings showing implementation of the cartel on a national level (recitals 91—97) as well as the note of the Arlanda meeting (recital 58),

— the pattern of virtually exact correspondence in timing and amount of the price increases which each producer implemented on the various national markets.

(The above is not an exhaustive list.)

(113) Even without the documentary evidence of collusion and Stora's detailed statements, the uniformity of the price increases announced by the cartonboard producers and the simultaneity of their introduction in each west European national market over a period of several years are so striking that on this basis alone the inference of prior collusion would have been almost inescapable.

Coupled with the incriminating documents obtained from several different sources, particularly M-M/FS-Karton, Cascades and Rena, the long-run pattern of industry price initiatives between 1987 and 1991 leaves no doubt whatever that the price increases were planned, organized and monitored by a European cartel of producers.

A particular feature of the documentary evidence obtained by the Commission in the present case is that each major item of proof is supported and corroborated by documents found at other producers. The statement made by Stora is confirmed in every significant respect by the documents found at (or provided by) FS-Karton, Cascades, Finnboard, Rena and several others. The argument of some (but not all) producers that the meetings of the Presidents and the JMC were concerned only with innocent matters can therefore be dismissed as entirely fanciful. The only records obtained of JMC meetings are entirely unambiguous as to their purpose and content. Although all the notes of JMC meetings obtained by the Commission related to GC grades, they can in the absence of any other record be taken as typical of meetings held for GD, as well as of the subject matter of the JMC meetings in general. Indeed in answer to questions during the oral hearing, the representative of M-M admitted that the incriminating notes were a representative sample of what occurred in these meetings. M-M's private note of the Economic Committee of 3 October 1989 may also be taken as indicative of the real nature of the deliberations of that body.

(114) The Commission rejects the argument of some producers that there was no element of volume control. The whole basis of the cartel — and which indeed ensured its success — was the 'price before tonnage' policy for which there is ample documentary evidence.

M-M's insistence that the producers attending cartel meetings accepted no 'commitment' as regards their future behaviour is totally at odds

with its own internal accounts of what occurred and the mass of other documentary evidence as well as the invariable pattern of the price increases which had earlier been fixed in meetings of the PG Paperboard being announced by all the participants. The conscious and voluntary commitment of the participants to a common scheme is well established. For its part, M-M's senior management habitually gave strict orders to the sales force that the price increases were to be implemented without exception.

It is also idle for certain of the other producers (e.g. MoDo, de Eendracht) who attended JMC or even PWG meetings to contend that the documented phenomenon of the industry price initiatives in which all producers took part between 1987 and 1991 were the result not of collusion but of natural market forces; their unsupported assertions are wholly against the weight of the documentary evidence of price fixing in the meetings of the PG Paperboard. The argument of some producers that they were merely following price increases of which they had legitimately acquired knowledge through press reports or from seeing letters from their competitors can similarly be rejected. It is of course true that price increase letters originating from competitors were found at a number of producers, but set against the direct evidence of collusion this does not provide an 'innocent explanation' for the close parallelism in pricing behaviour. In any case, it was clear that on some occasions at least they had been obtained from competitors directly, not from customers. Further, it was common practice for some producers to wait for firm proof that the others had already 'moved' before finally committing themselves to a planned price increase. Price increase letters from competitors provided such proof (second Stora statement, p. 17). In fact, the producers who were in possession of price increase letters from their main competitors were deeply involved in the JMC, PWG or both and can hardly claim to have been ignorant of their activities.

(115) As regards the pricing study produced by the firm of economic consultants, its evidential value is limited when set against the documentay evidence of price fixing and market sharing obtained by the Commission. The author of the report frankly accepted during the oral hearing that his findings in no way disproved the existence of cartel.

If the purpose of the economic study was simply to show that the cartel was ineffective, it does not fulfil this objective either. The Commission never alleged that the actual prices charged went up by the full amount of the proposed increase to all customers on the first day the new prices became effective and it would be unrealistic to expect that they would (see recitals 101 and 102). The various graphs in the economic study commissioned by the producers (and on which they rely to support the argument that there was no causal connection between 'announced' and 'actual' prices) [1] in fact show a close linear relationship between the two sets of data, both in absolute domestic currencies and converted to ecu in real terms (see recital 21). The net price increases achieved closely tracked the price announcements albeit with some time lag. The author of the report himself acknowledged during the oral hearing that this was the case for 1988 and 1989. It is only to the expected that when account is taken of individual arrangements, discounts and concessions on timing — and sometimes general customer resistance — the actual net increases achieved should be somewhat lower than those announced. The use of 'average' increases also tends to obscure the fact that in many cases the producers succeeded in making the customer pay the full amount of the announced increase.

Arguments by various producers regarding the extent of their involvement in the infringement will be dealt with in the next section.

H. THE INVOLVEMENT OF INDIVIDUAL PRODUCERS

(116) It is necessary to establish as against each addressee of this Decision that it participated in the infringement. This does not, however, as some undertakings have argued, require direct proof that every alleged participant expressly gave its consent to, or committed some overt act in support of, each and every individual aspect or manifestation of the cartel throughout its duration. Reasons of both substantive law and practicality militate against such a fragmented approach.

The whole gravamen of the infringement lies in the combination of the producers over several years in a joint unlawful enterprise pursuant to a common design. Price collusion and volume control were inextricably linked aspects of the same overall plan. It is fully accepted by the Commission that by their very nature the market sharing

[1] The price data on which the study was based was provided by the producers to be authors and the Commission has no way of checking the validity of the data or the methodology used.

arrangements (particularly the freezing of shares described in recitals 56 and 57) involved primarily the major producers. There is no indication, however, that individuals could select the aspects of the cartel in which they wished to join and opt out of others. Even the smaller producers were involved in the exercise of monitoring order backlogs which was essential to judging whether conditions were appropriate for a concerted price increase. Nor are individual price initiatives to be considered as a series of discrete infringements; rather they involve the implementation of the same overarching agreement.

Some undertakings argued that there was no express documentary evidence that they had actually participated in one or other price initiative or that their available documentation only showed price increases in some national markets and not in others. Others (who were members of the PWG) said that whatever the plan might have been or whatever others had done there was no proof that they had themselves restricted their output. These arguments were advanced in an attempt to diminish the responsibility of the undertaking concerned in the operation of the cartel.

Once, however, its membership of the cartel is demonstrated over the period in question, the degree of responsibility of a participant cannot be determined simply on the basis of how much direct documentary evidence of its own actions happened to be discovered. By its very nature, the cartel was a clandestine activity. Considerable efforts were made to conceal its existence and to ensure (not always successfully, however) that incriminating evidence was not kept. There could be no question in such a case of rewarding those who are most successful in frustrating the efforts of the investigating authority. Quite apart however from any deliberate concealment of evidence, the extent and availability of relevant routine pricing documentation for the relevant period showing the implementation of different price initiatives by each producer is a largely adventitious circumstance. In some cases documents had simply not been kept or were no longer available for particular markets or for a particular period.

(117) The proper approach in a case such as the present one is to demonstrate the existence, operation and salient features of the cartel as a whole and then to determine (a) whether there is credible and persuasive proof to link each individual producer to the common scheme and (b) for what period each producer participated (see judgment in Case T-1/89 *Rhône-Poulenc* v. *Commission* at point 126) [1]. That is what the Commission has done in this case.

The Commission as a factfinding authority is not required to compartimentalize the various constituent elements of the infringement by identifying each separate occasion during the duration of the cartel on which a consensus was reached on one or another matter or each individual example of collusive behaviour and them exonerating from involvement on that occasion or in that particular manifestation of the cartel any producer not implicated on that occasion by direct evidence.

(118) There is ample direct evidence to prove the adherence of each suspected participant to the infringement. The 'core' documents which prove the existence of the overall cartel or individual manifestations thereof often identify participants by name, and there is also a vast body of further documentary evidence showing the role of each producer in the cartel and the extent of its involvement.

There may sometimes be gaps in the documentation concerning detailed implementation of a particular price increase; some producers provided a more complete set of price instructions than did others. Nor — given the absence of minutes — may it be possible to say for each meeting whether or not a particular undertaking attended. It will still, however, be abundantly clear from other evidence that the producer in question continued to adhere to the common plan.

(119) The participation of each producer in the cartel can be established *prima facie* by its membership of the PG Paperboard and participation in its various committees. In most cases this is not denied. The participation in each group of the PG Paperboard is shown in Table 7.

The PG Paperboard itself had a predominantly unlawful purpose. It also had certain legitimate activities but no 'bright line' can be drawn between the 'legal' and 'illegal' groupings inside the organization. The PWG and JMC were almost entirely concerned with price fixing and market sharing and appear to have had little or no redeeming features. The Economic Committee may have been less directly concerned with price fixing as such but it is not credible that those who attended were unaware of the illicit purpose for which the information they knowingly provided to the JMC was to be used. In any case, the private note made by M-M of 'highlights' of the meeting in October 1989 makes the link with price

[1] [1991] ECR II-867.

initiatives abundantly clear. The President Conference received reports from the PWG and its members were told the prices to apply, and so they cannot have been ignorant of what was happening in the other committees of the PG Paperboard.

With the sole exception of Enso-Gutzeit, all the undertakings to which this Decision is addressed were in fact members of the JMC (and in the case of the major producers, of the PWG as well).

(120) Membership of the PG Paperboard (and especially of the PWG, JMC or both) is not, however, by any means the only evidence available of individual participation in the cartel. Further evidence of the participation of each undertaking in the infringement is provided by a combination of some or all of the following elements:

— explicit references to that undertaking in the cartel documents obtained from FS-Karton, Rena or Cascades,

— incriminating references in the PAA documents,

— participation in concerted price initiatives,

— internal documentation of that undertaking or another undertaking linking it to collusion.

The full details of the evidence proving the participation of each undertaking in the cartel were provided to each undertaking in the form of individual particulars sent with the principal statement of objections together with schedules showing the implementation of the price increases. In no significant respect was any of that evidence contradicted or shown to be anything but reliable during the administrative procedure.

(121) The special position of Enso-Gutzeit (see recital 119) is perhaps explicable in terms of its being the only major European cartonboard producer manufacturing exclusively SBS grades. It claims that its involvement in the PG Paperboard was innocent and only sporadic. It only went to President Conferences, and was the sole producer which never attended any meetings of the JMC. The Commission does not however rely simply as proof of its participation in the infringement on its attendance at President Conferences. Further proof of its involvement is provided *inter alia* by its membership of both the Board and the Marketing Committee of the NPI, a body whose role in collusion is amply demonstrated; its attendance at the Arlanda meeting noted by Rena (recital 58); the various references in the Iggesund note on the price increase of April 1990 (recital 97); and its own commercial documentation which (in so far as it is available) shows not only a continuing pattern of price increases identical to those of the other major SBS producer, Iggesunds Bruk, but also, for October 1989, a virtually exact correspondence to the NPI price list obtained from Rena (recital 80). The cumulative effect of these different items of both direct and circumstantial evidence is such that there is no reasonable doubt as to Enso-Gutzeit's involvement in a system of collusion.

I. PROCEDURAL ISSUES

(122) In the course of the procedure two producers, namely MoDo and De Eendracht, claimed that the Commission had infringed their rights of defence by failing to grant them full access to its administrative files.

MoDo's allegation was couched in very general terms and during the oral hearing its legal representative admitted that in reality it could point to no example of the Commission having withheld from it any document or material which might be relevant to its right to be heard.

De Eendracht's argument related solely to the Commission's having declined to disclose to it the full file of meetings and correspondence of ACBM (recitals 98 and 99), a body of which it was not a member. The Commission had annexed to the statement of objections sent to all producers, including De Eendracht, the documentation in its possession relating to the matters concerning the ACBM referred to in recitals 98 and 99. It declined, however, to permit the representatives of De Eendracht to peruse on a speculative basis the other records of the ACBM. De Eendracht insisted in this connection that the Commission was obliged to disclose to it all documents in its possession obtained during the course of the investigation from other undertakings apart from those containing business secrets and for which confidentiality had been expressly claimed by the owner.

(123) This argument is without foundation in law. The Commission is of course obliged to disclose the documents necessary to ensure that the addresses of a statement of objections are heard effectively on the matters alleged against them. In its judgment in Case T-7/89, *Hercules* v. *Commission* [1], the Court of First Instance held that the obligation of disclosure extends to documents which might be exculpatory. There is, however, no provision either in Regulation No 17

[1] [1991] ECR II-1711.

or the case law of the Court of Justice or the Court of First Instance which requires the Commission to make general disclosure of all the unused documentation in its possession irrespective of its relevance to the objections raised against the undertakings. On the contrary, the Commission is subject to certain obligations of confidentiality; under Article 20 (2) of Regulation No 17, it may not disclose information acquired as a result of the application of that Regulation and of the kind covered by the obligation of professional secrecy. This obligation is expressly without prejudice to the provision of Article 19 concerning the right to be heard. As the Court of Justice has observed (Case 85/76, *Hoffmann-la Roche* v. *Commission* [1]), the corollary of the Commission's wide powers to obtain documents from undertakings under Regulation No 17 is the guarantee that the information will not be disclosed to others except in so far as it is necessary to ensure their right to be heard.

(124) Contrary to De Eendracht's arguments, the Commission's qualified obligation of professional secrecy under Article 20 (2) does not relate only to information falling within the extremely narrow category of 'trade secret' which requires special protection. The two concepts — of professional secrecy and trade secrets — are entirely different in nature and purpose, and their application has completely different results. The obligation of professional secrecy to which the Commission and its officials are subject by virtue of Article 20 (2) embodies the general legal principle of confidentiality. It covers all information obtained from undertakings under Regulation No 7 except that which is so trivial that it is not worthy of confidentiality.

In the present case, the unused documentation relating to the ACBM consists principally of records of meetings which took place in private between members of a group of which De Eendracht was not a member and for which confidentiality should in principle be maintained unless good cause is shown. The Commission did in fact annex to the statement of objections a number of ACBM documents, (as well as those relating to the PAA) which were relevant to the issue of the implementation in national markets of the pricing discussion of the PG Paperboard. It should be noted that De Eendracht declined to comment at all in its written observations not only on those ACBM documents but also on those of the PAA in which its United Kingdom selling agent participated. De Eendracht has not identified any issue of fact or law in respect of which disclosure to it of the full set of ACBM documents may have been necessary or desirable. None of the members of the ACBM (to which the full ACBM file was made available) has put forward any argument on the basis of documents not annexed to the statement of objections. It is not therefore immediately apparent how the internal documents of the ACBM which were not relevant to the suspected infringement could have been in any way relevant to any possible defence of De Eendracht.

[1] [1979] ECR 461, 512.

PART II

LEGAL ASSESSMENT

A. ARTICLE 85

1. Article 85 (1)

(125) Article 85 (1) prohibits as incompatible with the common market all agreements between undertakings or concerted practices which may affect trade between Member States and which have as their object of effect the prevention, restriction or distortion of competition within the common market, and in particular those which directly or indirectly fix purchase or selling prices or any other trading conditions, limit or control production and markets, or share markets or sources of supply.

2. Agreement and concerted practice

(126) Article 85 (1) prohibits both agreements and concerted practices.

In circumstances such as the present case, an agreement can be said to exist when the parties have reached a consensus even in broad terms as to the lines of their mutual action or abstention from action in the market. While it involves joint decision-making and commitment to a common scheme, it does not have to be made formally or in writing, and no express sanctions or enforcement measures are required.

A concerted practice on the other hand does not require that the participants should have reached an agreement in terms as to what each should do or not do in the market.

