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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11 March 2008
C (2008) 926 final

COMMISSION DECISION
of 11 March 2008

**relating to a proceeding under Article 81 of the EC Treaty
and Article 53 of the EEA Agreement**

Case 38.543 - International removal services

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

CONSOLIDATED VERSION NOTIFIED TO:

Allied Arthur Pierre NV

Amcrisp Limited

Amertranseuro International Holdings Limited

Compas International Movers NV

Exel International Holdings (Belgium) NV

Exel International Holdings (Netherlands I) BV

Exel International Holdings (Netherlands II) BV

Exel International Holdings Limited

Exel Investments Limited

Gosselin Group NV

Interdean AG
Interdean Group Limited
Interdean Holding BV
Interdean International Limited
Interdean NV
Interdean SA
Iriben Limited
Mozer Moving International SPRL
North American International Holding Corporation
North American Van Lines Inc.
Putters International NV
Realcause Limited
Rondspant Holding BV
Sirva Inc.
Stichting Administratiekantoor Portielje
Team Relocations Limited
Team Relocations NV
Trans Euro Limited
Transworld International NV
Verhuizingen Coppens NV
Ziegler SA
(Text with EEA relevance)

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COMMISSION DECISION

of 11 March 2008

relating to a proceeding under Article 81 of the EC Treaty
and Article 53 of the EEA Agreement

(Case 38543 - International removal services)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules of competition laid down in Articles 81 and 82 of the EC Treaty¹ and, in particular, Articles 7(1) and 23(2) thereof,

Having regard to the Commission Decision of 18 October 2006 to initiate proceedings in this case pursuant to Article 2(2) of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty²,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 27(1) of Regulation No 1/2003 and Article 12 of Commission Regulation (EC) No 773/2004,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions³,

Having regard to the final report of the Hearing Officer in this case⁴,

Whereas:

¹ OJ L 1, 4.1.2003, p. 1. Regulation as last amended by Regulation (EC) No 1419/2006 (OJ L 269, 28.9.2004, p. 1).

² OJ L 123, 27.4.2004, p. 18. Regulation as amended by Regulation (EC) No 1792/2006 (OJ L 362, 20.12.2006, p. 1).

³ OJ [...], [...], p. [...].

⁴ OJ [...], [...], p. [...].

A. INTRODUCTION

- (1) The addressees of this Decision participated in a cartel in the international removal services sector in Belgium or are deemed responsible therefor. The participants in the cartel fixed prices, shared customers and manipulated the submission of tenders at least from 1984 to 2003⁵. As a result, the addressees have committed a single, continuous infringement of Article 81 of the Treaty and Article 53 of the EEA Agreement.

B. THE INTERNATIONAL REMOVAL SERVICES SECTOR

1. INTERNATIONAL REMOVAL SERVICES

- (2) The cartel concerns the provision of international removal services in Belgium. These include the international removal of goods of both natural persons – private individuals or employees⁶ of an undertaking or a public institution – and of undertakings or public institutions. Such international removals can be from Belgium to another country or from another country to Belgium. The distinguishing feature is that Belgium is either the starting place or the destination.
- (3) The removals are “door-to-door” removals. Normally, they consist of the following three services: packing and loading at the former residence or headquarters, haulage, and unloading and unpacking at the new residence or headquarters. First of all, a team arrives to pack the goods for removal and load them into the van, if necessary using a hoist. The second stage is the transport operation proper. Depending on the itinerary and the budget, the goods are moved by water, air, road or rail. In some cases, they have to be transported to the place of embarkation and loaded into a container. Lastly, they are unloaded from the means of transport and conveyed to the new residence or headquarters, where they are delivered and unpacked. If several days elapse between the three stages, the goods are stored. They are insured, and administrative formalities have to be completed as appropriate.

2. THE RELEVANT UNDERTAKINGS

- (4) The relevant undertakings are identified in this section. In the documents available to the Commission the names of other removal

⁵ The duration of participation by each of the addressees is given in sections 16.6 and 16.7.

⁶ For the purposes of this Decision, the term “employee” is used to refer equally to persons employed by a private sector employer or persons employed as officials or contractual staff by a public sector employer.

companies appear only occasionally in connection with the conduct in question or with acts which would be time-barred in their case⁷.

2.1 Allied Arthur Pierre

- (5) Allied Arthur Pierre NV (“Allied Arthur Pierre”) has been operating in the international removal services sector in Belgium under that name since 30 January 1997. Prior to that date, the undertaking was called “Arthur Pierre Belgium NV”, a company founded in November 1974. Arthur Pierre’s removal activities in Belgium date back to 1898⁸.

2.1.1 Allied Arthur Pierre under the control of Exel Investments Limited from 1992 to 1999

- (6) On 9 November 1992, NFC Plc bought Arthur Pierre Belgium NV⁹. NFC Plc is a British company set up in 1981 under the name of National Freight Consortium Public Limited Company, which was changed on 1 January 1989 to NFC Public Limited Company¹⁰. It operates in the logistics, removal and relocation services sector¹¹. On 19 November 1999, NFC Plc sold Allied Arthur Pierre to the American group Sirva Inc. (see section 2.1.2).
- (7) From 9 November 1992 until 19 November 1999, all of the shares in Allied Arthur Pierre were held by NFC International Holdings (Belgium) NV. From 9 November 1992 to 23 July 1996, the company [*]owned 99.99% of the shares in NFC International Holdings (Belgium) NV. During the same period, NFC International Holdings (Netherlands II) BV in the Netherlands was the 100% parent company of [*]. On 24 July 1996, [*] transferred its shares in NFC International Holdings (Belgium) NV to NFC International Holdings (Netherlands II) BV¹². During the period from 9 November 1992 to 19 November 1999, all the shares in NFC International Holdings (Netherlands II) BV were held by NFC International Holdings (Netherlands I) BV in the Netherlands, all the shares in which were held by Realcause Limited in the United Kingdom¹³, all the shares in which were held by NFC International Holdings Limited in the United Kingdom, which in turn was wholly owned by NFC Plc¹⁴.
- (8) NFC Plc changed its name to Exel Plc on 23 February 2000, to Exel Investments Plc on 26 July 2000 and to Exel Investments Limited on

⁷ See for example [*]. Parts of this text have been edited to ensure that confidential information is not disclosed ; those parts are enclosed in square brackets and marked with an asterisk.

⁸ [*]. Allied Arthur Pierre’s address is: Bosdellestraat 120 B-1933 Sterrebeek [*].

⁹ [*].

¹⁰ [*].

¹¹ [*].

¹² [*].

¹³ Address: The Merton Centre, 45 St Peters Street, Bedford MK40 2UB, United Kingdom [*].

¹⁴ [*].

16 November 2000¹⁵. The group operates in the logistics and removal services sector¹⁶.

- (9) NFC International Holdings Limited changed its name to Exel International Holdings Limited on 15 March 2000¹⁷.
- (10) NFC International Holdings (Netherlands I) BV changed its name to Exel International Holdings (Netherlands I) BV¹⁸.
- (11) NFC International Holdings (Netherlands II) BV changed its name to Exel International Holdings (Netherlands II) BV. It operates in the business management and storage sectors¹⁹.
- (12) NFC International Holdings (Belgium) NV changed its name to Exel International Holdings (Belgium) NV²⁰.

2.1.1.1 Persons and companies holding positions in several members of the group

- (13) During the period when the companies of the NFC Plc group (now Exel Investments Limited) were the parent companies of Allied Arthur Pierre, i.e. from 9 November 1992 to 19 November 1999, the following persons and companies held positions both in Allied Arthur Pierre and in one or more of those parent companies, as set out in this section.
- (14) From 1 January 1998 to 19 November 1999, NFC International Holdings (Belgium) NV was a member of the board of directors of Allied Arthur Pierre²¹.
- (15) The following persons were members of the board of directors of Allied Arthur Pierre and at the same time held positions in NFC International Holdings (Belgium) NV, NFC International Holdings (Netherlands I) BV and/or NFC International Holdings (Netherlands II) BV.
- (16) [*] was a director at Allied Arthur Pierre from 18 May 1993 to 4 February 1995. He was a director at NFC International Holdings (Belgium) NV from 7 January 1984 to 7 February 1995²².
- (17) [*] was a director at Allied Arthur Pierre from 18 May 1993 to 13 September 1994. He was a director at NFC International Holdings (Belgium) NV from 7 January 1984 to 14 September 1994. From 15 December 1993 to 29 September 1995 he was also a director at NFC

¹⁵ NFC, Exel Investments Plc and Exel Investments Limited have the same registration number: 01600736. Address: Ocean House, The Ring, Bracknell, Berkshire RG12 1AN, United Kingdom [*].

¹⁶ [*].

¹⁷ Address: The Merton Centre, 45 St. Peters Street, Bedford MK40 2UB, United Kingdom [*].

¹⁸ Address: Huygensweg 10, NL-5460 AD Veghel [*].

¹⁹ Address: Huygensweg 10, NL-5460 AD Veghel [*].

²⁰ [*]. Address: Zandvoortstraat 3, Industriezone Mechelen Noord, B-2800 Mechelen [*].

²¹ [*].

²² [*].

International Holdings (Netherlands I) BV and at NFC International Holdings (Netherlands II) BV²³.