The object of the Treaty in creating the concept of concerted practice in addition to that of agreement was to forestall the possibility of undertakings evading the application of competition rules by colluding in an anti-competitive manner falling short of a definite agreement by (for example) informing each other in advance of the attitude each intends to adopt, so that each may regulate its commercial conduct in the knowledge that its competitors will behave in the same way: judgment of the Court of Justice of 14 July 1972 in Case 48/69, *Imperial Chemical Industries* v. *Commission* [1].

(127) It should be observd that while identical pricing by competitors may be some evidence pointing to the existence of a concerted practice within the meaning of Article 85 (1), parallel conduct in the market place is not in fact a necessary constituent element of the infringement.

In its judgment of 16 December 1975 in relation to the European Sugar Cartel, Joined Cases 40—48, 50, 54 to 56, 111, 113 and 114/73, *Suiker Unie and others* v. *Commission* [2], the Court of Justice held that the criteria of coordination and cooperation laid down by the case law of the Court, which in no way requires the working out of an actual plan, must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition that each economic operator must determine independently the commercial policy which he intends to adopt in the common market. This requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors but it does strictly preclude any direct or indirect contact between them the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market.

Thus conduct may fall under Article 85 (1) as a 'concerted practice' where the parties have not agreed or decided in advance among themselves what each will do in the market but knowingly adopt or adhere to some collusive device which encourages or facilitates the coordination of their commercial behaviour.

(See also judgment of the Court of First Instance of 10 March 1992 in Case T-13/89, *Imperial Chemical Industries* v. *Commission* [3], at point 253).

(128) It is not necessary, particularly in the case of a complex infringement of long duration, for the Commission to characterize it as exclusively an agreement or concerted practice. Indeed, it may not even be feasible or realistic to make any such distinction as the infringement may present simultaneously characteristics of both types of prohibited conduct, while considered in isolation some of its manifestations could more accurately be described as one rather than the other. It would however be artificial to subdivide what is clearly a continuing common enterprise having one and the same overall objective into several discrete infringements (see again judgment of the Court of First Instance in Case T-13/89, *Imperial Chemical Industries* v. *Commission*, at point 260).

3. **The nature of the infringement in the present case**

(129) The account given by Stora shows that the cartonboard producers have been engaged since 1975 in attempts to regulate the market and fix selling prices. Stora states that these attempts were not generally successful but even if true that would not necessarily exclude the operation of Article 85.

However, no documentary evidence to corroborate Stora's statements is available to enable the Commission at this remove in time to make a fully-informed assessment of the factual and legal nature of the alleged behaviour in terms of Article 85 during the period from 1975 to 1986.

(130) From mid-1986 onward however there is ample evidence to show that the collusion progressively intensified, beginning with the establishment of the PWG during that year and leading to agreement at about the end of 1987 on the 'price before tonnage' scheme which characterized the PG Paperboard until at least April 1991.

The main features of the 'price before tonnage' scheme (recitals 51—60) were:

— the 'freezing' of the market shares of the major producers originally on the basis of their 1987 positions,

— the constant monitoring and analysis in meetings of 'market share development' and fluctuations in the market shares of the major producers,

— the fixing by agreement of the regular price increases to be applied in each national market,

— the periodic planning and coordination in advance of price initiatives involving the simultaneous implementation of the agreed price increases by all producers in each national market,

[1] [1972] ECR 619.
[2] [1975] ECR 1663.
[3] [1992] ECR II-1021.

— the adherence to a general principle of 'market discipline',

— the achievement of a uniform pricing system on a European-wide basis,

— the coordination of 'downtime' by the major producers instead of reduction in prices (mainly from 1990).

The role of the various organs of the cartel is described in recitals 35 to 50.

(131) The Commission considers that from the end of 1987, with the concretization of the progressive collusion of the producers in the so-called 'price before tonnage' scheme, the infringement has presented all the characteristics of a full 'agreement' in the sense of Article 85.

The working out of the plan via the twice-yearly price initiatives is not to be treated as involving a series of separate agreements or concerted practices but as part of one and the same continuing agreement.

The broad understanding on market shares, taking as its basis the position in 1987, is also to be considered as part of a continuing agreement even if the actual market share of the participants was subject to renegotiation each year. The essential point is that over the whole period an equilibrium acceptable to all producers was maintained.

The Commission accepts that the volume control measures applied principally to the major producers who were members of the PWG and whose conduct determined the state of the market. The restriction on volumes cannot however be separated from the pricing aspects of the infringement. Indeed, it was an indispensable condition for the success of the price initiatives in which all the producers took part.

(132) If collusion between the producers probably did not crystallize into the full 'price before tonnage' agreement until about the end of 1987, this does not however mean that their behaviour in the preceding 18 months falls outside the scope of Article 85.

The institutional framework for more effective concertation had already been put in place during 1986 with the establishment of the PWG. According to Stora, it 'met from 1986 to assist in the introducton of discipline in the market', and its terms of reference included 'discussion and concertation on markets, market shares, prices, price increases and capacity'.

Discussions relating to the pricing situation and overcapacity in European markets were already taking place in the President Conference. According to Stora, the PWG was already operating during 1987 as a decision-making body on prices and 'assisting in the process of cooperation between members of the PG Paperboard which intensified during the period from 1986'. In the United Kingdom a concerted price initiative was put through in January 1987. (In all probability the price increase and the detailed rules for its implementation were the subject of an express agreement between the participating undertaking). Even if at this time the definitive details of the 'price before volume' policy had not yet been agreed, it is thus clearly established that by mid-1986 the cartonboard producers were already at the very least involved in a form of collusion which may be characterized as a concerted practice in the sense of Article 85 (see also in this connection the judgment of the Court of First Instance in Case T-13/89, *Imperial Chemical Industries* v. *Commission*, points 255 to 258).

4. **The object and effect of the infringement**

(133) Article 85 (1) expressly mentions as restrictive of competition agreements or concerted practices which:

— directly or indirectly fix selling prices or any other trading conditions,

— limit or control production or markets,

— share markets.

These are the essential characteristics of the integrated scheme of arrangements under consideration in the present case.

The basic objective of the producers in setting up their scheme of institutionalized collusion was artificially and secretly to regulate the market and coordinate their behaviour in such a way as to ensure that their concerted price initiatives would be successful.

There can be no doubt whatever about the anti-competitive purpose of the substantive aspects of the cartel directly involving collusion on prices and sales volume.

(134) The various arrangements for the exchange of information require some special consideration although any examination must be made in the context of their relation to the operation of the cartel as a whole.

The exchanging by producers of normally confidential and sensitive individual commercial information in meetings of the PG Paperboard (mainly the JMC) on order backlog, machine closures and production rates was patently anti-competitive, being intended to ensure that the

conditions for implementing agreed price initiatives were as propitious as possible. The exchange of such information cannot be separated from the collective decision-making process. Although the Economic Committee was perhaps concerned less with individual positions than with the general market situation in each country its monitoring function in relation to price rises was an important element of the overall plan and must also be taken as an integral part of the cartel.

The analysis of the Fides information exchange system itself in terms of Article 85 is more complex. It is true that the system was supposed to show information country-by-country rather than for individual producers. In fact, in many cases individual data were shown or could be worked out without much difficulty. Irrespective of whether individual positions are disclosed, an information system which is used by the participants in the furtherance of a cartel will itself fall under Article 85 (see for example, Commission Decision 87/1/EEC [Case IV/31.128, Fatty Acids [1]]). In the present case, the information exchange system was an essential aid to:

— monitoring market share development,

— monitoring conditions of supply and demand so as to maintain full capacity utilization,

— deciding whether concerted price increases could be introduced,

— determining the necessary downtime.

The exchange of information conducted in the PG Paperboard via the Fides organization on capacity utilization rates and on weekly order backlogs enabled the participants closely to monitor market conditions during the period (1987 to 1989) when producers were effectively operating at full capacity.

Subsequently, when in 1990 they were faced with a combination of increased capacity and reduced demand they were able on the basis of these statistics to facilitate the coordinated taking of downtime and thereby avoid price initiatives being undermined by an excess of supply over demand.

The Fides monthly production and consumption statistics, though ostensibly aggregated, could be and were used (as Stora has explained: recitals 57, 63 and 64) to assist in determining and monitoring individual market shares and in the analysis of capacity utilization.

While not in itself directly involving the fixing of prices or allocation of markets, the information exchange carried out via Fides cannot be considered in isolation from the overall anti-competitive objectives of the cartel. It constituted a 'facilitating device' which made it easier for the participating producers to coordinate their commercial behaviour in an anti-competitive way.

The same considerations apply to the dissemination and discussion in the PG Paperboard of the annual capacity study prepared by Finnboard (recital 65).

These various measures involving the exchange of commercial information were all part of a scheme which aimed at creating or maintaining market conditions conducive to concerted price rises.

(135) Given the manifestly anti-competitive object of the cartel, it is not strictly necessary, for the application of Article 85 (1), for the Commission to find that there was also an appreciable effect upon market conditions.

However, in the present case the evidence shows that there was a definite — and adverse — effect upon competition in the market.

In contrast to some cartels discovered and sanctioned by the Commission in which the efforts of producers to increase prices were undermined by overcapacity, the PG Cartonboard matched supply and demand in a way which to a large extent ensured the success of planned price initiatives.

The concerted efforts of the producers to increase prices were no doubt helped by the steady increase in the demand for cartonboard but it is entirely misconceived to claim that their pricing behaviour and its effects in the market would have been exactly the same in the absence of any collusion.

In a market characterized by expanding demand and no spare capacity the commercial climate would tend to promote a general upward price trend. However, even on the assumption that they experienced broadly similar economic conditions, producers in such circumstances might well have very different conceptions of the profit-maximizing price. One might prefer a lower price increase than others; it might increase price on some products but not others, or it might forgo a price increase entirely in order to increase its market share.

(136) In the present case, however, price initiatives were implemented by all the producers announcing that

[1] OJ No L 3, 6. 1. 1987, p. 17.

they were increasing their prices by the same amount in each Member State and (in most cases) with effect from the same date.

The PWG agreed who would 'announce' the increase first and the dates on which each of the other major producers would announce that they were 'following'.

Despite the arguments of some of the producers, it is inconceivable in such circumstances that the concerted price announcements had no effect upon actual price levels.

The members of the cartel accounted for virtually the whole of the Community cartonboard market. As a result of the collusive price initiatives, customers were thus faced with uniform price increases in each currency for each grade of cartonboard with no realistic possibility of obtaining alternative supplies from a producer not involved in the cartel.

The fixing of the amount of the price increase in each national currency which was then applied by all producers and presented as an 'initiative' in which the whole industry was taking part meant that the opportunities for customers to negotiate freely with their suppliers were heavily circumscribed.

The consternation of the other producers when Weig announced that it was announcing a 7% increase instead of the agreed 9% in the United Kingdom (recital 41) is indicative of the importance attached by the cartel participants to uniform price announcements.

The Commission fully accepts that on occasions some producers waited until they saw proof that the others had announced a price increase to the market, or in some cases (or in some markets) did not increase their list prices by the amount which had been agreed. The documentation makes it clear, however, that the implementation of price initiatives was closely monitored and that failure to cooperate would be the subject of discussions in the JMC, with the perceived laggards being urged to support the price increases by the market leaders (see, for example, recital 82).

(137) As the contemporary documentation shows, the planned price increases were considered largely successful by the members of the PG Paperboard, an illustration of the point that collusion does not have to be completely watertight in order to lead to considerable harm to competition. It is significant that in 1990 the producers imposed an increase of 6 to 10% even though their costs were falling. During the period of the cartel, input costs per unit in real terms remained relatively steady and even fell somewhat during 1989 to 1991 but actual revenues per unit were increased substantially.

Besides increasing the price of cartonboard itself, the price initiatives must also have had a downstream effect upon the prices by the customers of the cartonboard manufacturers to their own customers. Each 'step' increase in the price of cartonboard normally would be passed on to the end users in the form of increased prices for folding boxes. Ultimately, given the importance of packaging in consumer products, it would be the general public which paid the price.

5. **Effect upon trade between Member States**

(138) The agreement between the producers also had an appreciable effect upon trade between Member States.

Article 85 is aimed at agreements which might harm the attainment of a single market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the common market.

In the present case, the pervasive nature of the collusive arrangements, which covered virtually all trade throughout the Community [1] (and other western European countries) in a major industrial product, must automatically have resulted in the diversion of trade patterns from the course they would otherwise have followed (see the judgment of the Court of Justice in Joined Cases 209 to 215 and 218/78, *Van Landewyck and others* v. *Commission* [2].

The cartonboard market is characterized by a substantial volume of trade between Member States (see recital 12). The application of Article 85 to a cartel is not, however, limited to that part of the Members' sales which actually involve the transfer of goods from one Member State to another. Nor is it necessary to show that the individual conduct of each producer, as opposed to the cartel as a whole, affected trade between Member States (see the judgment of the Court of First Instance in Case T-13/89, *Imperial Chemical Industries* v. *Commission,* at point 304).

It is not decisive for the application of Article 85 that in freezing market shares and controlling output the producers in this case did not allocate particular national markets to particular producers. The very existence of production control measures would operate to restrict the opportunities open to a producer. Arrangements like the 'freeze' on

[1] The only Member States for which there is no reliable evidence of price fixing arrangements were Portugal and Greece, which have no domestic cartonboard producer.

[2] [1980] ECR 3125.

market shares were clearly intended to prevent new trade relationships developing.

6. **Jurisdiction**

(139) Article 85 prohibits restrictive agreements which may affect trade between Member States and are applied in the Community irrespective of where the headquarters of the participants are located.

The fact that many of the largest cartonboard producers have their head office outside the Community does not therefore affect their liability in respect of the infringements of Article 85. These undertakings carried out the bulk of their business inside the Community. Stora, MoDo and M-M also now have a substantial part, if not the majority, of their production facilities located inside the Community.

Other smaller Scandinavian producers, such as Rena, participated in the cartel and to the extent they supplied the product inside the Community are within the scope of Article 85.

In so far as the activities of the cartel related to sales in non-member countries they are outside the direct ambit of this Decision.

7. **Undertakings**

(140) The subject of Community competition rules is the 'undertaking', which is not the same concept as that of the incorporated company possessing separate legal personality. The term 'undertaking' is not defined in the Treaty. It may however refer to any entity engaged in a commercial activity. In the context of large corporate groups, any of the following may, depending upon the circumstances, be treated as an 'undertaking':

— the parent or holding company of the group,

— the whole group consisting of the parent and its direct and indirect subsidiaries,

— intermediate holding companies,

— the subgroups or divisions formed by the subholding companies and their subsidiaries,

— the individual subsidiary companies.

(141) In the cartonboard industry many of the major operators are broad-based 'forest product' groups whose activities range from forestry and timber products through pulp to paper, cartonboard and packaging.

In most cases these groups have a complicated corporate and management structure. It might therefore be possible to address a statement of objections either to the group, to the appropriate division or even to the individual subsidiaries. While in theory incorporation is not relevant, in practice for the purposes of collecting any penalty imposed, the 'undertaking' to which the decision is addressed has normally to possess legal personality so that if necessary enforcement proceedings can be taken in the national civil jurisdictions under Article 192 of the Treaty.

(142) The corporate structure of a group may well be determined by considerations of fiscal and company law in the country in which its head office is located and the countries in which it operates.

— The top company of the group may in some countries act as a pure holding company owning the shares of the operating subsidiaries, while in other cases the main company itself encompasses the 'core' business of the group, with other sectors established in the legal form of separate subsidiaries.

— The group may be organized into several separate business areas which may have the legal status either of subholding companies with (in turn) their own direct and indirect subsidiaries or of unincorporated divisions.

— Even where the divisional head office is established as a separate subsidiary, it may not itself directly own the assets or even hold the shares of the various operating subsidiaries even though exercising functional and management control over them.

In some groups, the various business areas or divisions are designated in such a way that their membership of the group and their uniformity of corporate identity is explicitly demonstrated. In other groups, their 'independence' from the parent is stressed. Indeed, in some cases the links of ownership between companies in the group are deliberately played down.

(143) In the present case, the members of the PG Paperboard were usually identified in its records as the individual operating companies rather than the group itself (e.g. 'Papeteries de Lancey SA' rather than 'Aussedat Rey SA'). Normally, however, the Commission would have been entitled to address the decision to the group, particularly in the case of an integrated forest product undertaking. In order, however, to avoid the argument (which

tends to blur the distinction between a 'company' and an 'undertaking') as to whether the parent company of the group ought to be held responsible for the actions of what are said to be autonomous subsidiaries, the Commission has in principle treated the entity named in the membership lists of the PG Paperboard as the appropriate 'undertaking' for the purposes of addressing the present proceedings, subject to the following exceptions:

1. where more than one company in a group participated in the infringement; or

2. where there is express evidence implicating the parent company of the group in the participation of the subsidiary in the cartel,

the proceedings have been addressed to the group (represented by the parent company).

(144) The reorganization of the cartonboard industry in recent years has meant that some undertakings have been absorbed by others and/or that the cartonboard activity of one group has been transferred to another.

There is no express provision in the Treaty or in any regulation which covers the issue of responsibility for an infringement following corporate restructuring or acquisition.

It would, however, clearly be impermissible for undertakings to avoid or eliminate liability for infringements of Community competition law because of a corporate reorganization.

The question of succession is one to be determined by the principles of Community law relating to undertakings and cannot depend upon national rules which may differ widely from Member State to Member State according to the peculiarities of national fiscal or company law.

(145) The application of the principles set out above has the consequence that in cases where, but for the acquisition, proceedings would normally have been addressed to the subsidiary in its own right, responsibility for its conduct prior to the transfer passes with it. It is not necessary (although it may well be the case) that the acquirer has subsequently approved, adopted or continued the unlawful conduct. The test is whether there is a functional and economic continuity between the infringing undertaking and its successor (see, for example, the judgment of the Court of Justice in Suiker Unie, at point 87).

On the other hand, where a parent company or group which itself is properly considered a party to the infringement transfers a subsidiary to another undertaking, responsibility for the period up to the date of divestment does not pass to the acquirer but will remain with the first group.

In either case, if the transferred subsidiary continued as a member of the cartel, it will depend upon the individual circumstances whether proceedings in respect of such participation should be addressed to that subsidiary in its own name or to the new parent group.

(146) The question of the 'appropriate' addressee of the proceedings has arisen here in a number of cases but only in a few is there any question of succession. In fact, in the present case there is no example of an 'innocent' purchaser becoming fixed with liability under Article 85 solely by reason of its having acquired another undertaking which had already ceased to participate in the cartel.

(a) *Cascades SA*

(147) Prior to their acquisition by Cascades in 1989, Kartonfabriek van Duffel N.V. and Djupafors AB were participants in the cartel as independent undertakings. But for the acquisition, proceedings could have been addressed to both undertakings in their own name. Duffel and Djupafors were renamed and continued to exist as separate subsidiaries in the Cascades group. However, it is appropriate to address this Decision to the Cascades group represented by Cascades SA in respect of the participation in the infringement of all of Cascades cartonboard operations (see recital 143).

(b) *Europa Carton AG*

(148) The transfer as of 1 January 1993 by Europa Carton AG of its cartonboard activity to a new company in which it now holds a 50 % share does not affect its responsibility as a member of the cartel. The persons attending meetings did so in the name of Europa Carton AG which is still in existence as an undertaking and this Decision will therefore be addressed to it.

(c) *NV Koninklijke KNP BT NV*

(149) KNP Vouwkarton B.V. Eerbeek was at all material times a subsidiary company of KNP — Royal Dutch Papermills NV. Normally the statement of objections would have been addressed to KNP Vouwkarton BV as this was the undertaking

named as a member of the PG Paperboard. However, KNP Vouwkarton B.V. Eerbeek (which from an operational standpoint constituted one of several divisions in KNP's Packaging group) was represented in the President Conference and the PWG by the head of KNP's Packaging Group who was also a member of the board of management of KNP, i.e. its top executive organ. According to KNP's own annual report for 1990 there is a 'very direct' relationship between the board of management and the divisions with the board of management acting as the supervisory board of each division. It is therefore appropriate, given the proven link between the cartel and KNP itself, to address the decision to the whole KNP group in respect of the period up to the acquisition by M-M of KNP Vouwkarton as of 1 January 1990.

(For the period after the transfer, M-M is responsible for KNP Vouwkarton's continuing participation).

KNP was also at all relevant times the owner (95 %) of the German board producer Herzberger Papierfabrik, which included Badische Kartonfabrik. Herzberger is now organized as one of the five business units of the Solid Board Division of KNP. As regards the participation in the cartel of Badische, this Decision will therefore be addressed to KNP.

Following a recent merger, KNP NV is now known as NV Koninklijke KNP BT NV, but no point on succession arising out of the change has been raised.

(d) *Mayr-Melnhof Kartongesellschaft mbH*

(150) M-M has owned FS-Karton since 1984 and at all material times the management and the marketing activities of M-M and FS-Karton have been completely integrated. It is therefore appropriate to address this Decision to the M-M group as regards any involvement in the cartel of FS-Karton.

M-M is also responsible for the participation in the infringement of its 66 % subsidiary Deisswil for the whole of its involvement in the cartel including the period prior to M-M's acquiring full control in January 1990 and for the involvement of Mayr-Melnhof Eerbeek BV (as KNP Vouwkarton was renamed) from the date of its acquisition on 1 January 1990. Responsibility for the participation of KNP Vouwkarton before the take-over lies with KNP and no liability is attributed to M-M for this period.

Laakmann was acquired by M-M after the opening of proceedings in the present case and was separately represented. It will therefore be treated as a separate undertaking for the purposes of this Decision.

(e) *Mo och Domsjö AB*

(151) Thames Board Ltd (TBM), the largest United Kingdom producer of cartonboard (making GC grades only), was an active participant in the cartel as of 1986 and a member of the PWG. TBM was acquired by AB Iggesunds Bruk with effect from 1 January 1988 and was renamed Iggesund Paperboard (Workington) Ltd.

At that time AB Iggesunds Bruk was an associate company (as opposed to a fully-owned subsidiary) of the Swedish forest group MoDo which held 49,9 % of the voting rights in Iggesund.

Up to the acquisition of TBM, Iggesunds Bruk's main cartonboard product had been SBS; it was the only important Swedish producer of this grade. Despite the claim made in answer to Article 11 that it was not a member of the PG Paperboard, representatives of AB Iggesunds Bruk had in fact participated in the President Conferences (but not the PWG).

After the acquisition of TBM by AB Iggesunds Bruk on 1 January 1988, representatives from Workington continued as before to attend the meetings of the PG Paperboard. MoDo acquired full control of Iggesunds Bruk at the beginning of 1989 and made it a division of the MoDo group. As from the middle of 1989, the managing director of Iggesund Paperboard AB (as the division was known) from Sweden attended meetings of the PWG and his market analysis manager and/or marketing director went to the JMC.

The Iggesund representation at the JMC also continued to include officers and employees from Workington.

(152) During the administrative procedure in the present case, MoDo argued that the statement of objections (and any decision) should be addressed not to it but to Iggesund Paperboard AB which it claimed was an 'entirely separate undertaking' from the group holding company MoDo.

It is of course true that, as with any large industrial group, MoDo is organized operationally in several business areas of which Iggesund Paperboard is one. Indeed, it might well be that Iggesund Paperboard AB as a subgroup or division could be treated as an undertaking for the purposes of Community competition proceedings, as could other entities inside the group (see recital 140). This does not, however, mean that any proceedings must be addressed to it or that the MoDo group itself is freed from all responsibility.

(153) In the first place, there might be difficulties in collecting the fine were a decision to be addressed to Iggesund Paperboard AB. As a so-called

'commission company' of the MoDo group, it has itself a nominal capital of only SKr 50 000 (= ECU 5 500), the minimum permitted by law. As MoDo itself admits, there is some doubt in Swedish law as to the responsibility of a parent company for the debts of this type of subsidiary. To overcome this problem in its commercial dealings, MoDo has made a statement in its annual accounts accepting contractual liability for the commitments of its commission companies but it is not known whether this guarantee would apply to a fine imposed by the Commission.

Secondly (and in so far as the 'autonomy' argument might be relevant) Iggesund Paperboard AB is not as functionally independent of the group, as MoDo has claimed. Iggesund Paperboard AB neither owns the production facilities for cartonboard nor employs its labour force. The cartonboard assets formerly owned by Iggesunds Bruk AB remain owned by that company which is now a dormant company entirely owned by MoDo. All personnel in Sweden are employed by MoDo itself. MoDo exercises ultimate management and financial control over its divisions. It is therefore appropriate for the purposes of the present proceedings to address the decision to the MoDo group itself rather than to a subsidiary which has no real independence, owns no assets and employs no staff. For the reasons set out earlier (for example, in recital 141), the top holding company is taken to represent the group.

(f) *Sarrió/Saffa/Prat*

(154) During the period of the infringement there were substantial organizational and structural changes in Saffa's cartonboard operation. There is, however, a clear continuity as an 'undertaking' between Saffa SpA and the merged entity now known as Sarrió SA. This Decision is therefore addressed to Sarrió SA in respect of the whole duration of the participation in the infringement of the Saffa operations.

The acquisition of Prat Carton in 1991 also means that Sarrió became responsible for the involvement of this Spanish producer in the cartel for the whole of the period of its participation.

(g) *SCA*

(155) The acquisition by the Swedish forest products group SCA of Reedpack plc, the ultimate owner of the Colthrop Board Mill, presents no particular problem under the approach described in recital 143.

The membership list of the PG Paperboard names as a member Reed Paper & Board (UK) Ltd ('Reed P & B'), of which the Colthrop Board Mill in Newbury, Berkshire, was at all material times a part. Colthrop was not itself incorporated as a separate legal entity. Reed P & B, whose head office was in Kent, constituted a division of Reedpack and operated a number of paper mills besides Colthrop. After the acquisition by SCA in July 1990, Reed P & B continued in existence but its name was changed first to SCA Aylesford Ltd and then on 5 February 1992 to SCA Holding Ltd.

During the administrative procedure, SCA claimed that the proceedings should have been addressed not to SCA Holding Ltd (the former Reed P & B) but to the Colthrop mill which is now in the hands of M-M; SCA says that Colthrop was an entirely autonomous commercial entity distinct from the parent. As has been pointed out in relation to MoDo (see recital 152) even if this were correct, it would not necessarily absolve Reed P & B from responsibility. In any case, SCA's argument is not supported by the facts. Quite apart from its lack of separate legal personality (which the Commission does not consider decisive in itself) the Colthrop mill was not in fact organized or operated as a separate entity from Reed P & B. The so-called 'autonomy' on which SCA relies was no more than that of any operating unit in the normal management structure of an undertaking. In any case SCA's argument completely ignores the fact that it was a senior director from Reed P & B headquarters in Kent (to whom the manager of the Colthrop mill was responsible) who invariably attended the PG Paperboard at the 'President' level.

The Commission therefore expressly rejects SCA's argument that Colthrop Board Mill, not Reed P & B, would have been the appropriate addressee of proceedings. It amounts to saying that each functional unit inside an undertaking must always be treated as a discrete 'undertaking' for the purposes of Article 85.

(156) But for the acquisition by SCA, the proceedings would have been addressed to Reed Paper & Board (UK) Ltd. There is a clear continuity between Reed Paper & Board (UK) Ltd, SCA Aylesford Ltd, and SCA Holding Ltd; they are one and the same corporate entity known by different names. The fact that the Colthrop mill was sold off in May 1991 still left SCA Holding Ltd in existence. Responsibility for its involvement does not pass with the Colthrop mill which was simply one of its assets (see judgment of the Court of First

Instance in Case T-6/89, *Enichem Anic SpA* v. *Commission* [1], at points 236 to 240).

SCA also argued that even if in terms of company law SCA Holding Ltd was the same entity as Reed P & B, it now only existed on paper. According to SCA, apart from the Colthrop mill which had been sold off, the other assets of SCA Holding Ltd had during the reorganization been split between SCA's packaging division and its graphic paper division. It was therefore (said SCA) 'economically and functionally a different company with a different mix of assets and different personnel'. What SCA did not mention in its written and oral presentation was that under the reorganization SCA Holding Ltd in fact acquired the entire share capital of SCA Packaging Ltd and SCA Graphic Paper Holdings 1991 Ltd to which the assets in question were then transferred. In reality, apart from the fact that it is now technically a holding company rather than the actual owner of the assets, the activities of the former Reed P & B remained the same after the change of name.

(157) The Commission also rejects SCA's contention that it is 'manifestly inequitable' or unfair to fix liability on it for the prior actions of an undertaking which it had acquired. This argument overlooks the fact that the addressee of this Decision is not the SCA group as a whole but the acquired undertaking itself. In any case, Reed P & B continued to participate in both the JMC (October 1990) and President Conference (November 1990) after the purchase by SCA. Whether or not the new senior management from Sweden was actually aware of the existence or continuance of some collusion is not relevant, but SCA's insistence that this was not the case strains credulity given that the new managing director himself went to the President Conference of 26 October 1990 together with his predecessor (SCA claims they stayed only a short time but this does not appear from the minutes). SCA took action to withdraw from the PG Paperboard and its activities only once the BPIF complaint to the Commission became known a month later.

Although following the reorganization, the 'undertaking' now consists of the unit formed by SCA Holding Ltd and its subsidiaries which own the assets, it is necessary for the purposes of enforcement to identify an entity possessing legal personality as the addressee of this Decision. In conformity with the Commission's normal practice, the appropriate addressee is the holding company, SCA Holding Ltd.

[1] [1991] ECR II-1623.

(h) *Stora*

(158) Stora accepts that it is responsible for the involvement in the infringement of its subsidiary companies Feldmühle, Kopparfors and CBC both before and after their acquisition by the group.

(i) *Tampella Corporation*

(159) Tampella Corporation, one of the member companies of Finnboard, incorporated its five industrial divisions as separate legal entities with effect from 1 January 1991 as part of a group restructuring. The companies, now known as 'business groups' of Tampella were at all relevant times still all 100 % owned by the parent company.

The forest products division of Tampella was renamed Tampella Forest Inc. This new company officially took the place of its parent in Finnboard during 1991, although the persons representing it were exactly the same as before. During the proceedings in the present case, Tampella Corporation in fact took no point arising from the group reorganization. Tampella Forest Inc. was itself sold to Enso-Gutzeit as the beginning of 1993. Tampella Corporation is still in existence as an undertaking. The disposal by Tampella Corporation of its forest products division can make no difference to its responsibility as a member of Finnboard (see recital 175) for the participation of Finnboard in the infringement.