- (18) [*] was a director at Allied Arthur Pierre from 18 May 1993 to 11 April 1995. He was a director at NFC International Holdings (Belgium) NV from January 1984 to 12 April 1995²⁴.
- (19) [*] was a director at Allied Arthur Pierre from 18 February 1993 to 16 March 1996. He was a director at NFC International Holdings (Belgium) NV from 19 February 1993 to 7 February 1995²⁵.
- (20) [*] was a director at Allied Arthur Pierre from 18 February 1993 to 4 February 1995. He was a director at NFC International Holdings (Belgium) NV from 19 February 1993 to 1 September 1995²⁶.
- (21) [*] was a director at Allied Arthur Pierre from 18 February 1993 to 16 March 1996. He was a director at NFC International Holdings (Belgium) NV from 19 February 1993 to 19 March 1996²⁷.
- (22) [*] was a director at Allied Arthur Pierre from 18 February 1993 to 4 February 1995. He was a director at NFC International Holdings (Belgium) NV from 19 February 1993 to 7 February 1995²⁸.
- (23) [*] was a director at Allied Arthur Pierre from 4 February 1995 to 22 April 1997. He was a director at NFC International Holdings (Belgium) NV from 19 February 1993 to 22 April 1997²⁹.
- (24) [*] was a director at Allied Arthur Pierre from 22 April 1997 to 15 May 1999. He was a director at NFC International Holdings (Belgium) NV from 21 March 1996 to 15 May 1999³⁰.
- (25) [*] was a director at Allied Arthur Pierre from 15 May 1999 to 19 November 1999³¹. He was also a director at NFC International Holdings (Belgium) NV from 15 May 1999 to 19 November 1999³² and Operations Director Continental Europe of the NFC/Allied European moving services business³³.

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31 [*]. [*] performed his duties at Allied Arthur Pierre and at NFC International Holding (Belgium) NV beyond 19 November 1999; this date is given for the purposes of this Decision as it corresponds to the end of the period during which the companies of the Exel group were the parent companies of Allied Arthur Pierre (see paragraph (6)).

32 [*].

33 [*]. Allied Arthur Pierre explains the meaning of the phrase “NFC/Allied European moving services business” as follows: “As mentioned above, the shares in AAP were held by NFC plc prior to 19 November 1999. Subsidiaries within the NFC moving business operated under the “Allied” brand.

- (26) [*] was a director at Allied Arthur Pierre from 17 August 1999 to 19 November 1999. He was a director at NFC International Holdings (Belgium) NV from 17 August 1999 to 19 November 1999³⁴.

2.1.1.2 Reporting within the group

- (27) At least from 1 January 1998 to 19 November 1999, meetings to discuss important developments in Allied Arthur Pierre's business were held at irregular intervals between the General Manager of Allied Arthur Pierre ([*]) and the Operations Director Continental Europe ([*]). The key figures on financial performance were sent every month to the management for Europe in the United Kingdom. More recently, these indicators have also been sent to the United States³⁵.
- (28) Several documents dating from 1998 [*] indicate that technical information on the provision of international removal services and on the question of participation in an international conference with a view to establishing business contacts with certain market operators was compiled by Allied Arthur Pierre and sent to "NFC", for the attention of [*] among others. In view of the functions performed by [*] (in his capacity as addressee of these documents) in the Exel group (see paragraph (24)), "NFC" in these documents should be understood as an abbreviation of NFC International Holdings (Belgium) NV.
- (29) The first document dates from 14 August 1998³⁶. It is addressed to "NFC" (and hence to NFC International Holdings (Belgium) NV), for the attention of [*] among others. The document informs the recipients of the figures on reciprocity of commercial relations between Allied Arthur Pierre and several other companies between October 1996 and June 1998. At the end of the document, Allied Arthur Pierre writes that reciprocity of commercial relations in the Belgian branch should be monitored and that staff should be informed accordingly in order to strengthen reciprocity.
- (30) The second document dates from 18 August 1998³⁷. It is addressed to "NFC" (and hence to NFC International Holdings (Belgium) NV), for the attention of [*] among others, and sets out the figures on reciprocity of commercial relations between Allied Arthur Pierre and [*] in 1998.

"NFC/Allied European moving services business" was therefore used as a general term to describe the group of European moving companies in which shares were held by NFC plc." (original English) [*].

³⁴ [*]. [*] performed his duties at Allied Arthur Pierre and at NFC International Holding (Belgium) NV beyond 19 November 1999; this date is given for the purposes of this Decision as it corresponds to the end of the period during which the companies of the Exel group were the parent companies of Allied Arthur Pierre (see paragraph (6))

³⁵ [*]. The original English reads: "Key financial performance indicators would be sent by the AAP Accounts Department on a monthly basis to European Management based in the United Kingdom. More recently, the key performance indicators have also been copied to the US".

³⁶ [*].

³⁷ [*].

Allied Arthur Pierre states that these figures were obtained from [*] in Naperville and that [*] had taken “consignment of shipment” decisions based on their reciprocity and not on that of Allied Arthur Pierre. Allied Arthur Pierre states, moreover, that there is an imbalance in the relationship with [*], that Allied Arthur Pierre intends to increase the reciprocity of commercial relations, seeks [*]’s comments and asks that the document be treated as confidential.

- (31) Another document dated 18 August 1998³⁸ is addressed to “NFC” (and hence to NFC International Holdings (Belgium) NV), for the attention of [*] among others, and seeks [*]’s opinion on Allied Arthur Pierre’s participation in a conference with a view to establishing business contacts with third companies.
- (32) In the financial year ending 31 December 2006, Exel achieved a consolidated worldwide turnover of EUR 5 261 000 000³⁹.

2.1.2 Allied Arthur Pierre under the control of Sirva Inc. from 1999 to the present date

- (33) On 19 November 1999, NFC Plc sold Allied Arthur Pierre to NA Holding Corporation via the latter’s wholly owned subsidiary North American Van Lines Inc.⁴⁰ NA Holding Corporation changed its name to Allied Worldwide Inc. on 7 December 1999 and to Sirva Inc. on 7 March 2002⁴¹.
- (34) Sirva Inc. holds 100%⁴² of the shares in the following subsidiaries, in descending order: North American Van Lines Inc. and North American International Holding Corporation⁴³, which in turn holds 100% of the shares in Allied Arthur Pierre. North American Van Lines Inc.’s business is to provide removal and relocation services⁴⁴. Sirva Inc.’s registered office is in Wilmington, Delaware, in the United States⁴⁵.
- (35) The business and assets of Allied Arthur Pierre were sold on 20 April 2007 to [*], which is a wholly owned subsidiary of [*]⁴⁶. Allied Arthur Pierre still exists as a legal entity.

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[*] “NA Holding Corporation” stands for North American Holding Corporation.

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Address of the registered office of Sirva Inc., North American Van Lines Inc. and North American International Holding Corporation: c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808, USA. The postal address for Sirva Inc. is as follows : 700 Oakmont Lane, Westmont, IL 60559, USA. The postal address for North American Van Lines Inc. and North American Holding Corporation is as follows: 5001 US Highway 30 West, Fort Wayne, Indiana 46818, USA. [*].

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[*].

2.1.2.1 Persons and companies holding positions in several members of the group

- (36) From [*]⁴⁷ to [*]⁴⁸, [*] sat on the board of directors of Allied Arthur Pierre⁴⁹. [*]⁵⁰. [*] also performed duties in the parent companies of Allied Arthur Pierre as follows:
- [*]⁵¹.
 - [*]⁵².
 - [*]⁵³ and [*]⁵⁴.

2.1.2.2 Reporting within the group

- (37) Allied Arthur Pierre has indicated that the key figures on financial performance were sent to the United States⁵⁵.
- (38) In the financial year ending 31 December 2006, Sirva Inc. achieved a consolidated worldwide turnover of EUR 3 078 448 547⁵⁶.

2.2 Compas

- (39) Compas International Movers NV (“Compas”) was founded in 1994 by, among others, [*] et [*]⁵⁷.
- (40) In the financial year ending 30 April 2006, Compas achieved a consolidated worldwide turnover of EUR 1 348 715⁵⁸.

2.3 Coppens

- (41) Some 30 years ago, a company consisting of a single member, [*], started providing removal services in Belgium⁵⁹. This company was the subject of a contribution in kind (“*apport en nature*”/“*inbrenging in natura*”) to the capital of Verhuizingen Coppens NV (“Coppens”) when the latter was set up in May 1998. This contribution has a value corresponding to 248 shares out of a total of 250⁶⁰. [*] takes all decisions concerning the company; before May 1998 he did so in his

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[*]. Compas’s address is: Emmanuellaan 7, B-1830 Machelen.

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[*].

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[*].

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[*].

capacity as sole proprietor and since May 1998 he does so in his capacity as managing director⁶⁰.

- (42) In the financial year ending 31 December 2006, Coppens achieved a consolidated worldwide turnover of EUR 1 046 318⁶¹.

2.4 Gosselin

- (43) Gosselin Group NV (“Gosselin”) was founded in 1983⁶² and has operated under this name since 20 December 2007⁶³.

- (44) 92% of Gosselin’s shares have been held since 1 January 2002⁶⁴ by Stichting Administratiekantoor Portielje⁶⁵ (“Stichting”), the registered office of which is in the Netherlands⁶⁶. 8% of Gosselin’s shares are held by Vivet en Gosselin NV⁶⁷. Stichting holds 99.87% of Vivet en Gosselin NV’s shares⁶⁸.

- (45) According to Gosselin⁶⁹ and Stichting⁷⁰, Stichting is a foundation set up on 12 June 2001 which has no commercial activity and brings together the family shareholders in order to ensure unity of management.

- (46) The managers of Gosselin and Stichting are the same persons. [*] is a director and chairman of the board of directors of Stichting (*Bestuurder A en voorzitter van het bestuur*) and managing director of Gosselin. [*] is a director of Stichting (*Bestuurder B*) and a director of Gosselin. [*] is a director (*Bestuurder C*) of Stichting and managing director (*Gedelegeerd bestuurder*) of Gosselin⁷¹.

- (47) The Commission notes that the object of Stichting according to its articles of association and as confirmed by Stichting in its reply to the statement of objections⁷² is to acquire bearer shares against the issue of bearer certificates, manage these shares and exercise all rights relating to them, such as receiving any remuneration and exercising voting rights⁷³.

⁶⁰ [*] Address: Tiensesteenweg 270, B-3360 Bierbeek.

⁶¹ [*].

⁶² [*]. Address: Belcrownlaan 23, B-2100 Deurne.

⁶³ [*].

⁶⁴ [*]. Stichting stated [*] that it could be considered to be the titular manager of Gosselin’s shares only from 1 January 2002 at the earliest [*].