(j) *Tampella Española* (now called Enso Española)

(160) Tampella Española was 100 % owned by Tampella Corporation, one of the four Finnish GC producers. However, its activities are not integrated with those of the parent company and it operates essentially as a Spanish supplier. It does not sell through Finnboard. It was separately represented in the PG Paperboard in which it first participated regularly in 1987, the parent company's operation in Finland being represented by Finnboard.

Normally proceedings would have been addressed to the Tampella group in respect of the participation in the cartel of both the Spanish and the Finnish companies. However, in view of the special treatment of Finnboard and the four Finnish producers — each producer is held jointly and severally liable with Finnboard for that part of the fine which is proportionate to its own share of Finnboard's cartonboard sales (see recitals 173, 174 and 175) it is appropriate to address this Decision to (and impose a separate fine on) Tampella Española (or Enso Española, as it is now called).

The treatment of Tampella Española as a separate undertaking for the purposes of this Decision is unaffected by the acquisition of Tampella Corporation's forest products division by Enso-Gutzeit as of April 1993.

Details of those cases where an infringing undertaking was absorbed by another through acquisition or merger are shown in Table 8.

8. **Duration of the infringement**

(161) Although it is apparent from Stora's statements that collusive arrangements had been in existence since at least 1975, and that the PG Paperboard was in all likelihood set up as a vehicle for unlawful cooperation, the Commission will in the present case limit its assessment under Article 85 and the application of any fines to the period from June 1986 onward.

This was the date when the PWG was set up and the collusion between the producers intensified and started to be more effective.

The participation in the infringement of virtually all the addressees of this Decision is established from that date. Most, if not all of them, were already members of the PG Paperboard and had been from the time of its inception in 1981.

(162) Although they were already members of the PG Paperboard, a few producers apparently played no active role in the cartel before the setting up of the JMC in late 1987 or the beginning of 1988.

The active participation of Buchmann in the infringement may thus be said to have started when it began attending the JMC at about the time of the first price initiative of 1988.

Similarly, there is little evidence of Rena's participation in the price fixing activities of the cartel until the same price initiative of March 1988.

Enso Española started attending meetings of a PG Paperboard grouping (the Economic Committee) on a regular basis in 1987 and the first President Conference it attended was that of 25 May 1988. It claims to have started going to the JMC only in February 1989. However, it did take part in the first price initiative of 1988 and its effective participation in the infringement may be taken to have begun at about that time.

Gruber & Weber also seems to have started attending manifestly unlawful meetings later than most of the others. Given its unwillingness to provide any relevant information for the period before 1989 it is, however, impossible to say exactly when it began to attend the JMC. The fact that it joined the Fides system in 1988 is probably the best indication, in the circumstances, of when it first adhered to the unlawful cartel. As a result of a machine rebuild, this relatively minor producer appears to have ceased playing an active part in the PG Paperboard in late 1990.

KNP's responsibility for the participation of its Dutch subsidiary KNP Vouwkarton ended with the disposal to M-M of 1 January 1990. Its German subsidiary Badische had ceased going to JMC meetings in May 1989 and withdrew officially from the PG Paperboard at the end of that year. However, Badische was still following the price initiatives of the cartel at the time of the Commission's investigations. For the United Kingdom, it appears to have obtained its information about proposed price initiatives through the participation of its sales agent in the PAA. KNP must therefore be held a party to the infringement up to the date of the investigation although from the end of 1989 its involvement via Badische can be regarded as peripheral.

(163) Fiskeby ceased attending JMC meetings in June 1990 following its acquisition by Manville. Formal instructions had been given to Fiskeby by its new United States parent company to refrain from any activity which might infringe relevant anti-trust laws. However, it did not withdraw from the President Conference nor apparently from the NPI (through which it admitted receiving information on price at least in the past). From the fact that its new prices introduced on 1 January 1991 (and notified to customers in August and October of the previous year) in each national market were exactly those set out in the Rena note of the JMC meeting of 6 September 1990 (see recital 85), the Commission concludes that even if it stopped attending the JMC, it continued to receive and act upon information from other producers as to the price increases to be applied.

As regards SCA Holding Ltd, the Commission accepts that it ceased attending meetings of the PG Paperboard after November 1990. The undertaking says that it withdrew as soon as it became aware of possible infringements of Community competition law through the publicity given to the BPIF complaint. Nevertheless, its involvement in the PG Paperboard up to that time continued to have effects after November 1990 since the price increase planned in October 1990 for implementation in January 1991 was applied by the Colthrop mill and was still going through in April 1991.

(164) The exact date at which the cartel itself was wound up is not easy to establish, and it cannot be excluded that collusion continued for some time after the date of the investigations in April 1991.

Most of the producers — prudently enough under the circumstances — stopped going to JMC meetings. However, even if they withdrew immediately from the common unlawful enterprise, the effects of the last known concerted price initiative, which had been delayed until April 1991 and which in the initial stages at least was considered a success, were still being felt in the market for some time.

Several major producers in fact continued the JMC meetings despite what they must have known of the result of the Commission's investigation. They only stopped once Stora's cooperation with the Commission became known.

There must therefore be grave suspicion as to the content of the JMC meetings held in July 1991 and attended by Cascades, Finnboard, M-M, Sarrió and Stora. However, in the absence of direct evidence of unlawful collusion in those meetings the Commission will not impose any additional penalty upon these undertakings in respect of their continued participation in the JMC.

B. REMEDIES

1. Article 3 of Regulation No 17

(165) Where the Commission finds that there is an infringement of Article 85 it may require the undertakings concerned to bring such infringement to an end in accordance with Article 3 of Regulation No 17.

In the present case the participants in the cartel went to considerable lengths to conceal their unlawful conduct. Virtually all documentary traces of the activities of the PWG and JMC were systematically suppressed; no minutes, records, list of participants or invitations were retained. The official minutes which were kept of groups like the President Conference were drafted so as to conceal the true nature of their activities.

The producers for the most part gave vague or evasive replies concerning the terms of reference and activities of the President Conference, PWG and JMC. They claim to have no relevant documents. Some continued going to meetings after the date of the investigation.

In the circumstances it is not possible to say with certainty that collusion has entirely ceased in all its aspects.

It is therefore necessary for the Commission to require the undertakings to which this Decision is addressed to bring the infringement to an end (if they have not already done so) and henceforth to refrain from any agreement or concerted practice which may have the same or similar object or effect.

(166) As regards the exchange of information, the Fides system has been substantially modified (see recitals 105 and 106). However, even if the more egregious anti-competitive aspects of this system have been abandoned, the new system is still incompatible wih Article 85. It is apparent that even without being complemented by individualized information it can operate as a device to promote, encourage or facilitate the coordination by the cartonboard producers of their commercial behaviour and the adoption of a common industry response to market indicators. The producers shall therefore be required to abstain in the future from any exchange of information concerning:

— the present state of the order inflow and backlog (even if aggregated),

— the forecast utilization rate of production capacity (even if aggregated),

— the production capacity of each machine.

Any exchange of information shall be limited to the collection and dissemination in aggregated form of production and sales statistics conducted in such a way as to exclude the possibility that it can be used to enable the participants to coordinate their commercial behaviour.

The undertakings must also be required to abstain from any exchange of further information of competitive significance in addition to such permitted exchange and from meeting together to discuss the significance of the information exchanged or the possible reaction of the industry or of individual producers to that information.

2. Article 15 (2) of Regulation No 17

(167) Under Article 15 (2) of Regulation No 17, the Commission may by decision impose on

undertakings fines of from ECU 1 000 to 1 million, or a sum in excess thereof but not exceeding 10 % of the turnover in the preceding business year of each of the undertakings participating in the infringement where, either intentionally or negligently, they infringe Article 85 (1). In fixing the amount of the fine, regard is to be had to both the gravity and the duration of the infringement.

The undertakings to which this decision is addressed deliberately infringed Article 85. With full knowledge of the unlawful nature of their enterprise and awareness of the risk of substantial penalties they deliberately set up and successfully operated a secret and institutionalized system of regular meetings intended to fix prices and to foster the market conditions in which concerted price increases would be achieved throughout the common market.

A particularly grave aspect of the infringement is that in an attempt to disguise the existence of the cartel the undertakings went so far as to orchestrate in advance the date and sequence of the announcement of each major producer of the new price increases.

The infringement was of long duration. For the purposes of the present case the Commission will consider that it commenced in mid-1986 (although according to Stora collusion began long before this date). It continued at least until the date of the Commission's investigation, but for which the cartel would in all probability still be in full operation at the present time.

(168) In determining the general level of fines in the present case the Commission has taken into account the following considerations:

— collusion on pricing and market sharing are by their very nature serious restrictions on competition,

— the cartel covered virtually the whole territory of the Community,

— the Community market for cartonboard is an important industrial sector worth some ECU 2 500 million each year,

— the undertakings participating in the infringement account for virtually the whole of the market,

— the cartel was operated in the form of a system of regular institutionalized meetings which set out to regulate in explicit detail the market for cartonboard in the Community,

— elaborate steps were taken to conceal the true nature and extent of the collusion (absence of any official minutes or documentation for the PWG and JMC; discouraging the taking of notes; stage-managing the timing and order in which price increases were announced so as to be able to claim they were 'following', etc.),

— the cartel was largely successful in achieving its objectives.

(169) In assessing the fine to be imposed on each undertaking, the Commission in addition to the above takes account of:

— the role played by each in the collusive arrangements,

— any substantial differences in the duration of their respective participation in the cartel, if such is the case,

— their respective importance in the industry (size, product range, market share, group turnover and turnover in cartonboard),

— any mitigating factors including the degree of cooperation with the Commission after the investigation and the extent to which any such cooperation may have materially contributed to facilitating or expediting the conclusion of the present proceedings.

In so far as there is any good reason to accept that one or another undertaking may have participated for a substantially lesser period than did the others (see recital 162), this is reflected in the amount of the fine imposed upon it. The Commission will also take into account any substantial change in the nature or the intensity of the role played in the cartel by particular producers. It is not, however, intended in calculating each fine to employ some precise mathematical formula reflecting the exact number of days, months or years for which that producer adhered to the cartel.

(170) The 'ringleaders', namely the major producers of cartonboard which took part in the PWG (Cascades, Finnboard, M-M, MoDo, Sarrió and Stora), must bear a special responsibility. They clearly constituted the main decision-makers and were the prime movers of the cartel.

KNP also was a member of the PWG until 1988 and, although it is not a major manufacturer of cartonboard, it is one of the leading producers in the paper industry and one of the largest industrial groups in the Netherlands. Indeed, it is likely that the acceptance by the others of its representative as the chairman of the President Conference and the PWG at a critical time depended upon this particular status. KNP must also therefore be considered as a ringleader of the cartel during the period of its membership of the PWG.

Although Weig was a member of the PWG from 1988, it does not seem to have played as important a role in the determination of the policy of the cartel as did the major industrial groups.

The fine imposed on Enso-Gutzeit reflects its individual circumstances as the only producer which did not attend meetings of the JMC.

The Commission in assessing the fines to be imposed on the smaller producers of cartonboard takes into account *inter alia* their position as ordinary members rather than leaders of the cartel.

(171) As regards the cooperation of the different producers with the Commission's investigations in this case, it is clear that Stora and Rena are in a separate category from the others.

Although there was already strong documentary evidence to prove the existence of a cartel, Stora's spontaneous admission of the infringement and the detailed evidence which it provided to the Commission has contributed materially to the establishment of the truth, reduced the need to rely upon circumstantial evidence and no doubt influenced other producers who might otherwise have continued to deny all wrongdoing. Rena for its part provided important documentary evidence to the Commission on a voluntary basis.

There will therefore be a very substantial reduction in the fine which would otherwise have been imposed upon Stora and the minor producer Rena.

(172) The producers which at an early stage after the opening of proceedings, i.e. in their replies to the statement of objections, did not contest the essential factual allegations relied upon by the Commission against them are also entitled to recognition of this attitude by a reduction in the fine to be imposed upon them although this cannot be of the same order as that which is appropriate for Stora and Rena.

These producers are Buchmann, Europa Carton, Fiskeby, KNP, Papeteries de Lancey, Sarrió, Enso Española and Weig.

3. Joint and several liability to fines: Finnboard

(173) Finnboard is an entity exercising a commercial function is an 'undertaking' for the purposes of Article 85. As such it may be the subject of Community competition rules quite apart from any liability of the member companies.

Under Article 15 (2) of Regulation No 17, Finnboard may therefore be subject to fines of up to 10 % of its turnover in the preceding financial year.

However, Finnboard claims that for the purposes of Article 15 (2) its turnover is not the total value of the sales which it makes but only the commission which it receives on the sales made on behalf of its member companies. In its annual reports and published accounts Finnboard indeed presents its 'turnover' (as distinct from its 'sales') as the commission from those sales. In 1992, for instance, Finnboard's 'commission income' was US $ 20,2 million (ECU 15,7 million) on total sales at fob value of US $ 911 million (ECU 702 million). The first figure is in fact simply the amount of Finnboard's operating costs which are covered by the member companies. It would clearly be discriminatory and contrary to the intent of Article 15 if by setting up a joint sales agency and conducting all their sales of cartonboard via this entity the Finnboard producers who account for 10 %of the Community cartonboard market were able to limit any liability to fines to 10 % of its running expenses instead of 10 % of sales. As a common sales organization, Finnboard is not to be assimilated with an independent commercial agent. It would appear that in the various Member States, the customers' contracts are concluded with Finnboard (although title in the goods passes directly from the member mill to the customer). For the purposes of Article 15 (2) therefore the 'turnover' of Finnboard must be given its normal meaning namely the total invoiced value of the sales which it makes for its members.

This interpretation is supported by Finnboard's own published accounts; the balance sheet shows that Finnboard collects and receives into its accounts the total invoiced value of the sales made for its members. Under its current assets as of 31 December 1992 the figure of US $ 194 million (ECU 149,5 million) is shown as 'accounts receivable'.

(174) Given that it was Finnboard itself rather than the member companies which actively and directly participated in the cartel, it is appropriate to impose a fine on Finnboard and to take as the upper limit under Article 15 (2) 10 % of the total value of the invoiced sales made by Finnboard.

However, to reduce the risk of avoidance the Commission will also make each of the four Finnish GC producers which at the relevant times were members of Finnboard (Kyro, Tampella, Metsä-Serla and United Paper Mills) jointly and severally responsible with Finnboard for that part of the total fine which is approximately proportionate to its share of Finnboard's cartonboard sales in the Community during the last full calendar year in which the cartel is known

to have been in operation. The member companies deny all knowledge of any possible infringement by Finnboard and hence any liability to fines. However, Finnboard acted as their alter ego and in their interest when it participated in the cartel and they are responsible for its actions, particularly since each one was a member company of Finnboard and provided a member of its board of directors (see the judgment of the Court of Justice in Joined Cases 6 and 7/73, *Commercial Solvents* v. *Commission* [1]).

(175) For virtually the whole period during which the cartel is known to have been in operation, it was the four groups themselves which were listed as member companies of Finnboard. During 1991, however, three of them reorganized their structure so that the operating divisions (previously unincorporated) responsible for cartonboard were established as separate companies inside the group. Tampella incorporated its forest products division as Tampella Forest Inc. on 1 January 1991 and the new company took the place of the parent company in Finnboard. Metsä-Serla reformed its structure during 1991 and from 30 September 1991 it was represented in Finnboard by Metsä-Serla Paper and Board Ltd. Kyro corporatized its paper and board operations as of 1 January 1992 under the name Oy Kyro Board & Paper Ltd. The Kyro group's seat in Finnboard was taken by the new company. In most cases whatever formal change was made as regards the company membership, the same senior executives continued to represent each group as directors of Finnboard.

Apart from Tampella, these internal reorganizations (and the consequent formal changes in the membership of Finnboard) all took place after the date of the investigations in April 1991. In the case of Metsä-Serla and Kyro therefore no question as to the appropriate addressee arises; the group itself was formally a member of Finnboard for the whole of the relevant period from 1986 to April 1991. As regards Tampella, the fact that for the last few months of the known operation of the cartel its forest products division was incorporated does not affect the liability of the group itself (see recitals 142 and 143).

Nor does Tampella's subsequent transfer of its forest products operations (Tampella Forest Inc.) to Metsä-Serla at the beginning of 1993 mean that its responsibility for the participation of Finnboard in the infringement passes with the transferred subsidiary (see recitals 145 and 159).

This responsibility therefore remains with Tampella Corporation which is still in existence as an undertaking and in calculating the part of the fine for which Metsä-Serla is jointly and severally responsible with Finnboard the Commission takes no account of the acquisition,

HAS ADOPTED THIS DECISION:

Article 1

Buchmann GmbH, Cascades SA, Enso-Gutzeit Oy, Europa Carton AG, Finnboard — the Finnish Board Mills Association, Fiskeby Board AB, Gruber & Weber GmbH & Co KG, Kartonfabriek 'de Eendracht' NV (trading as BPB de Eendracht NV), NV Koninklijke KNP BT NV (formerly Koninklijke Netherlandse Papierfabrieken NV), Laakmann Karton GmbH & Co Kg, Mo Och Domsjö AB (MoDo), Mayr-Melnhof Gesellschaft mbH, Papeteries de Lancey SA, Rena Kartonfabrik A/S, Sarrió SpA, SCA Holding Ltd (formerly Reed Paper & Board (UK) Ltd), Stora Kopparbergs Bergslags AB, Enso Española SA (formerly Tampella Española SA) and Moritz J. Weig GmbH & Co KG have infringed Article 85 (1) of the EC Treaty by participating,

— in the case of Buchmann and Rena from about March 1988 until at least the end of 1990,

— in the case of Enso Española, from at least March 1988 until at least the end of April 1991,

— in the case of Gruber & Weber from at least 1988 until late 1990,

— in the other cases, from mid-1986 until at least April 1991,

in an agreement and concerted practice originating in mid-1986 whereby the suppliers of cartonboard in the Community

— met regularly in a series of secret and institutionalized meetings to discuss and agree a common industry plan to restrict competition,

— agreed regular price increases for each grade of the product in each national currency,

— planned and implemented simultaneous and uniform price increases throughout the Community,

— reached an understanding on maintaining the market shares of the major producers at constant levels, subject to modification from time to time,

— increasingly from early 1990, took concerted measures to control the supply of the product in the Community in order to ensure the implementation of the said concerted price rises,

[1] [1974] ECR 223.

— exchanged commercial information on deliveries, prices, plant standstills, order backlogs and machine utilization rates in support of the above measures.

Article 2

The undertakings named in Article 1 shall forthwith bring the said infringement to an end, if they have not already done so. They shall henceforth refrain in relation to their cartonboard activities from any agreement or concerted practice which may have the same or a similar object or effect, including any exchange of commercial information

(a) by which the participants are directly or indirectly informed of the production, sales, order backlog, machine utilization rates, selling prices, costs or marketing plans of other individual producers;

or

(b) by which, even if no individual information is disclosed, a common industry response to economic conditions as regards price or the control of production is promoted, facilitated or encouraged;

or

(c) by which they might be able to monitor adherence to or compliance with any express or tacit agreement regarding prices or market sharing in the Community.

Any scheme for the exchange of general information to which they subscribe, such as the Fides system or its successor, shall be so conducted as to exclude not only any information from which the behaviour of individual producers can be identified but also any data concerning the present state of the order inflow and backlog, the forecast utilization rate of production capacity (in both cases, even if aggregated) or the production capacity of each machine.

Any such exchange system shall be limited to the collection and dissemination in aggregated form of production and sales statistics which cannot be used to promote or facilitate common industry behaviour.

The undertakings are also required to abstain from any exchange of information of competitive significance in addition to such permitted exchange and from any meetings or other contact in order to discuss the significance of the information exchanged or the possible or likely reaction of the industry or of individual producers to that information.

A period of three months from the date of the communication of this Decision shall be allowed for the necessary modifications to be made to any system of information exchange.

Article 3

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

(i) Buchmann GmbH, a fine of ECU 2 200 000;

(ii) Cascades SA, a fine of ECU 16 200 000;

(iii) Enso-Gutzeit Oy, a fine of ECU 3 250 000;

(iv) Europa Carton AG, a fine of ECU 2 000 000;

(v) Finnboard — the Finnish Board Mills Association, a fine of ECU 20 000 000, for which Oy Kyto AB is jointly and severally liable with Finnboard in the sum of ECU 3 000 000, Metsä-Serla Oy in the sum of ECU 7 000 000, Tampella Corporation in the sum of ECU 5 000 000 and United Paper Mills Ltd in the sum of ECU 5 000 000;

(vi) Fiskeby Board AB, a fine of ECU 1 000 000;

(vii) Gruber & Weber GmbH & Co KG, a fine of ECU 1 000 000;

(viii) Kartonfabriek 'De Eendracht' NV (trading as 'BPB de Eendracht'), a fine of ECU 1 750 000;

(ix) NV Koninklijke KNP BT NV, a fine of ECU 3 000 000;

(x) Laakmann Karton GmbH & Co KG, a fine of ECU 2 200 000;

(xi) Mayr-Melnhof Karton Gesellschaft mbH, a fine of ECU 21 000 000;

(xii) Mo Och Domsjö AB, a fine of ECU 22 750 000;

(xiii) Papeteries de Lancey SA, a fine of ECU 1 500 000;

(xiv) Rena Kartonfabrik A/S, a fine of ECU 200 000;

(xv) Sarrió SpA, a fine of ECU 15 500 000;

(xvi) SCA Holding Ltd, a fine of ECU 2 200 000;

(xvii) Stora Kopparbergs Bergslags AB, a fine of ECU 11 250 000;

(xviii) Enso Española SA, a fine of ECU 1 750 000;

(xix) Moritz J. Weig GmbH & Co KG, a fine of ECU 3 000 000.

Article 4

The fines imposed under Article 3 shall be payable in ecu within three months of the date of notification of this Decision to the following bank account of the Commission of the European Communities: 310-0933000-43, Banque Bruxelles-Lambert, Agence Européenne, Rond Point Schuman 5, B-1040 Brussels.

On expiry of that period, interest shall automatically be payable at the rate charged by the European Monetary Institute on its ecu operations in the first working day of the month in which this Decision was adopted, plus 3,5 percentage points, namely 9,25 %.

Article 5

This Decision is addressed to:

— Buchmann GmbH, D-76857 Rinnthal,

— Cascades SA, les Mercuriales, Tour Ponant, 40 rue Jean-Jaurès, F-93176 Bagnolet Cedex,

— Enso-Gutzeit Oy, Kanavaranta 1, SF-00160 Helsinki,

— Europa Carton AG, Spitalerstrasse 11, D-20095 Hamburg,

— Finnboard — the Finnish Board Mills Association, Eteläesplanadi 2, SF-00130 Helsinki,

— Oy Kyro Ab, SF-39200 Kyröskoski,

— Metsä-Serla Oy, Fabianinkatu 8, SF-00130 Helsinki,

— Tampella Corporation, PO Box 256, Lapintie 1, SF-33101 Tampere,

— United Paper Mills, PO Box 40, SF-37601 Valkeakoski,

— Fiskeby Board AB, Box 1, Fiskeby, S-60102 Norrköping,

— Gruber & Weber GmbH & Co KG, D-76593 Gernsbach,

— Kartonfabriek 'de Eendracht' NV (trading as BPB de Eendracht), Woldweg 18, NL-9902 AG Appingedam,

— NV Koninklijke KNP BT NV, Paalbergweg 2, NL-1105 AG Amsterdam 20,

— Laakmann Karton GmbH & Co KG, Bonsfelderstrasse 1—4, D-42555 Velbert,

— Mo Och Domsjö AB, Strandvägen 1, S-11484 Stockholm,

— Mayr-Melnhof Karton Gesellschaft mbH, Brahmsplatz 6, A-1041 Vienna,

— Papeteries de Lancey SA, rue du Petit Clamart, F-78140 Vélizy Villacoublay,

— Rena Kartonfabrik A/S, N-2451 Rena,

— Sarrió SpA, Via G. de Medici 17, I-20013 Pontenuovo-Magenta (Milano),

— SCA Holding Ltd, New Hythe House, Aylesford, Maidstone Kent ME20 7PB,

— Stora Kopparbergs Bergslags AB, S-79180 Falun,

— Enso Española SA, Carretera N-2 Km 592, 6, E-08755 Castellbisbai,

— Moritz J. Weig GmbH & Co KG, Polcherstrasse 113, D-56727 Mayen.

This Decision is enforceable pursuant to Article 192 of the Treaty.

Done at Brussels, 13 July 1994.

For the Commission

Karel VAN MIERT

Member of the Commission

Table 1

Production, sales and consumption of cartonboard (1990)

(in '000 tonnes)

	Production				Sales					Consumption															
					Total	Of which exports				By origin												Total	By grade		
										Imports EC				Imports EFTA				Domestic origin							
	SBS	GC	GD	Total		EC	EFTA	Others	Total	SBS	GC	GD	Total	SBS	GC	GD	Total	SBS	GC	GD	Total		SBS	GC	GD
Benelux	—	24,4	6,4	30,8	30,7	22,3	0,9	—	23,2	—	16,3	40,2	56,5	6,7	20,2	8,3	35,2	—	5,2	2,4	7,6	99,3	6,7	41,7	50,9
Denmark	—	—	—	—	—	—	—	—	—	—	0,7	7,3	8,0	10,0	22,1	15,4	47,5	—	—	—	—	55,5	10,0	22,8	22,7
Germany	—	205,4	656,8	862,2	861,7	217,6	20,3	101,4	339,3	—	21,7	76,3	98,0	81,7	86,8	70,1	238,6	—	132,6	386,1	518,7	855,3	81,7	241,1	532,5
Spain	5,0	46,7	229,3	281,0	276,5	57,8	1,2	53,9	112,9	—	8,3	4,5	12,8	16,4	18,2	0,4	35,0	4,1	35,3	123,4	162,8	210,6	20,5	61,8	128,3
France	—	167,4	143,6	311,0	301,9	99,9	2,0	20,0	121,9	—	43,8	136,7	180,5	27,8	79,9	33,7	141,4	0,2	97,3	82,4	179,9	501,8	28,0	221,0	252,8
Greece	—	—	—	—	—	—	—	—	—	—	2,1	8,4	10,5	5,1	6,5	2,7	14,3	—	—	—	—	24,8	5,1	8,6	11,1
Ireland	—	—	—	—	—	—	—	—	—	—	3,7	4,5	8,2	5,5	12,8	0,9	19,2	—	—	—	—	27,4	5,5	16,5	5,4
Italy	—	49,5	537,4	586,9	588,3	107,9	2,9	51,3	162,1	—	21,2	10,2	31,4	18,6	21,9	30,8	71,3	—	41,7	384,5	426,2	528,9	18,6	84,8	425,5
Netherlands	—	32,0	100,7	132,7	127,2	85,1	4,3	5,6	95,0	—	20,6	36,8	57,4	23,0	28,1	19,6	70,7	—	10,9	21,1	32,0	160,1	23,0	59,6	77,5
Portugal	—	—	—	—	—	—	—	—	—	—	6,1	14,3	20,4	0,9	4,3	1,3	6,5	—	—	—	—	26,9	0,9	10,4	15,6
United Kingdom	—	178,8	50,8	229,6	225,3	30,0	2,7	10,6	43,3	—	40,6	95,0	135,6	41,0	199,8	36,8	277,6	—	139,4	42,6	182,0	595,2	41,0	379,8	174,4
EC	5,0	704,2	1 725,0	2 434,2	2 411,6	620,6	34,3	242,8	897,7	—	185,1	434,2	619,3	236,7	500,6	220,0	957,3	4,3	462,4	1 042,5	1 509,2	3 085,8	241,0	1 148,1	1 696,7
Sweden	229,8	326,2	99,1	655,1	649,1	418,9	66,5	85,4	570,8	—	2,0	3,6	5,6	1,1	7,0	1,0	9,1	11,4	36,1	30,6	78,1	92,8	12,5	45,1	35,2
Norway	—	20,6	—	20,6	19,3	13,4	0,7	1,5	15,6	—	0,7	1,6	2,3	2,4	8,0	2,6	13,0	—	3,7	—	3,7	19,0	2,4	12,4	4,2
Finland	125,5	504,6	2,0	632,1	603,2	337,3	24,3	189,2	550,8	—	—	0,8	0,8	2,2	1,7	3,4	7,3	14,6	37,6	0,2	52,4	60,5	16,8	39,3	4,4
Austria	—	—	339,0	339,0	336,4	134,4	11,9	108,4	254,7	—	4,9	9,2	14,1	6,5	11,1	1,9	19,5	—	—	81,7	81,7	115,3	6,5	16,0	92,8
Switzerland	—	10,2	87,2	97,4	98,0	53,0	2,5	4,1	59,6	—	5,2	4,0	9,2	20,4	25,1	11,5	57,0	—	5,3	33,1	38,4	104,6	20,4	35,6	48,6
EFTA	355,3	861,6	527,3	1 744,2	1 706,0	957,0	105,9	388,6	1 451,5	—	12,8	19,2	32,0	32,6	52,9	20,4	105,9	26,0	82,7	145,6	254,3	392,2	58,6	148,4	185,2
EEA	360,3	1 565,8	2 252,3	4 178,4	4 117,6	1 577,6	140,2	631,4	2 349,2	—	197,9	453,4	651,3	269,3	553,5	240,4	1 063,2	30,3	545,1	1 188,1	1 763,5	3 478,0	299,6	1 296,5	1 881,9

Source: PG Paperboard information exchange.

Table 2

Attendance at PWG meetings from November 1989

	28. 11. 1989	6. 2. 1990	6. 4. 1990	23. 5. 1990	26. 11. 1990	1. 2. 1991	12. 4. 1991	27. 5. 1991	5. 6. 1991
Cascades	×	×	×	×	×	×	×	absent	×
CBC	×*	×	×	×*	×*	×	no info	×	×
Feldmühle	×*	×	×	×*	×*	×	no info	×	×
Finnboard	absent?	no info	×	×	×	×	×	no info	×
M-M	×*	×	×	×	×	×	×	×	×
MoDo	×	?	×	×	×	×	denied	denied	denied (1)
Sarrió/Saffa	×*	?	×	×	×	×	×	×	absent
Weig	×	×	×	×	×	×	no info	×	absent

× = presence at PWG admitted.
×* = probably present at PWG owing to attendance at President Conference on same day.
(1) MoDo denies attending PWG meeting on 5 June 1991 but was present at a President Conference on same day.