⁶⁵ [*].

⁶⁶ Address: Prins Bernhardplein 200, NL-1097 JB Amsterdam [*].

⁶⁷ [*].

⁶⁸ [*].

⁶⁹ [*]. The original Dutch reads: “*Verenigt de familiale aandeelhouders zodat eenheid in bestuur bereikt wordt*”.

⁷⁰ [*].

⁷¹ [*].

⁷² [*].

⁷³ The Commission understands that a “*stichting administratiekantoor portielje*” is a trust-type legal construct under Dutch law whereby the owner (as the administrator of the assets) is obliged to restore

- (48) In the financial year ending 30 June 2006, Gosselin achieved a consolidated worldwide turnover of EUR 143 639 000.⁷⁴ In the financial year ending 2006, Stichting achieved a consolidated worldwide turnover of EUR 0⁷⁵.

2.5 Interdean

- (49) Interdean NV (“Interdean”) has been operating under this name in Belgium since 1970⁷⁶.

2.5.1 Interdean from 1984 to 1999, in particular under the control of International Investors Participation Company NV

- (50) The Interdean group started business in 1959 on the initiative of [*], who owned the group until 17 June 1999⁷⁷.
- (51) Interdean’s ultimate parent company initially was [*], which transferred “Interdean’s” activities “in the mid-1980s” to [*]⁷⁸. On 2 November 1987, [*] sold⁷⁹ all the share capital of Interdean NV to Interdean Holding BV (Netherlands)^{80 81}.
- (52) From 2 November 1987 to 24 June 1999, Interdean Holding BV held 100% of Interdean’s shares⁸².
- (53) On 17 June 1999, [*] sold the group to [*], a private equity company⁸³.

2.5.2 Interdean under the control of Interdean Group Limited from 1999 to 2003

- (54) Following the sale to [*], the group was reorganised. From 17 June 1999 to beyond 10 September 2003, the new ultimate parent company (under [*]) controlling Interdean was Interdean Group Limited (“IGL”), established in the United Kingdom⁸⁴. IGL has performed since that date all the management functions on behalf of the holdings in the group⁸⁵.
- (55) From 17 June 1999 to beyond 10 September 2003, IGL owned 100% of the capital of the following subsidiaries, in descending order: Iriben

them to the founder (as the original, real owner). The “*stichting administratiekantoor portielje*” exercises the voting rights and control rights associated with ownership [*].

74 [*].

75 [*].

76 [*]. Address: Jan-Baptist Vinkstraat 9, B-3070 Kortenberg.

77 The original English reads: “The Interdean business was founded in 1959 by [*]. [*].

78 [*].

79 [*].

80 [*] Interdean has clarified both the date and the percentage of ownership of the shares compared with its earlier replies to requests for information. This Decision takes account of the clarifications.

81 [*]. Interdean Holding BV is a holding company.

82 [*].

83 [*].

84 [*]. IGL’s address is: Central Way, Park Royal, London NW 10 7XW, United Kingdom [*].

85 [*].

Limited⁸⁶, Interdean International Limited⁸⁷, Amcrisp Limited⁸⁸ (all in the United Kingdom), Rondspant Holding BV⁸⁹ and Interdean Holding BV in the Netherlands, Interdean SA in Switzerland⁹⁰ and Interdean AG⁹¹ in Germany⁹².

- (56) On 24 June 1999, Interdean Holding BV sold all but one (i.e. 17 199) of the shares it held in Interdean NV, corresponding to 99.99%, to Rondspant Holding BV, which transferred them the same day to one of its subsidiaries, Interdean AG in Germany. Interdean Holding BV still holds one share, or 0.01% of Interdean NV's capital⁹³.

2.5.3 Persons and companies holding positions in several members of the group

- (57) Interdean Holding BV was a member of Interdean NV's board of directors from 19 December 1995 to 5 June 2000. The company was represented by [*] at the meeting of Interdean's board of directors on 10 May 1999⁹⁴.
- (58) Interdean AG in Germany was a member of Interdean NV's board of directors from 19 December 1995 to 10 September 2003⁹⁵. Interdean AG was represented at meetings of Interdean NV's board of directors by [*] on 10 May 1999, 8 May 2000 and 22 May 2001 and by [*] on 27 May 2002 and 26 May 2003⁹⁶.
- (59) IGL was a member of Interdean NV's board of directors from 5 June 2000 to 23 June 2003 and was represented at meetings of Interdean NV's board of directors by [*] on 22 May 2002 and by [*] on 27 May 2002 and 26 May 2003⁹⁷.
- (60) [*] was the founder of the Interdean group and its owner until 17 June 1999. He was Chairman of IGL until 1 February 2002⁹⁸.
- (61) [*] has been a director and board member of Interdean NV since 1 January 1998. [*] was a director of IGL from 17 June 1999 to

⁸⁶ [*]. Address: Central Way, Park Royal, London NW10 7XW, United Kingdom [*].

⁸⁷ [*]. Address: Central Way, Park Royal, London NW10 7XW, United Kingdom [*].

⁸⁸ [*]. Address: Central Way, Park Royal, London NW10 7XW, United Kingdom [*].

⁸⁹ [*]. Address: A. Einsteinweg 12, NL-2408 AR Alphen aan den Rijn [*].

⁹⁰ Operates in the removal services sector [*]. Address: Im Langhag 9, CH-8307 Efretikon [*].

⁹¹ [*]. Interdean AG operates in the removal services sector [*]. Address: Lerchenstrasse 26-28, D-80995 München [*].

⁹² [*].

⁹³ [*].

⁹⁴ [*].

⁹⁵ Interdean AG was a member of Interdean NV's board of directors beyond 10 September 2003. This date is given here because it corresponds to the end of Interdean NV's documented participation in the infringement; see section 16.6.

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⁹⁷ [*].

⁹⁸ [*].

25 July 2003. He has also been acting President for Europe since May 2001⁹⁹.

- (62) [*] was Chief Financial Officer of the Interdean Group from 1984 until 10 September 2003¹⁰⁰. He was also a director of IGL from 17 June 1999 to 10 March 2003 and from 25 July 2003 to beyond 10 September 2003¹⁰¹, of Amcrisp Limited from 17 June 1999 to 2 September 2002 and of Interdean AG from 7 June 1999 to 4 December 2001¹⁰².
- (63) [*] has been a director of Interdean SA since 3 January 1976 and he was a director of Interdean AG from 7 November 2002 to beyond 10 September 2003¹⁰³.
- (64) [*] was Group Financial Controller from January 2000 to 1 September 2002. He was also a director of IGL from 30 August 2001 to beyond 10 September 2003. From 2 September 2002 to beyond 10 September 2003, [*] was also a director of the following parent companies of Interdean NV: Iriben Limited, Amcrisp Limited and, from 2 February 2003, also of Rondspant Holding BV. From 1 May 2003 to beyond 10 September 2003, he was also a director of Interdean Holdings BV¹⁰⁴.
- (65) From January 2002 to beyond 10 September 2003, [*] was Chief Financial Officer of the Interdean Group and a director of the following parent companies of Interdean NV: Interdean Group Limited, Iriben Limited, Amcrisp Limited, Rondspant Holding BV, Interdean Holdings BV, Interdean SA and Interdean AG¹⁰⁵.

2.5.4 Reporting within the group

- (66) Before the change of owner on 17 June 1999, the management of the company was informal, reflecting the personalities of the body of shareholders. [*], the founder and owner of the Interdean group until June 1999, was assisted by [*], Financial Manager for the whole group. Control of the group was exercised through visits from [*] or [*] to the subsidiaries and through ad hoc meetings and telephone calls¹⁰⁶. The reporting obligations consisted in monthly financial reports addressed to [*]¹⁰⁷.
- (67) Since the acquisition of Interdean by IGL, the management of Interdean has been relatively autonomous. Management relations between IGL and its European subsidiaries have developed over time,

99 [*].
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101 [*].
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since IGL has sought different ways of adding value to the activities of the operating companies. However, the management of the European subsidiaries is still relatively decentralised¹⁰⁸.

- (68) Interdean's general manager and management are responsible for the day-to-day running of the company. Their responsibilities include, for example, sales, purchases, cash flow management, operating vehicles and removal teams. The management of Interdean is also responsible for decisions affecting the staff¹⁰⁹.
- (69) Decisions relating to commercial strategy and investments in the Belgian international removals market are taken by the Interdean management subject to control by IGL. Interdean's budgets are approved by the IGL board after scrutiny by its chief financial officer, its chief executive officer and also by its senior management committee¹¹⁰.
- (70) The reporting obligations within IGL are the following: Interdean must send to Interdean International Limited the annual budgets, the monthly management accounts and, since 2003, sales management information including "a summary of monthly sales activities of each salesman and a summary of current sales opportunities with prospective customers with a value in excess of €250 000"¹¹¹. Interdean International Limited is the entity specially founded following the acquisition of Interdean in June 1999 in order to provide a financial control structure within the Interdean group¹¹². This financial control structure enabled L&GVML to have an overview of the main businesses and objectives of the Interdean group, largely with a view to drawing up financial forecasts¹¹³. Interdean must also report back to its ultimate parent company or to the intermediate holding companies and explain variances between its actual and budgeted results and variances between actual and forecast cash balances¹¹⁴.
- (71) Interdean International Limited is a holding company employing 14 people which provides management services to companies of the group. It thus provided and provides the financial control structure for the entire Interdean group as regards financial checks, financial reporting requirements and tax advice. It also provided and provides group management assistance services in the areas of sales, marketing, advertising services, group strategy, cross promotion, operational matters such as van coordination, cash flow, information technology

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[*] The original English reads: "Interdean NV was not obliged to report back to its ultimate parent company, Interdean Group Limited or to any immediate holding company ... other than to explain variances between its actual and budgeted results and variances between actual and forecast cash balances".

(IT) systems and policy, monitoring financial performance and financial reporting to shareholders¹¹⁵.

- (72) In the financial year ending 31 December 2006, Interdean Group Limited achieved a consolidated worldwide turnover of EUR 106 198 598¹¹⁶.

2.6 Mozer

- (73) Mozer Moving International SPRL (“Mozer”) has been so called since 8 November 2002¹¹⁷. Since 1 January 2006, Mozer has no longer done business in its own right¹¹⁸.

- (74) In the financial year ending 31 December 2006, Mozer achieved a consolidated worldwide turnover of EUR 15 331¹¹⁹.

2.7 Putters

- (75) Putters International NV (“Putters”) has existed in the form of a company limited by shares since 9 January 1997¹²⁰.

- (76) In the financial year ending 31 December 2006, Putters achieved a consolidated worldwide turnover of EUR 3 950 907¹²¹.

2.8 Team Relocations

- (77) Team Relocations NV (“Team Relocations”) was founded under the name Transeuro Worldwide Movers NV (Belgium) on 7 May 1993¹²². The name was changed on 5 September 2002¹²³.

- (78) Since January 1994, the 100% parent company of Team Relocations has been Team Relocations Limited in the United Kingdom¹²⁴, a company which operates in the removal services sector and whose shares are all held by Trans Euro Limited (“Trans Euro”)¹²⁵.

- (79) Since 8 September 2000, 100% of Trans Euro’s shares have been held by Amertranseuro International Holdings Limited in the United

¹¹⁵ [*].

¹¹⁶ [*].

¹¹⁷ Address: Avenue de Jupille 19, B-4020 Liège [*].

¹¹⁸ [*].

¹¹⁹ [*].

¹²⁰ [*]. Address: Erasmuslaan 30, B-1804 Cargovil. [*], Putters stated that it had existed only since 9 January 1997 and that the Antwerp Commercial Court had declared the insolvency of another company bearing a similar name on 13 January 1995 [*].

¹²¹ [*].

¹²² [*].

¹²³ [*]. Address: Budasteenweg 2B, B-1830 Machelen.

¹²⁴ Prior to 8 May 2002 Team Relocations Limited was called Trans Euro Worldwide Movers Limited. Address of Team Relocations Limited: Drury Way, London NW10 0JN, United Kingdom [*].

¹²⁵ Prior to 8 September 2000 Trans Euro Limited was called the Trans Euro Public Limited Company [*]. Address: Drury Way, London NW 10 0JN, United Kingdom [*].

Kingdom (“Amertranseuro”)¹²⁶. Amertranseuro explained in its reply to the statement of objections that it had become the owner of the Team Relocations group following a wider transaction encompassing the acquisition of the removal companies of the Trans Euro group¹²⁷.

- (80) From 1 January 1994 to 7 September 2000, Team Relocations had to submit to Team Relocations Limited the following reports: annual reports on the budget, and yearly management accounts and financial statements¹²⁸. Since 8 September 2000 Team Relocations has had to submit the same reports to Amertranseuro¹²⁹.
- (81) From 1994 to 5 September 2001, monthly meetings took place between Team Relocations and the representatives of Trans Euro, namely the Director of Continental Europe with responsibility for the operational and financial management of the Belgian subsidiary¹³⁰ and the Group Managing Director with overall responsibility for the Belgian subsidiary¹³¹. Trans Euro provided management services to Team Relocations from 1 January 1994 to 5 September 2001¹³².
- (82) Informal meetings have been taking place since 6 September 2001 between Team Relocations and the representative of Amertranseuro, [*]. Amertranseuro has been providing management services since 6 September 2001 to Team Relocations¹³³.
- (83) In the financial year ending 30 September 2006, Amertranseuro achieved a consolidated worldwide turnover of EUR 44 352 733¹³⁴.

2.9 Transworld

- (84) Transworld International NV (“Transworld”) has since 16 February 1990 been the name of a removal company whose business dates back to 1978¹³⁵. The company was originally called “Global International Forwarding N.V.”¹³⁶ and from 1989 to 1990 it was called “Transworld NV”¹³⁷. [*]¹³⁸.
- (85) In the financial year ending 31 December 2006, Transworld achieved a consolidated worldwide turnover of EUR 2 465 699¹³⁹.

¹²⁶ [*]. Address of Amertranseuro International Holdings Limited: Russell Square House, 10-12 Russell Square, London WC1B 5LF, United Kingdom [*].

¹²⁷ [*].

¹²⁸ [*].

¹²⁹ [*].

¹³⁰ Description of post in original English wording.

¹³¹ Description of post in original English wording.

¹³² [*].

¹³³ [*].

¹³⁴ [*].

¹³⁵ [*]. Address: Clement Vanophemstraat 78, B-3090 Overijse.

¹³⁶ [*].

¹³⁷ [*].

¹³⁸ [*].

¹³⁹ [*].

2.10 Ziegler

- (86) Ziegler was founded in 1908 under the name “Transports internationaux, Ziegler et Compagnie”. Since 1981 it has been called Ziegler, and in 1983 it became a public limited company, Ziegler SA (“Ziegler”)¹⁴⁰. Up to December 2003, the removals business was a division of Ziegler. On 11 December 2003, Ziegler’s removals division was transferred to [*], which is part of the Ziegler group and whose name was changed to [*]¹⁴¹.
- (87) In the financial year ending 31 December 2006, Ziegler achieved a consolidated worldwide turnover of EUR [*]¹⁴².

3. DESCRIPTION OF THE MARKET

3.1 Supply

- (88) The services concerned are international removal services in Belgium, i.e. door-to-door removal services whose place of departure or destination is in Belgium.
- (89) The combined turnover of Allied Arthur Pierre, Compas, Coppens, Gosselin, Interdean, Mozer, Putters, Team Relocations, Transworld and Ziegler in the international removal services market in Belgium in 2002 has been estimated by the Commission on the basis of the information furnished *inter alia* by those companies at approximately EUR 41 000 000 and their market share at approximately 50%¹⁴³.

3.2 Demand

- (90) Belgium is an important geopolitical centre and also a commercial hub.
- (91) Several European and international institutions – such as the Council of the European Union, the European Commission, the European Parliament, the Representation of the European Free Trade Association and of the European Economic Area, the North Atlantic Treaty Organisation, non-governmental organisations and bodies linked to the United Nations – have their headquarters or offices in Brussels. These institutions, as well as embassies, the permanent representations of the Member States to the European Union, representatives of interest groups, and Belgian ministries with international links, such as the

¹⁴⁰ [*]. Address: Rue Dieudonné Lefèvre 160, B-1020 Brussels.

¹⁴¹ [*].

¹⁴² [*].

¹⁴³ The turnovers achieved in the international removal services market in Belgium in 2002 were communicated by the relevant removal companies or were calculated by the Commission on the basis of the information furnished by those companies. The size of the international removal services market in Belgium in 2002 was estimated by five of the relevant companies and one of their competitors. Each company cited a different basis for its estimate, or no basis at all. Market shares were estimated by four of the relevant companies and two of their competitors. [*].

Ministry of Foreign Affairs and the Ministry of Defence, use international removal companies to move their goods or those of their officials, contractors and other employees.

- (92) Many multinationals have a branch or head office in Belgium. They use international removal companies to move their goods and those of their employees between their various head offices or branches.

3.3 Geographic scope

- (93) An international removal service is by definition international. It necessarily involves crossing a border from one country to another.
- (94) However, since the international removal companies in question are all located in Belgium, since the removals have their place of departure or destination in Belgium and since the cartel's activity takes place in Belgium, the geographic centre of this case is considered to be Belgium, where the removals which are the subject of the infringement in this case started from or terminated.

C. PROCEEDINGS

4. THE INVESTIGATION

- (95) The Commission had information that certain Belgian companies in the international removals business were party to agreements that might be caught by the prohibition in Article 81 of the Treaty.
- (96) On 23 August 2003, the Commission adopted individual decisions ordering an investigation under Article 14(3) of Council Regulation No 17 of 6 February 1962, the first regulation applying Articles 85 and 86 of the Treaty¹⁴⁴, which was carried out in Belgium on the premises of Allied Arthur Pierre on 16 and 17 September 2003, Interdean on 16 and 17 September 2003, Transworld on 16 September 2003, and Ziegler on 16, 17 and 18 September 2003.

5. THE APPLICATION FOR IMMUNITY OR FOR A REDUCTION OF FINE

- (97) Following the investigation, on 26 September 2003 Allied Arthur Pierre, represented by its lawyers, applied for immunity from fines or, failing that, a reduction of fine in accordance with the Commission notice on immunity from fines and reduction of fines in cartel cases ("the Leniency Notice")¹⁴⁵. [*]¹⁴⁶. [*]¹⁴⁷.

¹⁴⁴ OJ L3, 21.2.1962, p. 204. Regulation repealed by Regulation (EC) No 1/2003.

¹⁴⁵ OJ C 45, 19.2.2002, p. 3.

¹⁴⁶ [*].

¹⁴⁷ [*].

- (98) [...], the Commission told Allied Arthur Pierre that no immunity was possible and undertook to evaluate the evidence submitted with the application for leniency in order to establish whether it represented significant added value with respect to the evidence already in the Commission's possession. [...], the Commission informed Allied Arthur Pierre that it had come to the preliminary conclusion that the evidence submitted by Allied Arthur Pierre did constitute added value within the meaning of the Leniency Notice, and that it intended to reduce the amount of the fine to be imposed on Allied Arthur Pierre by between 30% and 50%.
- (99) [...] ¹⁴⁸. [...] ¹⁴⁹.