Table 3

Attendance at President Conferences

	(1) 29. 6. 1986	(2) 10. 11. 1986	(3) 20. 5. 1987	(4) 4. 12. 1987	(5) 25. 5. 1988	(6) 17. 11. 1988	(7) 17. 5. 1989	(8) 28. 11. 1989	(9) (1) 23. 5. 1990	(10) 26. 11. 1990	(11) 5. 6. 1991
Badische (KNP)	×		×	×	×		×				
Billerud (Stora)			×								
Cascades (2)		×	×	×	×	×	×	×	×	×	×
CBC (Stora)	×	×	×	×	×	×	×	×	×	×	×
Deisswil (M-M)		×				×	×	×	×		
De Eendracht	×		×	×		×			?		×
De Lancey	×		×	×	×	×	×		?	×	×
Djupafors (Cascades) (2)	×						×				
Duffel (Cascades) (2)	×		×	×	×	×	×				
Enso-Gutzeit	×		×	×	×	×	×	×	?	×	×
Europa Carton	×			×			×		×	×	
Feldmuehle (Stora)	×	×	×	×	×	×	×	×	×	×	×
Finnboard	×	×	×		×	×	×		×	×	×
Fiskeby	×						×		?	×	×
Iggesunds Bruk (MoDo) (3)	×		×	×	×		×	×	×	×	×
Kopparfors (Stora)				×	×	×		×	×	×	
KNP Vouwkarton (KNP)	×	×	×	×	×	×	×				
Laakmann	×		×	×	×	×	×	×	×		
Mayr-Melnhof (incl. FS)	×	×	×	×	×	×	×	×	×	×	×
Metsä Serla (FB)	×		×		×		×		×		×
Prat Carton (Sarrió)	×				×	×		×			
Reedpack (SCA)	×	×	×	×	×	×	×	×	×	×	
Rena									×	×	×
Saffa (Sarrió)	×	×	×	×	×	×	×	×	×	×	
United Paper Mills (FB)							×				
Tampella Espanola					×	×	×				
Thames Board (MoDo) (3)	×	×	×	×	×	×	×	×	×	×	×
Weig	×	×		×	×		×	?	×	×	
Scanpapp/NPI	×		×	×	×	×	×	×	?	×	×

(1) The attendance list for the Helsinki meeting of 23 May 1990 was not annexed to the minutes of the meeting.
(2) After the acquisition by Cascades of Djupafors and Duffel in 1989, these mills ceased to be separately represented.
(3) From 17 May 1989 the chairman of Iggesund Paperboard AB represented both MoDo mills.

Table 4

Participation in known JMC meetings

Dates of meetings	Badische (KNP)	Buchmann [1]	Cascades	Europa Carton	Finnboard [2]	Fiskeby [3]	Gruber & Weber [4]	Kartonfabriek de Eendracht [5]	KNP [6]	Laakmann [7]	M-M/FS [8]	MoDo Igg/TBM [9]	Papeteries de Lancey [10]	Prat Carton (Sarrió)	Rena	Sarrió/Saffa [11]	SCA Holding (Reed)	Stora [12]	Tampella Española	Weig
13 January 1988				×													×			
5 February 1988																	×			
17 February 1988																	×			
16—17 March 1988	×		×														×			
11 May 1988																	×			
1 June 1988																	×			
28—29 June 1988			×										×							×
31 August 1988	×		×	×																
20 September 1988										×							×			
4 November 1988																	×			
13 December 1988																	×			
8—9 February 1989			×		×	×					×						×		×	
3—4 April 1989				×				×			×						×			
27—28 June 1989			×		×						×	×	×				×			×
6—7 September 1989			×		×						×	×			×	×	×	×	×	
16 October 1989											×	×								
23 October 1989			×			×					×	×					×			
29 November 1989			×	×	×	×					×	×								
6—7 February 1990		×	×		×	×	×				×	×			×			×	×	
4—5 April 1990			×	×	×	×	?				×	×						×	×	
14 May 1990		×	×				×				×									
28 June 1990					×					×	×	×		×						
4 September 1990		×	×	×			×				×			×					×	×
6 September 1990					×						×	×			×			×		
8—9 October 1990		×	×		×		?				×	×		×	×			×	×	
19—20 November 1990		×	×		×		?	×			×	×								×

Dates of meetings	Badische (KNP)	Buch-mann (1)	Cascades	Europa Carton	Finn-board (2)	Fiske-by (3)	Gruber & We-ber (4)	Karton-fabriek de Een-dracht (5)	KNP (6)	Laak-mann (7)	M-M/ FS (8)	MoDo Igg/ TBM (9)	Pape-teries de Lan-cey (10)	Prat Carton (Sarrió)	Rena	Sarrió/ Saffa (11)	SCA Holding (Reed)	Stora (12)	Tampella Española	Weig
29—30 January 1991		×	×		×					×	×	×	×					×	×	×
5 March 1991		×	×		×						×	×	×					×	×	
10 April 1991		×	×		×						×	×	×						×	×
3/10 July 1991			×		×						×					×		×		

(1) Buchmann admits participation from 1988 but no details available before 1990.
(2) Finnboard has provided no information on attendance for period before 1989.
(3) Fiskeby admits participation from 1983 but no details available before 1989.
(4) Gruber & Weber admits participation from 1989 but no details before 1990.
(5) De Eendracht admits participation from 1989.
(6) KNP is known to have attended 'most meetings'.
(7) Laakmann admits attending meetings from 1984.
(8) M-M makes no admissions regarding attendance at meetings before 1989.
(9) MoDo admits that TBM 'may have attended' before 1989 but provides no details.
(10) Papeteries de Lancey admits attending meetings in 1988, 1989, 1990 and 1991.
(11) Sarrió/Saffa admits regular participation in meetings but provides no details.
(12) Stora admits participation in most meetings from the beginning.

Table 5

Participation in MC/JMC meetings

Producer	Admitted participation		Identified as participating in meetings by														
	from	to	Buchmann (GD)	Cascades (GC/GD)	Europa (GD)	Finnboard (GC)	Karton-fab. de Eendracht	Laakmann	M-M/FS	MoDo	Papeteries de Lancey	Prat Carton	Sarrió/ Saffa	SCA/ Reed-pack (1)	Stora	Tampella Española	Weig
Badische (KNP)	1986	1989												infrequently			
Buchmann	1988	1990	×	×	×	×	×	×	×				×	once only	×		×
Cascades	1987	1991	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×
Europa Carton	1988	1990			×			×	×	×			×	—	×		
Finnboard	1989	1991		×		×				×	×	×	×	(GC only)	×	×	
Fiskeby	1983	1990			×				×				×	occasionally	×		
Gruber & Weber	1989	1990	×		×		×	×	×				×	occasionally		×	×
Kartonfabriek de Eendracht	1989	1990	×				×		×	×			×	occasionally	×		×
KNP	1989	1989 (2)		×				×					×	×	×		
Laakmann	1984	1990	×		×		×	×	×				×	×	×		×
M-M/FS	1989	1991	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×
MoDo (Igg/TBM)	1989	1991		×		×	×		×	×	×	×	×	(GC only)	×	×	
Papeteries de Lancey	1988	1991		×		×			×	×	×	×	×	occasionally	×		
Prat Carton	1990	1991	×	×		×		×			×	×		occasionally	×	×	×
Rena	1989	1990		×		×			×	×	×		×				
Sarrió/Saffa	1984	1991		×	×	×	×	×	×	×	×	×	×	×	×	×	×
SCA/Reedepack	1987	1990	×	×	×		×		×	×		×	×	×	×	×	×
Stora	1984	1991	×	×		×		×	×	×	×	×	×	×	×	×	×
Tampella Española	1989	1991	×	×		×		×	×	×	×	×	×	occasionally	×	×	×
Weig	1989	1991	×	×	×		×	×	×	×			×	occasionally	×		×
NPI	no reply			×		×			×	×				×			

(1) Reed P & B/SCA attended GD meetings only.
(2) After acquisition by M-M on 1 January 1990, M-M Kerbeek continued to participate in the JMC.

Table 6

Attendance at Economic Committee

	15. 10. 1986	4. 2. 1987	4. 11. 1987	27. 1. 1988	3. 5. 1988	20. 9. 1988	3. 2. 1989	8. 5. 1989	3. 10. 1989	20. 2. 1990	25. 10. 1990
Buchmann										×	
Badische (KNP)	×	×	×					×			
CBC (Stora)	×	×	×	×	×	×	×	×	×	×	×
Cascades	×	×			×						
Deisswil (M-M)	×		×	×	×	×		×		×	
Duffel (Cascades)				×	×		×	×			
Feldmühle (Stora)	×			×	×						
Finnboard	×	×	×	×	×	×	×	×	×	×	×
Fiskeby								×			
Kartonfabriek de Eendracht	×	×					×	×	×	×	×
Kopparfors (Stora)			×	×					×		
KNP [1]	×	×	×	×	×	×	×	×	×	×	×
Laakmann	×	×	×	×	×				×	×	×
M-M/FS	×		×	×	×	×	×	×	×		
MoDo (TBM/Iggesund)	×	×		×		×	×	×			
Papeteries de Lancey		×	×	×	×	×	×	×	×	×	
Prat Carton (Sarrió)						×		×	×		
Reed P & B (SCA)	×	×	×	×	×	×	×	×		×	
Sarrió/Saffa		×			×	×	×	×	×	×	
Tampella Española		×	×	×	×			×			
NPI	×	×	×	×	×	×	×	×	×	×	×

[1] From 1 January 1990, KNP Eerbeek.

Table 7

Participation in PG Paperboard groups

Undertaking	President Conference	PWG	JMC	Economic Committee
Buchmann			×	× (1)
Cascades	×	×	×	×
Enso Gutzeit	×	(2)	(2)	(2)
Europa Carton	×		×	
Finnboard	×	×	×	×
Fiskeby	×		×	× (3)
Gruber & Weber			×	
Kartonfabriek de Eendracht	×		×	×
KNP	×	×	×	×
Laakmann	×		×	×
M-M	×	×	×	×
MoDo	×	×	×	×
Papeteries de Lancey	×		×	×
Rena	×		×	×
Sarrió	×	×	×	×
SCA Holding (formerly Reed P & B)	×		×	×
Stora	×	×	×	×
Tampella Española	×		×	×
Weig	×	×	×	

(1) On one occasion only since 1986.
(2) Enso Gutzeit was a member of the NPI which attended itself or was represented by Finnboard.
(3) On one occasion only.

Table 8

Liability of successor undertakings

Addressee	Undertaking acquired	on/in	Before acquisition undertaking participated in	from/to	Economic and functional continuity after acquisition	Continuation of conduct after acquisition	Remarks
Cascades SA	1. Kartonfabriek van Duffel NV	1 March 1989	PC, JMC, EC	1986 to 1989	yes	yes	As Cascades Duffel and Cascades Djupafors continued to participate in PG Paperboard along with other Cascades companies until all group commercial functions were taken on by Cascades Commercialisation SA in January 1990.
	2. Djuparfors AB	1 April 1989	PC, JMC	1986 to 1989	yes	yes	
NV Koninklijke KNP BT	KNP	Early 1993 (KNP merged with two other Dutch paper groups)	PC, PWG, JMC, EC	1986 to 1991 (1)	yes	—	
Mayr-Melnhof (2) (3) (4) (5)	Deisswil	1 January 1990 (full control)	PC, JMC, EC	1986 to 1989	yes	yes	After acquisition by M-M Deisswil representatives continued to take part in some PG Paperboard groups.
MoDo	1. Thames Board Ltd	1 January 1988 (acquired by AB Iggesunds Bruk and renamed Iggesund Paperboard (Workington) Ltd	PC, PWG, JMC, EC	1986 to 1988	yes	yes	After acquisition by AB Iggesunds Bruk TBM/IP(W) representatives continued to attend PC and PWG until mid-1989 and JMC until 1991.
	2. AB Iggesunds Bruk	1 January 1989 (fusion of MoDo/ Holmen/Iggesund)	PC	1986 to 1988	yes	yes	Following merger the new MoDo group was represented from mid-1989 in PC, PWG and JMC by Iggesund Paperboard AB (Cartonboard Division of MoDo). Representatives from IP(W) as well as the head office continued to attend the JMC.
Sarrió	1. Cartiere Saffa SpA	1989 to 1990 (fusion of Saffa with Sarrió)	PC, PWG, JMC, EC	1986 to 1990	yes	yes	After fusion participation in meetings of Saffa/Sarrió continued as before.
	2. Prat Carton	February 1991	PC, JMC, EC	1986—	yes	—	Having continued the economic activity of Prat Carton, Sarrió is responsible for its prior participation.

Addressee	Undertaking acquired	on/in	Before acquisition undertaking participated in	from/to	Economic and functional continuity after acquisition	Continuation of conduct after acquisition	Remarks
Stora	1. Kopparfors AB	1 January 1987	PC, EC	1986	yes	yes	After acquisition by Stora Kopparfors AB continued as member of PC, JMC and EC.
	2. Feldmühle AG	April to December 1990 (FM/Stora merger)	PC, PWG, JMC, EC	1986 to 1990	yes	yes	1. Under new Stora group structure, cartonboard activities of FM and Kopparfors are combined in Billerud Carton Board division. 2. After merger with Stora participation in cartel continued.
	3. Papeterie Béghin-Corbehem	1989 (by FM)	PC, PWG, JMC, EC	1986 to 1989	yes	yes	FM acquired 50 % of BC in 1988 and remainder in 1989.

(1) KNP sold KNP Vouwkarton to M-M as of 1 January 1990 but retained Badische Kartonfabrik.
(2) M-M and FS-Karton have been integrated since 1984.
(3) KNP remains responsible for its involvement in the cartel prior to acquisition by M-M of KNP Vouwkarton (now M-M Eerbeek) on 1 January 1990.
(4) Laakmann was acquired by M-M in late 1992 at the same time as the opening of the procedure in this case and is treated as a separate undertaking.
(5) The acquisition by M-M of the Colthrop Board mill does not affect the responsibility of SCA Holding Ltd (formerly called Reed Paper & Board (UK) Ltd).

ANNEX

PRICE INITIATIVES 1987—1991

A. PRICE INCREASE JANUARY 1987 (United Kingdom only)

	Germany (DM/100 kg)	France (FF/100 kg)	United Kingdom (£/t)	Belgium (Bfrs/kg)	Netherlands (Fl/100 kg)	Italy (Lit/kg)	Denmark (Dkr/t)
Cascades (Djupafors)			45 15. 12 a ([1]) 31. 1 b				
Finnboard			GC 45 13. 11 a 26. 1 b Graphic 55 10. 11 a 15. 12 b				
Fiskeby			9 % — a 16. 2 b				
De Eendracht			8 % 14. 11 a 12. 1 b				
KNP/Eerbeek			9 % November a 2. 2 b				
Laakmann			9 % November a 1. 1 b				
M-M			9 % November a 12. 1 b				
Iggesund-Bruks (MoDo)			Graphic 55 3. 11 a 1. 1 b				
Thames Board Mill (MoDo)			GC 45 5. 11 a 26. 1 b				
Sarrió Saffa			9 % — a January b				
Reed P & B (SCA)			GD 1 30 GD 2 20 29. 1 a 30. 3 b				
Feldmühle (Stora)			9 % 1. 12 a February b				
Kopparfors (Stora)			50 2. 12 a 1. 2 b				

([1]) a = date increase notified to customers.
b = date increase effective.