6. COMMISSION REQUESTS FOR INFORMATION

- (100) On 1 February 2005, the Commission sent requests for information under Article 18 of Regulation (EC) No 1/2003. The requests for information related to the structure of the undertakings, their positions in the market for international removal services in Belgium, and market data.
- (101) The requests for information were sent to the four undertakings on whose premises the investigation had been carried out, namely Allied Arthur Pierre ¹⁵⁰, Interdean ¹⁵¹, Transworld ¹⁵² and Ziegler ¹⁵³, and to six other undertakings providing international removal services whose names had appeared several times in documents [...]: these were Compas ¹⁵⁴, Coppens ¹⁵⁵, Gosselin ¹⁵⁶, Mozer ¹⁵⁷, Putters ¹⁵⁸ and Team Relocations ¹⁵⁹.
- (102) On 12 September 2005, the Commission sent requests for information under Article 18 of Regulation (EC) No 1/2003 to the six other international removal companies that had been indicated by the companies concerned as their main competitors, asking them to describe their position in the market for international removals in Belgium and to supply data regarding that market ¹⁶⁰. On 19 September 2005, the Commission sent a request for information to the Chamber of Belgian Movers (Chambre belge des déménageurs/Belgische Kamer der Verhuizers) regarding the position of the first 20 companies in the

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market for international removal services in Belgium and data regarding that market¹⁶¹.

- (103) On 19 September 2005, the Commission sent a second request for information to [*], concerning a document found [*] during the investigation¹⁶².
- (104) The Commission sent a second request for information regarding the structure of their businesses to Allied Arthur Pierre¹⁶³, Interdean¹⁶⁴, Team Relocations¹⁶⁵ and Gosselin¹⁶⁶.
- (105) On 6 July 2007, the Commission sent requests for information concerning matters contained in their replies to the statement of objections to Sirva Inc.¹⁶⁷, Interdean NV, Interdean AG, Interdean SA, Interdean Holding BV, Rondspant Holding BV, Iriben Limited, Interdean International Limited, Interdean Group Limited¹⁶⁸, Exel International Holdings (Belgium) NV, Exel International Holdings (Netherlands II) BV, Exel International Holdings (Netherlands I) BV, Realcause Limited, Amcrisp Limited, Exel International Holdings Limited and Exel Investments Limited¹⁶⁹.
- (106) On 9 October 2007, the Commission sent requests for information to all the parties, concerning turnovers and any changes in business structure or names and addresses¹⁷⁰.

7. THE STATEMENT OF OBJECTIONS

- (107) On 18 October 2006, the Commission initiated proceedings and adopted a statement of objections which was notified to the parties on 20 and 23 October 2006.
- (108) The parties requested and were sent, between 23 October 2006 and 27 November 2006, an electronic version on DVD of the accessible documents in the Commission's file.
- (109) The representatives of all the parties, with the exception of Amertranseuro, Stichting, Team Relocations Limited and Trans Euro, exercised their right of access to the documents in the Commission's file, these being accessible only on the Commission's premises. Access was granted between 6 and 29 November 2006.

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- (110) All the parties gave their views on the statement of objections. Coppens, Interdean, Gosselin and Stichting asked the Hearing Officer for an extension of the time limit for replying. The Hearing Officer acceded to their request, and the deadline was set at 22 January 2007. All the other parties gave their views on the statement of objections within the time limit originally set¹⁷¹.
- (111) On 12 January 2007, Coppens said it wished to exercise its right to be heard, and a hearing was duly held on 22 March 2007.
- (112) On 10 August 2007, Ziegler requested access to the other parties' comments on the statement of objections¹⁷². The request was turned down by the Commission on 17 August 2007 on the ground that Ziegler had in fact been granted access to the file in accordance with the rules and established practice¹⁷³. On 19 September 2007, Ziegler asked the Hearing Officer to accede to its request¹⁷⁴. By letter dated 28 September 2007, the Hearing Officer replied in the negative¹⁷⁵. He explained that the Commission's investigation was completed in principle with the notification of the statement of objections. Consequently, any information received after the notification of the statement of objections did not form part of the Commission's investigation file and hence was not accessible¹⁷⁶. Unless the Commission used replies to the statement of objections to charge other parties or replies contained evidence exonerating them, the Commission was not required to communicate them.¹⁷⁷
- (113) The Commission would point out that, in their comments on the statement of objections, none of the ten removal companies in question denied having participated in the activities concerning it described in

¹⁷¹ Allied Arthur Pierre on 21 December 2006 [*], Amerisp Limited on 22 January 2007 [*], Amertranseuro on 20 December 2006 [*], Compas on 20 December 2006 [*], Coppens on 12 January 2007 [*], Exel International Holdings (Belgium) NV on 20 December 2006 [*], Exel International Holdings (Netherlands I) BV on 20 December 2006 [*], Exel International Holdings (Netherlands II) BV on 20 December 2006 [*], Exel International Holdings Limited on 20 December 2006 [*], Exel Investments Limited on 20 December 2006 [*], Gosselin on 22 January 2007 [*], Interdean AG on 22 January 2007 [*], Interdean Group Limited on 22 January 2007 [*], Interdean Holding BV on 22 January 2007 [*], Interdean International Limited on 22 January 2007 [*], Interdean NV on 22 January 2007 [*], Interdean SA on 22 January 2007 [*], Iriben Limited on 22 January 2007 [*], Mozer International SA on 11 December 2006 [*], Mozer on 11 December 2006 [*], North American International Holding Corporation on 21 December 2006 [*], North American Van Lines Inc. on 21 December 2006 [*], Putters on 21 December 2006 [*], Realcause Limited on 20 December 2006 [*], Rondspant Holding BV on 22 January 2007 [*], Sirva Inc. on 21 December 2006 [*], Stichting on 22 January 2007 [*], Team Relocations NV on 20 December 2006 [*], Team Relocations Limited on 20 December 2006 [*], Trans Euro on 20 December 2006 [*], Transworld on 20 December 2006 [*] and Ziegler on 21 December 2006 [*].

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¹⁷³ [*].

¹⁷⁴ [*].

¹⁷⁵ [*].

¹⁷⁶ [*].

¹⁷⁷ Judgment of the Court of Justice in Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, *Aalborg Portland and Others v. Commission*, [2004], ECR I-123, paragraphs 71, 74 and 75.

the statement of objections. It would also point out that none of the parent companies denies possessing, directly or indirectly, all (or almost all) of the shares in one of the ten participants in the cartel as set out in the statement of objections.

- (114) The Commission would point out, lastly, that Compas has said it has checked as far as possible the facts presented in the statement of objections and has found them, as well as the Commission's interpretation thereof, to be accurate. Compas has admitted its guilt ("*Schuldbekentenis*") and expressed regret for taking part in the cartel¹⁷⁸.

8. STATEMENT OF FACTS

- (115) In the statement of facts of 23 August 2007, the Commission informed the parties of the evidence [*] and of its intention to use it against Allied Arthur Pierre, Interdean and Ziegler. Annexed to the statement of facts, the Commission sent a copy of this evidence to all the parties. The latter were given the opportunity to make known their views.
- (116) Compas¹⁷⁹, Coppens¹⁸⁰, Amcrisp Limited, Interdean NV, Interdean AG, Interdean SA, Interdean Holding BV, Rondspant Holding BV, Iriben Limited, Interdean International Limited, Interdean Group Limited¹⁸¹, Exel International Holdings (Belgium) NV, Exel International Holdings (Netherlands I) BV, Exel International Holdings (Netherlands II) BV, Realcause Limited, Exel International Holdings Limited, Exel Investments Limited¹⁸², Gosselin¹⁸³, Stichting¹⁸⁴, Transworld¹⁸⁵ and Ziegler¹⁸⁶ submitted comments.
- (117) Interdean NV and its parent companies and Ziegler do not contest the facts presented in the statement of facts of 23 August 2007¹⁸⁷. The other parties took the view that they were not concerned by those facts.

D. THE FACTS

9. THE DOCUMENTS IN THE COMMISSION'S POSSESSION

- (118) [*]¹⁸⁸, [*]¹⁸⁹, [*]¹⁹⁰, [*]¹⁹¹ and [*]¹⁹².

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- (119) References to the items of evidence used in this Decision are given in the footnotes and in Annexes 1 and 2, which set out the evidence, broken down by company and by category of conduct.
- (120) Gosselin is alone in considering in its reply to the statement of objections that some of these documents do not constitute sufficient evidence of its participation in certain arrangements regarding commissions and cover quotes. The Commission rejects this argument for the reasons given in connection with the commission arrangements (section 12.1) and the cover quote arrangements (section 12.2).

10. THE CARTEL

- (121) In the present case the cartel, whose object and effect was to restrict competition in the international removal services market in Belgium, lasted for more than 19 years. The cartel was aimed *inter alia* at establishing and maintaining high prices and at sharing the market contemporaneously or successively. It manifested itself in various forms, namely: an agreement on prices, an agreement on sharing the market by means of a system of providing cover (called “cover quotes”)¹⁹³ and an agreement on a system of financial compensation (called “commissions”)¹⁹⁴. These agreements were applied continuously.
- (122) The implementation of the agreement is described in sections 11 to 13, starting with a presentation of the agreement on prices, followed by an explanation of the agreement on commissions and of the agreement on cover quotes.

11. THE AGREEMENT ON PRICES

- (123) [*]¹⁹⁵.
- (124) The earliest direct evidence in the Commission’s possession that demonstrates the existence of a cartel in international removal services in Belgium dates from the mid-1980s and concerns *inter alia* the agreement on prices and the operation of the cartel. In the course of the inspection [*] the following eight documents¹⁹⁶ were found in the office of [*].

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191 See, for example, [*].

192 See footnote 171.

193 Hereinafter “the agreement on cover quotes”.

194 Hereinafter “the agreement on commissions”.

195 [*].

196 These documents were written in English. The presentation of these documents in paragraphs (125) to (151) refers to the original English terms: “Overseas removals inbound/outbound”, “Proposal tariff”

- (125) The first document dates from 1984¹⁹⁷. It consists of one typed page, under the headline “OVERSEAS REMOVALS – INBOUND”.
- (126) The title is underlined once in black. Section A indicates the services covered¹⁹⁸; section B gives prices for these services, by volume or weight of the removal, in Belgian francs and dollars¹⁹⁹; section C gives prices for lift vehicles in Belgian francs and dollars; section D gives prices for reception and placing of goods and containers in warehouses, in Belgian francs and dollars; and section E gives prices for storage, by volume or weight, in Belgian francs. Below the typed matter are the signatures of representatives of the companies Arthur Pierre, Global²⁰⁰, Interdean, [*] and Ziegler. Below the signatures is the handwritten date 4 October 1984. At the top of the page, to the right of the headline, are the words “PROPOSAL TARIFF 1985”, underlined with several small black lines. A diagonal line has been drawn through the document by hand. The undertakings concerned have not contested the fact that this document constituted an agreement at the time.
- (127) A second document²⁰¹, of seven pages, carries the headline “AGREED RATE FROM ON FEBRUARY 1²⁰², 1985”. It is signed on behalf of the same companies as the 1984 document, and by the same representatives with the exception of Allied Arthur Pierre’s²⁰³. Each page is initialled eight times, and there are eight signatures on the last page. The document is divided into the following chapters: “I. OVERSEAS REMOVALS – OUTBOUND”, “III. INTRA-EUROPEAN REMOVALS – OUTBOUND (over 20 m³)”, “IV. IMPORTANT REMARK”.
- (128) Chapters I and III each contain several sections indicating prices²⁰⁴ for the services covered²⁰⁵, lift vehicles, reception and placing of goods in warehouses, storage and insurance.

(tariff or price proposal), “Agreed rate from on” (tariff or price agreed with effect from); “Important remark”; “Preliminary remark”; “Special rates and charges”; “Rules”; “Minimum rates”; “Insurance”; “General conclusion”.

197

[*].

198

“Collection from quayside Antwerp, normal customs formalities on used removal goods, linehaul from port of Antwerp to destination city, delivery into residence (normal access – not above 4), unpacking and setting up of the furniture, one time removal of empty debris upon completion of the delivery, return of the steamship container to the Antwerp terminal” (original English) [*].

199

In overseas removals volume is expressed in “feet”, which is the unit used to measure containers. Weight is expressed in “lbs” or “pounds”. (One pound is equal to 0.4536 kg: see http://www.simetric.co.uk/si_lm.htm.)

200

“Global” was the name borne by Transworld from 1978 to 1989. The person who signed for Global was [*]. [*].

201

[*].

202

The typed version indicates “Jan. 15, 1985”. The words “Jan. 15” have been crossed out by hand, and the words “Feb 1” entered by hand above them.

203

The person who signed for Arthur Pierre was not [*] but [*].

204

For overseas removals the prices are given by weight or by volume (see footnote 199). For European removals the prices are given by volume, expressed in cubic metres or in feet.

205

“Packaging of all items, supplying of all necessary packing materials, overseas packing of all furniture, loading into steamship container(s), normal access – max. 4th floor or loading into wooden

- (129) At the end of the document is the following: “It is clear that all above mentioned rates are minimum rates allowing a minimal profit to the companies. It is obvious that higher rates might be set”²⁰⁶.
- (130) A third document, headed “AGREED RATE FROM ON JULY 1, 1987”²⁰⁷ is signed by representatives²⁰⁸ of the companies A. Pierre Belgium, Arthur Pierre, Global, Interdean, [*] and Ziegler.
- (131) After the heading “PRELIMINARY REMARK” there is the same formula that ended the document of February 1985 (see paragraph (129)). Like the document of February 1985, the July 1987 document contains the following chapters: “I. OVERSEAS REMOVALS – OUTBOUND”, “III. INTRA-EUROPEAN REMOVALS – OUTBOUND (over 20 m³)”. The content of these chapters is identical to that of the document of February 1985, except for the prices for storage in connection with European removals, which are higher²⁰⁹.
- (132) In addition to those chapters the document of July 1987 has a chapter IV, “SPECIAL RATES AND EXTRA CHARGES”²¹⁰, a chapter V, “RULES”, a chapter VI, “STATES-SIDE REQUEST” and a chapter VII, “VERY IMPORTANT REMARK”.
- (133) Attention may be drawn to the following provisions in chapter V, “RULES”:

For every agreement reached, members are to determine the weight or volume involved in each individual move. The penalty clause states that, if it is proved that one of the signatories has deviated from the agreed tariffs, double commission must be paid and that, in the event of a dispute, a final decision will be taken by the other members at the quarterly meeting. Every member is required to check with his counterparts each removal of which he has knowledge. Participants must even inform each other when they wish to alter the terms of contract relating to other types of move than the type covered by the agreement. If he defaults on this obligation, the participants who are the

liftvan(s), supplying and construction of same including stuffing into steamship container if required, transport to quayside Antwerp, normal outgoing customs formalities”. The following are not covered: “Extra: abnormal access, heavy items like pianos, use of special hoisting equipment, etc.” (original English). [*].

²⁰⁶ [*] (original English).

²⁰⁷ [*].

²⁰⁸ The signatures of the representatives of Global, [*], [*] and Ziegler are the same as those on the document concerning prices dating from February 1985 which is described in paragraphs (127) to (129). The signatures of the representatives of Interdean and [*] are not legible. The representative of Arthur Pierre has signed “[*]”. [*].

²⁰⁹ [*].

²¹⁰ [*] Sections A to E of this chapter list the services not covered and the prices of some of these services, such as cleaning, air transport, and transport of cars.

victims of his conduct may decide not to negotiate any more with that particular member until the next quarterly review²¹¹.

- (134) The next chapter, chapter VI, is headed “STATES-SIDE REQUEST” and stipulates that the participants must consult each other with a view to agreeing on commission rates before submitting an offer to overseas agents²¹².
- (135) The “very important remark” in chapter VII states that the document is not just a price agreement, but also reflects the spirit of cooperation between the signatories²¹³.
- (136) Entered by hand on the first page of the document²¹⁴ is an arrow followed by the letters “[*]”²¹⁵, and below that “Draft” (*Ontwerp*) and “[*]”. A diagonal line has been drawn through the first page by hand.
- (137) A fourth document [*], likewise dating from 1987, is a covering letter dated 22 October 1987²¹⁶ with an eight-page document headed “AGREED RATE FROM ON NOVEMBER 1 1987”²¹⁷.
- (138) The covering letter is addressed to the representatives of Arthur Pierre Belgium, [*], Ziegler, Interdean and Global and is signed by [*] of Arthur Pierre Belgium. In it, Allied Arthur Pierre communicates a revised tariff following the meeting of 21 October 1987 and proposes 1 November as the date on which it should take effect. The addressees

²¹¹ The original English reads: “A. For every agreement reached, members also should fix the weight or volume of every individual move. B. This tariff becomes effective June 19, penalty clause only as from July 1st. C. Penalty clause. If counterpart can prove that apparent error or deviation from agreed tariffs is made by one of the undersigned, double commission will be paid. In case of dispute, final decision will be voted by other members at quarterly meeting. D. Every member is obliged to check with his colleagues on every move where he knows the competition. For moves under 5000 lbs or 25 m³ if a member is informed that a non-member is also quoting, member is free from his obligation to quote tariff. If a non-member is quoting on moves over 5000 lbs or 25 m³, members should consult each other and eventually may decide to go their own way if agreed by all parties concerned. If there has been an agreement reached between members on other types of moves as handled in this proposal, members can not alter the terms of contract without informing his counterparts. If he fails to do so, the victims members may decide not to negotiate any more on actual proposals with that particular member until next quarterly review.” [*].

²¹² The original English reads: “For requests by Van Lines or overseas agents to quote on certain moves, origin rates and ocean freight charges of actual proposal should be applied. If non-conference is requested, rate has to include all extras. Members before quoting should consult each other in order to agree on commissions”. [*].

²¹³ The original English reads: “This agreement is based on the understanding that it is not only a rate agreement, but also the reflection of a co-operative spirit, whereby all members will respect each members organisation”. [*].

²¹⁴ [*].

²¹⁵ [*].

²¹⁶ [*].

²¹⁷ [*].

are asked to notify the sender as a matter of urgency if they do not agree with the date or with any other element of the tariff.²¹⁸.

- (139) The document concerning the tariff from November 1987 contains the same chapters, sections and text as the tariff of July 1987, the only difference being that the prices are higher for the volumes, weights and regions indicated in chapter I, “OVERSEAS REMOVALS – OUTBOUND”, sections B to E, and in chapter III, “INTRA-EUROPEAN REMOVALS – OUTBOUND (over 20 m3)”.
- (140) The fifth document [*] is a handwritten memo on Arthur Pierre headed notepaper, dated 21 October 1987²¹⁹, which contains details on the setting of the commission rate, intimating in particular that 10% of turnover is to be shared among the participants and that the latter need to talk before applying the agreed price plus the commission rate²²⁰.
- (141) A sixth document [*] takes the form of a covering letter dated 7 May 1990, signed by [*] of Arthur Pierre Belgium²²¹, and a two-page paper headed “Minimum Rates”²²², together with a second letter dated 7 May 1990 informing its recipients of the outcome of the consultations.
- (142) The covering letter bears the reference number 142, is addressed to the representatives of Ziegler, Transworld, [*], Interdean, [*], Arthur Pierre and [*] and asks them to check the two pages following. If they agree they are to sign and return the pages²²³. [*] says that the agreement should start to run on 14 May, and that the next meeting is to take place on 28 May on the premises of Arthur Pierre in Overijse. The letter was sent by fax on 8 May 1990²²⁴.
- (143) The two pages²²⁵ referred to in this covering letter were also sent by fax on 8 May 1990. They begin with the heading “MINIMUM RATES”, framed in a black double rectangle. The first chapter is headed “A. OVERSEAS”. This title is framed in a black rectangle with a shadow effect. The chapter sets out prices in Belgian francs by volume for container storage, and in dollars for delivery. Additional services not included in these prices are shown in a non-exhaustive list (car, cleaning, pets, air transport). The second chapter carries the heading

²¹⁸ The original English reads: “Re: Tariff. We refer to our meeting of October 21st 1987. Please find attached the amended tariff. We propose it will become effective as from November 1st next. If you do not agree with this date or with any other point of the tariff, please advise me urgently”.

²¹⁹ [*].