B. PRICE INCREASE MARCH/APRIL 1988

	Germany (DM/100 kg)	France (FF/100 kg)	United Kingdom (£/t)	Belgium (Bfrs/kg)	Netherlands (Fl/100 kg)	Italy (Lit/kg)	Denmark (Dkr/t)
Buchmann	GC 15 GD 12 30. 12 a 15. 2 b						
Cascades-France	min. A, B, C B 2-15 B 2-16	GC 1 70 GC 2 50 GD 40 24. 12 a 1. 3 b		GC 3 GD 2,5 19. 2 a 19. 2 b			
Cascades (Djupafors)		GC 2 45—55 20. 1 a 1. 3 b	GC 6 % later: 5 % 4. 1 a 1. 4 b				
Enso Gutzeit			SBS 40 1. 3 a 18. 4 b				
Europa Carton	GD doc. — a B 4-1 29. 2. b B 4-2				doc. B 4-3		
Finnboard	GC 2 15 4. 1 a 10. 2 b	GC 2 50 4. 2 a 1. 3 b	GC 2 6 % 12. 2 a 11. 4 b				GC 2 ? 7. 3 a 12. 5 b Graphic 200 12. 5 a 15. 6 b
Fiskeby	min. A, B, C B 6-2		GD 5 % 20 23. 3 a 27. 4 b				
KNP/Eerbeek	GC 12 % GD 10 % 11. 1 a 1. 3 b		GC 28 GD 20 14. 3 a 1. 5 b	GC 3 GD 2 8. 2 a 1. 4 a			
Laakmann	GD 9,5 % (= 11—13 DM) January a mid-February b		GD 5 % — 11. 4 a b	GD 2 17. 2 a 1. 4 b	6—7 % 17. 6 a 1. 7 b		
FS/MM	GC 15 GD 12 18. 12 a 15. 2 b	GC 2 50 GD 40 18. 1 a 1. 3 b for GC 1. 4 b for GD	6 % 23. 2 a 14. 4 b		GC 15 GD 12 — a 1. 6 b	50 14. 12 a 25. 1 b	
Deisswil (MM)	GC 15 GD 12 13. 1 a 1. 3 b	GC 50 GD 40 20. 1 a 1. 4 b	20 orig.: 25 18. 3 a 22. 4 b				GC 250 GD 200 — a 15. 3 b

(1) a = date increase notified to customers.
b = date increase effective.

	Germany (DM/100 kg)	France (FF/100 kg)	United Kingdom (£/t)	Belgium (Bfrs/kg)	Netherlands (Fl/100 kg)	Italy (Lit/kg)	Denmark (Dkr/t)
TBM (MoDo)			6 % 8. 2 a 8. 4 b				
Iggesund-Bruks (MoDo)			SBS 40 24. 3 a 6. 6 b		SBS 2—5 % (12) 11. 4 a 1. 7 b		
De Lancey		50 — a 1. 3 b					
Rena			6 % 11. 3 a 25. 4 b				
Sarrió Saffa	GC 15 GD 12	GC 50 GD 40 3. 2 a 1. 3 b for GC 1. 4 b for GD	6 % 8. 3 a 1. 5 b	GC 3 GD 2,5	GC 15 GD 12 — a 1. 4 b	50 — a 15. 1 b	
Reed P & B (SCA)	GD 12 — a 1. 3 b	GD 40 — a 1. 4 b	GD 20 26. 2 a 25. 4 b				
Feldmühle (Stora)	GC 15 GD 12 13. 1 a 15. 2 b	GC 1 70 GC 2 50 GD 40 21. 1 a 1. 3 b	6 % 23. 2 a 5. 4 b	GC 3 GD 2,5 12. 2 a 1. 4 b	GC 15 GD 12 10. 3 a 1. 5 b	doc. B 17-2 B 17-18	GC 250 GD 200 — a 15. 3 b
Kopparfors (Stora)	GC 15 29. 12 a 8. 2 b		GC 6 % 17. 2 a 15. 4 b		GC 15 11. 3 a 1. 5 b		GC 250 29. 1 a 1. 3 b
CBC (Stora)		GC 2 50 21. 1 a 1. 3 b					
Tampella Española		GC 2 50 GD 40 — a 1. 3 b	GC 35 GD 20 — a 1. 4 b				
Weig	GD 12 6. 1 a 22. 2 b	GD 40 4. 2 a 11. 4 b	GD 5—6 % 25. 2 a 1. 4 b	GD 2,5 11. 2 a 1. 4 b	GD 10 DM 28. 3 a 2. 5 b		

C. PRICE INCREASE OCTOBER 1988

	Germany (DM/100 kg)	France (FF/100 kg)	United Kingdom (£/t)	Belgium (Bfrs/kg)	Netherlands (Fl/100 kg)	Italy (Lit/kg)	Denmark (Dkr/t)
Buchmann	Individual-increases by customer — a 17. 10 b						

(1) a = date increase notified to customers.
b = date increase effective.

	Germany (DM/100 kg)	France (FF/100 kg)	United Kingdom (£/t)	Belgium (Bfrs/kg)	Netherlands (Fl/100 kg)	Italy (Lit/kg)	Denmark (Dkr/t)
Cascades	GC 15 GD 9 25. 7 a 1. 10 b			GC 3 GD 2 — a 1. 10 b 1. 11 b		70 30. 6 a 15. 7 b	
Enso Gutzeit	SBS 10—13 30. 8 a 15. 10 b	SBS 50 29. 8 a 1. 10 b	SBS 50 21. 11 a 23. 1 b	SBS 2 29. 9 a 1. 10 b	SBS 6 % 19. 10 a 1. 1 b		SBS 350—500 — a 1. 10 b 1. 1 b
Europa Carton	GD 9 — a 31. 10 b				GD 10 — a 15. 11 b		GD 350 14. 9 a 1. 11 b
Finnboard	GC 15 11. 7 a 1. 10 b	GC 50 26. 8 a 1. 10 b		GC 3 11. 7 a 1. 10 b	GC 15 11. 7 a 1. 10 b	GC 100 later: 70 11. 7 a 1. 10 b	385 1. 8 a 1. 10 b
Fiskeby	GD 9 July a 1. 11 b	GD 30 11. 7 a 1. 10 b					GD 350 — a 1. 11 b
Gruber & Weber	GD 9 2. 8 a 15. 10 b						
KNP/Eerbeek	GC 10 % GD 7 % 29. 8 a 20. 10 b	GC 50 GD 30 15. 7 a 1. 10 b					
KNP/Badische	GD 9 August a 1. 9 b						
Laakmann	GD 9 28. 7 a 1. 10 b			GD 2 19. 9 a 1. 11 b			
FS/MM	GC 15 GD 9 25. 7 a 15. 10 b						
Deisswil (MM)	GD 9 26. 9 a 2. 11 b	GC 50 GD 30 7. 7 a 1. 11 b			GC 15 GD 10 13. 10 a 1. 12 b		
TBM (MoDo)		GC 45—55 15. 7 a 1. 10 b					
Iggesund-Bruks (MoDo)	SBS 10—15 19. 7 a 1. 10 b		SBS 50 9. 11 a 9. 1 b (Graphic)		SBS 5 % (12) 2. 9 a 1. 1 b		
De Lancey		GC 50 22. 7 a 1. 10 b					

(1) a = date increase notified to customers.
b = date increase effective.

	Germany (DM/100 kg)	France (FF/100 kg)	United Kingdom (£/t)	Belgium (Bfrs/kg)	Netherlands (Fl/100 kg)	Italy (Lit/kg)	Denmark (Dkr/t)
Sarrió Saffa	GC 15 GD 9 27. 7 a 1. 11 b	GC 50 GD 30 26. 7 a 1. 11 b		GC 3 GD 2 25. 7 a 1. 11 b	GC 15 GD 10 25. 7 a 1. 11 b		
Feldmühle (Stora)	GC 15 GD 9 19. 7 a 1. 10 b	GC 50—60 GD 30 25. 7 a 1. 10 b		GC 3 GD 2 — a 1. 10 b	GC 15 GD 10 20. 7 a 1. 10 b	GC 100 GD 70 11. 10 a — b	GC 385 GD 185 15. 9 a 1. 10 b
Kopparfors (Stora)	GC 15 13. 7 a 1. 10 b	GC 50 18. 8 a 1. 10 b		GC 3 15. 7 a 1. 10 b	GC 15 July a 1. 10 b	GC 70 14. 7 a 15. 9 b	GC 385 15. 7 a 1. 9 b
CBC (Stora)		GC 50 21. 7 a 3. 9 b					
Weig	GD 9 12. 8 a 17. 10 b	GC 30 5. 9 a 24. 10 b		GD 2 14. 9 a 1. 11 b	GD 10 — a 1. 11 b		

D. PRICE INCREASE APRIL 1989

	Germany (DM/100 kg)	France (FF/100 kg)	United Kingdom (£/t)	Belgium (Bfrs/kg)	Netherlands (Fl/100 kg)	Italy (Lit/kg)	Denmark (Dkr/t)
Buchmann	GC 17 GD 9 — a 17. 4 b						
Cascades France	GC 17 GD 9 16. 1 a 1. 4 b for GC 1. 5 b for GD	GC 60 GD 30 10. 1 a 1. 4 b for GC 1. 5 b for GD	GC — GD 25 17. 2 a 10. 4 b	GC 3,5 GD 2,5 9. 1 a 1. 4 b for GC 1. 5 b for GD	GC 19 GD 10 16. 1 a 1. 4 b for GC 1. 6 b for GD	GC 120 GD 80 23. 11 a 16. 2 b for GC 2. 1 b for GD	
Cascades (Djupafors)			GC 55 10. 2 a 31. 3 b				
Cascades Duffel				GC 3,5 GD 2,5 5. 1 a 3. 4 b			
Enso Gutzeit	SBS 9 10. 3 a 10. 4 b	(SBS) 60 13. 2 a 1. 4 b					SBS 350—550 — a 1. 3 b 1. 4 b
Europa Carton	GD 9 — a 1. 5 b				GD 10 14. 4 a 29. 5 b		
Finnboard	GC 17 20. 1 a 1. 4 b	GC 60 — a 1. 4 b	GC 55 2. 2 a 3. 4 b	GC 3,5 16. 1 a 28. 3 b			GC 550 25. 1 a 1. 3 b
Fiskeby	GD 9 28. 4 a 2. 5 b	GD 30 6. 3 a 2. 5 b	GD 25 24. 2 a 10. 4 b	GD 2,5 — a 1. 5 b	GD 10 — a 1. 6 b	GD 30 — a 1. 4 b	GD 375 23. 2 a 1. 5 b

(1) a = date increase notified to customers.
b = date increase effective.

	Germany (DM/100 kg)	France (FF/100 kg)	United Kingdom (£/t)	Belgium (Bfrs/kg)	Netherlands (Fl/100 kg)	Italy (Lit/kg)	Denmark (Dkr/t)
Gruber & Weber	GD 9 17. 1 a 1. 5 b						
De Eendracht			GD 25 16. 2 a 10. 5 b				
KNP/Eerbeek			GC 60 GD 25 — a May b				
KNP/Badische	7—8 %						
Laakmann	GD 6,9 % January a 1. 4 b	GD 30 — a 1. 5 b	GD 25 — a 10. 4 b	GD 2 20. 2 a 1. 4 b			
FS/MM	GC 17 GD 9 12. 1 a 1. 4 b for GC 1. 5 b for GD	GC 60 GD 30 26. 1 a 4. 4 b for GC 8. 5 b for GD	GC 60 GD 25 6. 2 a 3. 4 b		GC — GD 10 17. 4 a 1. 6 b		
Deisswil (MM)	GC 17 GD 9 30. 1 a 1. 4 b for GC 1. 5 b for GD	GC 60 GD 30 20. 1 a 1. 4 b for GC 1. 5. for GD	GC 55 GD 25 20. 2 a 17. 4 b		GC 19 GD 10 — a 7. 4 b for GC 1. 6 b for GD		
TBM (MoDo)		GC 60 20. 1 a 1. 4 b	GC 11 % 26. 1 a 3. 4 b		GC 10 % (19) 20. 1 a 1. 4 b		
Iggesund-Bruks (MoDo)	SBS 9 February a 1. 4 b	SBS 70 20. 1 a 1. 4 b	SBS 60 (2) 26. 1 a 3. 4 b	SBS 3,5 — a 31. 3 b			
De Lancey		GC 12 % 9. 1 a 1. 4 b					
Rena			GC 55 — a 17. 4 b				
Sarrió Saffa	GC 17 GD 9 — a 1. 4 b for GC 1. 5 b for GD	GC 60 GD 30 13. 1 a 1. 4 b for GC 1. 5 b for GD	GC 60 GD 25 17. 2 a 17. 4 b	GC 3,5 GD 2,5 13. 1 a 1. 4 b for GC 1. 5 b for GD	GC 19 GD 10 — a 1. 4 b for GC 1. 6 b for GD	GC 120 GD 80 — a February b for GC January b for GD	
Reed P & B (SCA)		GD 30 — a 1. 5 b	GD 25 8. 2 a 10. 4 b				

(1) a = date increase notified to customers.
b = date increase effective.
(2) Packaging.

	Germany (DM/100 kg)	France (FF/100 kg)	United Kingdom (£/t)	Belgium (Bfrs/kg)	Netherlands (Fl/100 kg)	Italy (Lit/kg)	Denmark (Dkr/t)
Feldmühle (Stora)	GC 17 5. 1 a 1. 4 b GD 9 5. 1 a 1. 5 b	GC 60 5. 1 a 3. 4 b GD 30 5. 1 a 2. 5 b	GC 10 % (55) 8. 2 a 4. 3 b GD 6 % (25) 8. 2 a 1. 4 b	GC 3,5 5. 1 a 1. 4 b GD 2,5 5. 1 a 1. 5 b	GC 19 23. 1 a 1. 4 b GD 10 17. 4 a 1. 6 b	GC 120 — a 15. 2 b GD 80 (50 30) — a 1. 1 b 1. 4 b	
Kopparfors (Stora)	GC 17 18. 1 a 1. 4 b		GC 60 6. 2 a 1. 4 b	GC 3,5 — a 1. 4 b	GC 19 9. 1 a 1. 4 b	GC 120 6. 12 a 15. 2 b	GC 550 20. 1 a 1. 4 b
CBC (Stora)		GC 60 3. 1 a 1. 4 b GD 30 5. 1 a 2. 5 b					
Weig	GD 9 20. 1 a 2. 5 b	GD 7 % (30) 30. 1 a 1. 5 b	GD 25 20. 1 a 1. 4 b	GD 2 6. 3 a 1. 5 b	GD DM 6. 3 a 1. 5 b		GD 375 13. 3 a 1. 5 b

E. PRICE INCREASE OCTOBER 1989 (GC AND SBS ONLY)

	Germany (DM/100 kg)	France (FF/100 kg)	United Kingdom (£/t)	Belgium (Bfrs/kg)	Netherlands (Fl/100 kg)	Italy (Lit/kg)	Denmark (Dkr/t)
Buchmann	GC 1 15 GC 2 11 19. 7 a 1. 10 b						
Cascades	GC 1 15 GC 2 11 1. 8 a 1. 10 b	GC 1 60 GC 2 50 25. 7 a 1. 10 b	GC 1 62 GC 2 52 31. 7 a 2. 10 b	GC 1 3,3 GC 2 2,5 — a 1. 10 b	GC 1 17 GC 2 13 — a 1. 10 b	GC 1 120 GC 2 90 — a 1. 10 b	
Enso Gutzeit	SBS 11 31. 7 a 1. 10 b	SBS 40 20. 7 a 1. 10 b	SBS 60 2. 8 a 1. 10 b			SBS 13 (2) 8. 8 a 1. 10 b	SBS 580 25. 5 a 1. 10 b
Finnboard	GC 1 15 GC 2 11 7. 7 a 1. 10 b	GC 1 50 GC 2 40 7. 7 a 1. 10 b	GC 1 62 GC 2 52 7. 7 a 2. 10 b	GC 1 3,3 GC 2 2,5 7. 7 a 2. 10 b	GC 1 17 GC 2 13 7. 7 a 2. 10 b	GC 1 120 GC 2 90 11. 7 a 4. 9 b	GC 1 580 GC 2 580 7. 7 a 2. 10 b
KNP/Eerbeek	GC 1 15 GC 2 11 7. 8 a 2. 10 b		GC 1 8 % (60) GC 2 7 % (50) 7. 8 a 2. 10 b	GC 1 3 2 — a 1. 10 b			
FS/MM	GC 1 8 % GC 2 8 % 28. 7 a 2. 10 b	GC 1 50 GC 2 40 20. 7 a 1. 10 b					
Deisswil - (MM)	GC 1 15 GC 2 11 4. 9 a 2. 10 b	GC 1 50 GC 2 40 August a 1. 10 b				GC 1 120 GC 2 90 20. 7 a 1. 9 b	

(1) a = date increase notified to customers.
b = date increase effective.
(2) Postponed to 1. 1. 1990.