²²⁰ The original English reads: “MIN 10% COMM ON TURNOVER TO BE DIVIDED BETWEEN QUOTING PARTIES”. The question “NEXT MEETING: END NOV.?” also features, as does the following instruction: “TALK BEFORE APPLYING CONVENTION RATES (+ COMM). INCREASE CONV. RATES FOR ORIGIN +/- 10 %, EUROPE +/- 20% + 100 BF/KM”.

²²¹ [*].

²²² [*].

²²³ [*] The original English reads: “Please verify following two pages. If in agreement please fax me both pages back signed for agreement”.

²²⁴ [*].

²²⁵ [*].

“B. EUROPE”, and is likewise framed in a black rectangle with a shadow effect. It indicates prices per cubic metre per kilometre, and for extra labour during transport. Chapter C, “INSURANCE”, contains percentage rates for insurance in Europe and overseas; the graphic presentation of this title is the same as that of the preceding ones.

- (144) The second letter dated 7 May 1990 bears the reference number 148, and is addressed to the same representatives and to the representative of Arthur Pierre Antwerp; it was sent by fax on 14 May 1990. [*] here informs the representatives of the “minimum rates” agreed by all the parties. [*] confirms that Arthur Pierre Antwerp is also considered to be a party to the agreement²²⁶.
- (145) The seventh document²²⁷ [*] is a handwritten memo, on Arthur Pierre headed notepaper, dated 23 November 1990, which includes the following passage in Dutch: *initiatief komt meestal vanuit AP 250 consultaties = AP – list outsiders* (“initiative usually comes from AP 250 consultations = AP – list outsiders”).
- (146) The eighth document²²⁸ [*] is headed “MINIMUM RATES FOR EUROPEAN AND OVERSEAS MOVES”. The title is framed in a black rectangle with a shadow effect. All the pages of the document are marked “draft for discussion” (*ontwerp ter besprekking*) at the top right. The document contains two chapters, whose titles are likewise framed in a black rectangle with a shadow effect. The first chapter is entitled “1 - BASIC PRINCIPLES”, and the second “2 - RATES”. The basic principles are as follows: only one person in each company knows about the new system. Accounts are balanced and settled between companies at three-monthly intervals on the basis of a single invoice. The participants agree to show all extra costs separately or add them to the basic price at cost. Insurance is to be calculated at the normal rate²²⁹.
- (147) The document indicates, in chapter 2 “RATES”, the categories of international removal for which two commissions are to be paid, classified by region and volume, and the amount of these commissions²³⁰.
- (148) For international removals within Europe, with a volume of between 20 and 40 m³, the price is set at BEF 6 000/m³, and “this rates includes 2 x 15.000 BF commission”. It is stipulated that: “If there are only 2 parties quoting, the booker keeps 1 commission (15.000 BF)”²³¹. For

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[*].

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[*].

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[*].

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The original English reads: “Only one person in each Co knows about the new system. There is a compensation between Co every 3 months: only 1 bill is issued. Parties agree that all extra’s will be mentioned separately, or added to the minimum price at real cost. Insurance rates should be on normal levels.” [*].

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Insurance rates are also set: chapter 2.5 [*].

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[*]. The price per kilometre is set at BEF 85.

international removals with a volume of between 40 and 60 m³, the price is set at BEF 5 500 m³, “Commission: 2 x 25.000 BF (included)”²³². For international removals with a volume above 60 m³, the price is set at BEF 5 000/m³, and commissions at “2 x 35.000 BF”²³³.

- (149) For removals “overseas-U.S.A.”, the categories, expressed in pounds, are: “between 3001 – 6500 lbs (1 x 20 f.”²³⁴), with set prices, “rate includes 2 x 15.000 BF commission”, and “between 6.500 and 13.000 lbs (1 x 40 f”)”, including two commissions of BEF 30 000. For removals “over 13.000 lbs”, reference is made to the previous categories.
- (150) The arrangement for the other regions is the same as for the United States²³⁵.
- (151) Under the heading “2.6 - GENERAL CONCLUSION” we read that the parties agree to apply these rates in a spirit of fairness and mutual trust²³⁶.
- (152) In reply to the request for information relating to this document, “MINIMUM RATES FOR EUROPEAN AND OVERSEAS MOVES”, [*] stated that it could no longer say where or when it had come into possession of the document. It said the document dated from fifteen years previously at least²³⁷. [*] said it was more than likely that the document had been circulated or discussed at a trade association meeting. From the wording of the general conclusion at the end of the document, [*] deduced that the initiative might perhaps have been taken by Arthur Pierre, which was named in the document²³⁸.
- (153) The Commission notes that this eighth document [*] has the same graphic presentation as the document on prices of May 1990: the black rectangles with shadow effects around the headings seem to have been drawn on a computer. This presentation is different from those of the agreements of October 1984, February 1985, and July and November 1987, where the underlined headings and typed text appear to have been typed on a typewriter. This document also has a different structure from that of the preceding ones: it begins with basic rules, and there is then one chapter on prices. The content seems to represent a considerable change from the document of May 1990, in that its content and presentation are more concise and simplified. The

²³² [*]. The price per kilometre is set at BEF 90.

²³³ [*]. The price per kilometre is set at BEF 95.

²³⁴ See footnote 199.

²³⁵ [*].

²³⁶ The original English text reads: “Parties agree to apply these rates in all fairness and mutual trust. As agreed, Arthur Pierre will add 5% on top of above rates. If Pierre is requested to lower their rates, they are allowed to do, but limited to 3%. It is obvious that our colleagues in these circumstances should not lower their rates.” [*].

²³⁷ [*].

²³⁸ [*].

Commission takes the view, therefore, that this eighth document must be dated after November 1987, and most probably after May 1990.

12. THE AGREEMENTS ON COMMISSIONS AND COVER QUOTES

- (154) On the basis of the evidence contained in the Commission's file, the operation of the arrangements between the relevant companies regarding commissions and cover quotes may be described as follows.
- (155) Before settling on a removal company, the customer or the person who was moving²³⁹ would usually contact several companies offering international removal services in order to compare their quotations. Representatives of some or all of the companies contacted would visit in order to take particulars of the volume and any special features of the removal that they might need to know in order to draw up an estimate. If the companies made their surveys at the same time, these representatives would meet on the spot, and would then know who were their competitors for the removal. In cases where the relevant removal companies could not identify their competitors in that fashion, they themselves took the initiative of contacting their competitors in order to establish which of them knew of the removal and intended to submit an estimate²⁴⁰.
- (156) Once the service providers with an interest in the same international removal had identified one another, they contacted one another to agree on commissions²⁴¹, cover quotes²⁴² or a combination of the two arrangements²⁴³.
- (157) It was this establishing of contact and acting concertedly that characterised the operation of the cartel in the 1980s. As, for example, rule "D" of the July 1987 written agreement explicitly states, every participant in the cartel was obliged to check with his colleagues on the application of the cartel's rules for every move for which he had identified a competitor²⁴⁴. That written agreement required the

²³⁹ For the purposes of this Decision, "customer" means the party to the international removal contract who pays for the service. The customer is therefore the institution or undertaking which pays the costs of the international removal of its employees. The actual move is effected by the employee. The customer may also be a private individual who pays for his own removal.

²⁴⁰ [*], International Moving Division Manager at Ziegler, sent an email on 15 May 2001 to inform his colleagues [*], International Moving Division Manager, [*], [*] and [*] that [*] of Interdean wanted to know whether Ziegler would be submitting an estimate for the removal of [*] from Waterloo to Germany, which appeared to be a big removal. Probably there would be no call to make a home visit, and the price would be based on previous experience with the customer. [*] asked his colleagues if they knew anything about the matter, and asked for their opinion [*].

²⁴¹ By email of 4 May 2001, [*], General Manager of Interdean, informed his colleague [*] that [*] of Gosselin was asking whether it was possible for Interdean to include a commission of twice BEF 30 000 in the estimate made by Interdean together with Ziegler, for the removal of [*]. If this was not possible, [*] was to inform [*]. [*]. See section 12.1.

²⁴² See section 12.2.

²⁴³ See the examples described in paragraphs (178), (179), (180) and (194).

²⁴⁴ See paragraph (133).

participants in the cartel to consult each other before agreeing on commissions²⁴⁵.

- (158) Implementation of the agreements on commissions and cover quotes was based on direct contact between the participants in the cartel at the customer's home or office²⁴⁶, by telephone²⁴⁷, by fax²⁴⁸, by email²⁴⁹ or at meetings²⁵⁰.
- (159) Compas said in its reply to the statement of objections²⁵¹ and at the hearing²⁵² that its managers had been versed in the operation of the commission and cover quote system of their previous employer, Allied Arthur Pierre, since the 1980s²⁵³. It also said it had checked as far as possible the facts presented in the statement of objections and it confirmed that the Commission had interpreted them correctly²⁵⁴.
- (160) Most of the evidence in the Commission's possession concerns agreements on commissions and cover quotes for international removals of property belonging to natural persons. Some of the evidence concerns the implementation of agreements on commissions and cover quotes for international removals of offices²⁵⁵. For the purposes of this Decision, it is not necessary to distinguish between removals of property belonging to natural persons and removals of offices. The approach adopted will be to adduce against each addressee of this Decision the specific evidence of its participation in the cartel (see paragraphs (172), (173), (236) and (237) and Annexes 1 and 2).

²⁴⁵ See paragraph (134).

²⁴⁶ [*].

²⁴⁷ Email of 20 July 1998 from [*] of Allied Arthur Pierre to [*] of Interdean: "As agreed by telephone this morning please find enclosed the signed cover quote for [*]." (*Zoals deze morgen telefonisch afgesproken, vindt u in bijlage het ondertekende schaduwbestek voor de heer en [*].*) [*]. In a document dated 9 July 2003 entitled "Interdean/Interconnex Survey report", concerning the removal of [*], paid for by [*], there is a handwritten note "call [*] for % 3 x 500" (*bellen met [*] voor % 3 x 500*). The Commission understands the symbol "%" to stand for the term "commission" (*commissie*) [*]. Email of 5 December 2002 from [*] of Ziegler to her colleagues [*] and [*] regarding the removal of [*]: "Interdean has called me to settle a commission for the [*] case" (*Interdean m'a téléphoné pour régler une commission pour le dossier [*]*). [*].