	Germany (DM/100 kg)	France (FF/100 kg)	United Kingdom (£/t)	Belgium (Bfrs/kg)	Netherlands (Fl/100 kg)	Italy (Lit/kg)	Denmark (Dkr/t)
TBM (MoDo)	GC 2 15 (11) 10. 7 a 1. 10 b	GC 2 40 End July a 1. 10 b	GC 2 9,5 % 27. 7 a 2. 10 b		GC 2 13 17. 8 a 1. 10 b		
Iggesund-Bruks (MoDo)	SBS 6 % 10. 7 a 1. 10 b	SBS (6—8 %) (40) — a October b	SBS 60 27. 7 a 2. 10 b				
De Lancey		65 50 27. 7 a 1. 10 b					
Rena			GC 1 62 GC 2 52 17. 8 a 9. 10 b				
Sarrió Saffa	GC 11 — a October b	GC 1 50 GC 2 40 — a October b				GC 1 120 GC 2 90 3. 7 a 1. 9 b	
Feldmühle (Stora)	GC 1 15 GC 2 11 24. 7 a 2. 10 b	GC 1 50 GC 2 40 7. 8 a 30. 9 b	GC 1 62 GC 2 52 4. 8 a 2. 10 b	GC 1 3,3 GC 2 2,5 1. 8 a 1. 10 b	GC 1 17 GC 2 13 15. 8 a 2. 10 b	GC 1 120 GC 2 90 11. 7 a 1. 9 b	GC 1 610 (580) GC 2 580 — a 1. 10 b
Kopparfors (Stora)	GC 1 15 GC 2 11 13. 7 a 2. 10 b	GC 1 50 GC 2 40 13. 7 a 2. 10 b	GC 1 65 GC 2 55 13. 7 a 2. 10 b	GC 1 3,3 GC 2 2,5 13. 7 a 2. 10 b	GC 1 17 GC 2 13 13. 7 a 2. 10 b	GC 1 120 GC 2 90 13. 7 a 1. 9 b	GC 1 580 GC 2 580 13. 7 a 2. 10 b
Tampella Española	GC 2 —	GC 2 40	GC 2 59				

F. PRICE INCREASE APRIL 1990

	Germany (DM/100 kg)	France (FF/100 kg)	United Kingdom (£/t)	Belgium (Bfrs/kg)	Netherlands (Fl/100 kg)	Italy (Lit/kg)	Denmark (Dkr/t)
Buchmann	8 % — a 1. 4 b						
Cascades	GC 1 15 GC 2 13 GT 11 GD 10 29. 1 a 1. 4 b	GC 1 50 GC 2 40 GT GD 40 5. 1 a 1. 4 b	GC 1 58 GC 2 54 GT GD 45 1. 2 a 2. 4 b	GC 1 2,5 GC 2 2,5 GT 3 GD 2,5 29. 1 a 1. 4 b	GC 1 13 GC 2 13 GT 11 GD 10 January a 1. 4 b	GC 1 90 GC 2 90 GT 70 GD 70 1. 2 a 1. 4 b	
Enso Gutzeit	SBS 13 30. 5 a 1. 6 b	SBS 40 20. 2 a 1. 4 b	SBS 8,5 % 9. 2 a 9. 4 b				
Europa Carton	GC 13 GT 11 GD 10 — a 1. 4 b						

Note: Finnboard, Feldmühle and Kopparfors all increaseed their prices for Spain by 9 Pta/kg for GC 1 and by 8 Pta/kg for GC 2.

(1) a = date increase notified to customers.
b = date increase effective.

	Germany (DM/100 kg)	France (FF/100 kg)	United Kingdom (£/t)	Belgium (Bfrs/kg)	Netherlands (Fl/100 kg)	Italy (Lit/kg)	Denmark (Dkr/t)
Finnboard	GC 1 13 GC 2 13 31. 1 a 1. 4 b	GC 1 40 GC 2 40 31. 1 a 2. 4 b	GC 1 58 GC 2 54 30. 1 a 2. 4 b	GC 1 2,5 GC 2 2,5 29. 1 a 2. 4 b	GC 1 13 GC 2 13 — a 2. 4 b	GC 1 90 GC 2 90 — a 2. 4 b	GC 1 535 GC 2 425 5. 2 a 1. 4 b
Fiskeby	GD 10 GT 11 January a 2. 4 b	GD 40 GT 50 30. 1 a 2. 4 b	GD 45 GT 30. 1 a 2. 4 b	GD 2,5 GT 2,8 31. 1 a 2. 4 b	GD 10 GT 11 31. 1 a 2. 4 b		GD 300
Gruber & Weber	Doc. F 7-1						
De Eendracht			GD 45 — a — b				
KNP/Badische	GD 10 — a 1. 4 b		GD 45 1. 2 a 19. 3 b				
Laakmann	GD 11 GT 11 February a April b		GD 40 GT 40 26. 2 a 2. 4 b	GD 2,5 GT 2,8 4. 4 a 1. 5 b	GD 10 GT 10 7. 3 a 1. 4 b		
FS/MM	GC 1 13 GC 2 13 GT 11 GD 10 18. 1 a 1. 3 b	GC 1 50 GC 2 40 GT 50 GD 40 19. 1 a 1. 3 b	GD 45 22. 12 a 1. 3 b	GC 1 2,5 GC 2 2,5 GT 2,8 GD 2,5 23. 1 a 1. 3 b	GC 1 13 GC 2 13 GT 11 GD 10 19. 1 a 1. 3 b		
MM Eerbeek			GC 1 58 GC 2 54 GT, GD 45 30. 1 a 1. 3 b				
Deisswil (MM)	GC 1 & 2 13 GT 11 GD 10 21. 2 a 2. 4 b	GC 1 & 2 40 GT 40 GD 40 February a 2. 4 b for GC 1. 5 b for GD		GC 1 & 2 2,5 GT 2,5 GD 2,5 February a 2. 4 b	GC 1 & 2 13 GT 11 GD 10 15. 2 a 2. 4 b	GC 1 & 2 90 GT 70 GD 70 12. 3 a 1. 4 b	
TBM (MoDo)	GC 13 6. 2 a 2. 4 b	GC 40 22. 1 a 2. 4 b	GC 54 11. 1 a 2. 4 b	GC 2,5 — a 2. 4 b	GC 13 — 2. 4	GC 90 — a 2. 4 b	GC 425 — a 2. 4 b
Iggesund-Bruks (MoDo)	SBS 13 — a 1. 4 b	SBS 40 — a 1. 4 b	SBS 50 24. 1 a 2. 4 b	SBS 3 — a 1. 4 b	SBS 13 — 1. 4 b	SBS 90 — a 1. 4 b	SBS 480 — a 1. 4 b
De Lancey		GC 6,5 % 29. 1 a 1. 4 b					
Rena			GC 9,5 % — a 2. 4 b				

(1) a = date increase notified to customers.
b = date increase effective.

	Germany (DM/100 kg)	France (FF/100 kg)	United Kingdom (£/t)	Belgium (Bfrs/kg)	Netherlands (Fl/100 kg)	Italy (Lit/kg)	Denmark (Dkr/t)
Sarrió Saffa	GC 1 13 GC 2 13 GT 11 GD 10 January a 1. 4 b	GC 1 50 GC 2 40 GT 50 GD 40 22. 1 a 1. 4 b	GC 1 58 GC 2 54 GT 45 GD 45 22. 1 a 1. 4 b	GC 1 2,5 GC 2 2,5 GT 2,5 GD 2,5 22. 1 a 1. 4 b	GC 1 13 GC 2 13 GT 11 GD 10 22. 1 a 1. 4 b	GC 1 90 GC 2 90 GT 70 GD 70 19. 1 a 1. 4 b	
Reed P & B (SCA)			GD 28 1. 2 a 2. 4 b				
Feldmühle (Stora)	GC 13 GD 10 1. 2 a 2. 4 b	GC 1 50 GC 2 40 19. 1 a 1. 4 b	GC 1 58 GC 2 54 GD 45 (9,5 %) 2. 2 a 2. 4 b	GC 2,5 GD 2,5 28. 2 a 1. 4 b	GC 13 GD 10 31. 1 a 1. 4 b	GC 90 30. 1 a 2. 4 b	
Kopparfors (Stora)	GC 13 12. 1 a 1. 4 b		GC 1 58 GC 2 54 30. 1 a 1. 4 b	GC 2,5 — a 1. 4 b	GC 13 — a 1. 4 b	GC 90 8. 3 a 4. 4 b	GC 1 535 GC 2 425 30. 1 a 1. 4 b
CBC (Stora)		6—7 % — a 1. 4 b	GC 9,5 % — a 2. 4 b		GC 2 13 GD 2 10		
Tampella Española		GC 2 40 GD 2 40 — a 1. 4 b	GC 2 50 GD 2 50 — a 2. 4 b		GC 2 13 GD 2 10 — a 1. 4 b		
Weig	GD 9 28. 2 a 15. 4 b	GD 40 8. 3 a 15. 4 b	GD 45 — a 2. 4 b	GD 2,5 5. 3 a 15. 4 b	GD 9 DM 8. 3 a 15. 4 b	GD 70 22. 1 a — b	GD 350 8. 3 15. 4

G. PRICE INCREASE JANUARY 1991

	Germany (DM/100 kg)	France (FF/100 kg)	United Kingdom (£/t)	Belgium (Bfrs/kg)	Netherlands (Fl/100 kg)	Italy (Lit/kg)	Denmark (Dkr/t)
Buchmann	GC 12 GD 12 24. 9 a 14. 1 b						
Cascades	GC 12 GT 15 GD 12 5. 10 a 7. 1 b	GC 40 GT 50 GD 40 3. 10 a 7. 1 b	GC 40 GT 50 GD 40 5. 10 a 7. 1 b	GC 2,5 GT 3 GD 2,5 — a 7. 1 b	GC 14 GT 17 GD 14 25. 10 a 1. 7 b	GC 80 GT 100 GD 80 17. 10 a 7. 1 b	GC 425 GT 425 GD 425 — a 7. 1 b
Enso Gutzeit							SBS 425 17. 12 a 1. 1 b
Europa Carton	GD 12 — a 7. 1 b						
Finnboard	GC 6—7 % 12—14 5. 10 a 28. 1 b	GC 6—7 % 5. 10 a 27. 1 b	GC 6—7 % 40 5. 10 a 27. 1 b			GC 6 % 5. 10 a 1. 2 b	

(1) a = date increase notified to customers.
b = date increase effective.

	Germany (DM/100 kg)	France (FF/100 kg)	United Kingdom (£/t)	Belgium (Bfrs/kg)	Netherlands (Fl/100 kg)	Italy (Lit/kg)	Denmark (Dkr/t)
Fiskeby	GD 12 1. 10 a 1. 1 b	GD 40 12. 10 a 1. 1 b	GD 40 15. 10 a 1. 1 b	GD 2,5 10. 8 a 1. 1 b	GD 14 8. 10 a 1. 1 b	GD 80 8. 10 a 1. 1 b	GD 425 17. 10 a 1. 1 b
G + W	doc. G 7-1						
De Eendracht			40 31. 10 a 28. 1 b				
KNP/Badische	GD 12 6. 12 a 14. 1 b		GD 40 21. 11 a 28. 1 b				
Laakmann	GD 14 November a 14. 1 b		GD 40 2. 11 a 14. 1	GD 2,5 15. 11 a 14. 1	GD 14 15. 11 a 14. 1 b		
FS/MM	all 14 September a 7. 1 b	GC, GD 40 GT 45 13. 9 a 7. 1 b	all 40 17. 9 a 7. 1 b		all 14 17. 9 a 7. 1 b		
MM/Eerbeek	all 14 September a 7. 1 b						
Deisswil (MM)	all 12 17. 9 a 7. 1 b		GC 40 GT 50 GD 40 19. 9 a 7. 1 b	all 2,5 17. 9 7. 1 b		all 80 17. 9 a 7. 1 b	
Iggesund Workington (MoDo)	GC 12 6. 11 a 14. 1 b	GC 40 19. 10 a 2. 1 b	GC 40 (6 %) 19. 10 a 28. 1 b	GC 2,5 — a 2. 1 b	GC 14 30. 10 a 1. 1 b	GC 90	
Iggesund-Bruks (MoDo)	SBS 12 6. 11 a 14. 1 b	SBS 40 19. 10 a 2. 1 b	SBS 40 19. 10 a 28. 1 b		SBS 12 11. 2 a 1. 4 b		
De Lancey		GC 6 % 8. 10 a 2. 1 b					
Rena			GC 40 — a 28. 1 b				
Sarrió Saffa	all 12	GC 40 GT 45 GD 40 5. 10 a 2. 1 b	all 40 5. 10 a 31. 1 b	all 2,5 11. 10 a 2. 1 b	all 14 — a 2. 1 b	all 90	
Reed P & B (SCA)	GD 12 later: 7 — a 1. 1 b		GD 40 29. 10 a 28. 1 b				

(1) a = date increase notified to customers.
b = date increase effective.

	Germany (DM/100 kg)	France (FF/100 kg)	United Kingdom (£/t)	Belgium (Bfrs/kg)	Netherlands (Fl/100 kg)	Italy (Lit/kg)	Denmark (Dkr/t)
Feldmühle (Stora)	all 12 19. 9 a 2. 1 b	GC 40 GT 50 GD 40 20. 9 a 2. 1 b	all 40 24. 9 a 2. 1 b	all 2,5 26. 9 a 2. 1 b	all 14 20. 9 a 2. 1 b	all 90 — a 1. 1 b	all 425 — a 2. 1 b
Kopparfors (Stora)	GC 12 19. 9 a 7. 1 b	GC 40 19. 9 a 7. 1 b	GC 40 19. 9 a 7. 1 b	GC 2,5 19. 9 a 7. 1 b	GC 14 19. 9 a 7. 1 b	GC 80 19. 9 a 7. 1 b	GC 425 8. 10 a 7. 1 b
Tampella Española					all 14 10. 12 a 1. 2 b		
Weig	GD 12 9. 11 a 15. 1 b	GD 40 7. 11 a 15. 1 b	GD 40 — a 15. 1 b	GD 2,5 20. 11 a 15. 1 b	GD DM 12 13. 11 a 15. 1 b		GD 460 12. 11 a 15. 1 b

Note: The main producers supplying the Spanish market (Cascades, Finnboard, MoDo, Feldmühle and Tampella Española) all increased their prises by 5 Pta/kg.

(1) a = date increase notified to customers.
b = date increase effective.