²⁴⁸ In an email message of 14 July 2003, [*], Sales Coordinator at Team Relocations, asks [*] of Allied Arthur Pierre to confirm reception of a fax she sent the week before, requesting a cover quote, and asks whether they are prepared to give one: "Hi [*], Last week I sent a fax about a request for a cover quote. Can you confirm that you got it, and whether you will do it? It was a document for [*]. Thanks in advance" (*Hallo [*], Vorige week heb ik een fax gestuurd ivm een ddc aanvraag. Kan je even bevestigen of jullie hem goed ontvangen hebben, alsook of jullie hem willen maken? Het was een doc voor [*]. Alvast bedankt*) [*]. See also "Document EC removal Brussels-Catania sent to your fax" (*Document EC-verhuizing Brussel naar Catania - ligt op fax bij jullie*) [*].

²⁴⁹ Email dated 14 May 2003 from [*] of Allied Arthur Pierre to [*] of Interdean: "Hello, Could you do us another cover quote? It's for [*]. Me [*]" (*Middag ! Kunnen jullie nog een ddc voors ons maken ? Is voor [*] Ikke*) [*], and other examples in sections 12.1 and 12.2.

²⁵⁰ [*]

²⁵¹ [*].

²⁵² [*].

²⁵³ See footnote 262.

²⁵⁴ [*].

²⁵⁵ See, for example, the removal of the offices of [*] described in paragraph (194).

The argument advanced by Gosselin²⁵⁶ and Team Relocations²⁵⁷ to the effect that they do not perform international removals of offices therefore has no incidence on the evidence adduced against each of these companies in this Decision.

12.1 The agreement on commissions

- (161) There is evidence of the use of commissions dating back to the 1980s. Commissions are thus mentioned in the written price agreements of July and November 1987²⁵⁸ and in the document the Commission dates to after May 1990²⁵⁹.
- (162) [*]²⁶⁰. [*]²⁶¹.
- (163) [*]²⁶².
- (164) It follows from the evidence in the file that a “*commission*” in French²⁶³, “*commissie*” in Dutch²⁶⁴ or “*commission*” in English²⁶⁵ was a sum of money that the removal company winning the contract for an international removal owed to the competitors that had not secured the contract, whether they had submitted an estimate or had abstained from doing so. It was therefore a sort of financial compensation for the removal company that did not win the contract.
- (165) A removal for [*] provides a clear example. On 2 April 2001, [*], moving consultant at Interdean, informed [*], Interdean’s general manager, that a commission of BEF 25 000 had been agreed with Putters²⁶⁶. On 3 May 2001, [*] informed [*] that the commission was to be paid by Interdean, which had secured the removal²⁶⁷.
- (166) Another example is provided by an email message from [*] of Interdean to his colleague [*] saying that commissions are to be billed

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See paragraphs (132) to (139).

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See paragraphs (146) to (153).

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“Morning, [*]. I have agreed BEF 25 000 com. with [*] for the case of [*] (...) of [*]. Best wishes, [*]”
(*Goeiemorgen [*], Heb BEF 25.000,- com. afgesproken met [*] voor het dossier [*] (...) van [*] groeten [*]*) [*]

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“[*], The commission of BEF 25 000 agreed with Putters for the case of [*] of [*] ... the commission has to be paid by us, since we got the job. [*]” ([*], *De afgesproken commissie van 25.000 met [*] voor het [*] – dossier [*] ... de commissie is door ons te betalen, wij boekten de job [*]*) [*]. For the removal of [*] of [*] the situation is reversed: [*] tells [*] that Putters has to pay Interdean BEF 30 000 in commission because Interdean has “lost” the order [*].

to the company that secures the contract. In reply, [*] tells his colleague that he should not send information of this sort by email²⁶⁸.

- (167) The commissions were part of the price to be paid by the customer, though the customer received nothing in return. In some cases the way in which the commissions were agreed amounted to an allocation of international removal contracts, and thus of customers.
- (168) The commissions paid to competitors are additional to the profit margin proper, for the profit is indicated separately, as a percentage, in the internal price calculations²⁶⁹.
- (169) The number and level of commissions were fixed in advance, before the removal companies involved in an international removal submitted their estimates to the customer.
- (170) [*], out of the removal companies contacted by the customer for an international removal, the companies in question would first identify those which would be interested in performing the removal. Those which had little or no interest would agree with the most interested parties on a commission they were to receive for submitting an estimate with a price higher than that of the interested companies, or submitting no estimate at all²⁷⁰.
- (171) [*], one factor that helped to determine the level of a commission was the degree of interest the companies showed in carrying out a removal. Commissions were higher for companies that hoped to obtain the contract than for companies that were not interested or were unable to perform the particular removal. A company might be uninterested or unable because the date or the destination did not suit it, or because it lacked relevant specialised knowledge²⁷¹.

12.1.1 Table summarising participation in the implementation of the agreement on commissions

- (172) The Commission has evidence demonstrating the existence of numerous instances of contact between the relevant companies regarding contracts for international removal services in respect of which commissions were paid from 1988 to 2003. It is clearly impossible to list this evidence exhaustively in this Decision; it is summarised in statistical form in Table 1, and in more detail in Annex 1. Table 1 summarises the number of international removals for which the participation of each of the relevant removal companies in the implementation of the agreement on commissions for the period 1998 to 2003 has been demonstrated by the documents in the file²⁷².

²⁶⁸ [*].

²⁶⁹ For details see section 12.1.3.

²⁷⁰ [*].

²⁷¹ [*].

²⁷² [*].

(173) **Table 1: Documented participation in the implementation of the agreement on commissions**

Company	First documented participation	'88	'89	'90	'91	'92	'93	'94	'95	'96	'97	'98	'99	'00	'01	'02	'03	Un-dated	Last documented participation	TOTALS
Allied Arthur Pierre	07.04.1988																		10.07.2003	
Compas	30.01.1997																		05.09.2002	
Coppens																				
Gosselin	31.01.1992																		31.07.2002	
Interdean	21.06.1988																		04.08.2003	
Mozer	31.03.2003																		31.03.2003	
Putters	14.2.1997																		04.08.2003	
Team Relocations	20.01.1997																		20.06.2003	
Transworld	31.08.1992																		31.12.2002	
Ziegler	11.04.1988																		4.08.2003	

(174) Annex 1 contains for each relevant removal company (in alphabetical order) a list setting out the evidence of its participation in the implementation of the agreement on commissions for international removals.

(175) Sections 12.1.2 to 12.1.5 outline the way in which the agreement on commissions was implemented, and give an example of its full implementation in respect of an international removal.

12.1.2 The implementation of the agreement on commissions

(176) There is evidence that, in some cases, the removal companies agreed the price of an international removal and the number and level of the commission(s) to be paid between themselves. In other cases there is evidence that the companies were aware of the price the others would quote, and agreed the number and level of commissions. Lastly, in a great many cases the evidence shows that commissions were agreed between the companies concerned, although the Commission is not able to say whether the companies had also agreed the prices quoted in these cases.

- (177) In the case of some international removals, the prices of services and the number and level of commissions were determined jointly by the relevant removal companies²⁷³.
- (178) This was the case with three international removals carried out in 2000 on behalf of [*]. From a handwritten memo [*]²⁷⁴, it emerges that in 2000 the removal companies Ziegler, Interdean and Allied Arthur Pierre jointly decided to handle one each of three international removals being paid for by [*]. The memo is headed “[*]”, followed by “three removals end June” and the names of the people who are to move. Each name is linked by an arrow to the name of one of the companies: “[*] → AP²⁷⁵”, “[*] → Interdean”, and “[*] → Ziegler”. For each removal the memo indicates the prices quoted by Allied Arthur Pierre itself and by Interdean and Ziegler. Each company offers a price lower than the other two for the removal of the person whose name is linked by an arrow to the name of that company.
- (179) Allied Arthur Pierre’s price for [*]’s removal to Montevideo, which Allied Arthur Pierre secured, was BEF 758 000: this was below the prices quoted by Ziegler (BEF 802 000) and Interdean (810 000). For [*]’s removal to Brasilia, which was awarded to Interdean, Interdean quoted BEF 528 000, which was below the price quoted by Ziegler (BEF 552 000) or Allied Arthur Pierre (BEF 545 000). For [*]’s removal to Montevideo, which was awarded to Ziegler, Ziegler asked for BEF 656 000, which was less than Interdean (BEF 712 000) or Allied Arthur Pierre (BEF 680 000). All of these prices included BEF 30 000 in commissions, as will be seen from the documents referred to in paragraph (180).
- (180) A document with the English title “Survey Report”²⁷⁶ [*] indicates that on 19 May 2000 Allied Arthur Pierre carried out a technical survey with a view to [*]’s removal. A handwritten note at the bottom shows the prices of Ziegler, “626 000 + insurance (ass) + 30 000”, Allied Arthur Pierre, “650 000 + insurance + 30 000”, and Interdean, “682 000 + insurance + 30 000”. At the top of the document the letter “Z” has been written by hand. Another document is the “Survey Report” for [*] which Allied Arthur Pierre drew up on 18 May 2000²⁷⁷. At the bottom handwritten notes indicate the prices of Interdean, “498 000 + 30 000”, Allied Arthur Pierre, “515 000 + 30 000”, and Ziegler, “532 000 + 30 000”. At the top of the document the letter “I” has been written by hand²⁷⁸.

²⁷³ Gosselin points out that the Commission does not accuse it of having fixed prices and commissions for the same removal [*].

²⁷⁴ [*].

²⁷⁵ “AP” refers to Allied Arthur Pierre.

²⁷⁶ [*].

²⁷⁷ [*].

²⁷⁸ [*] concerned an arrangement between Allied Arthur Pierre, Interdean and Ziegler. Ziegler had contacted Allied Arthur Pierre and Interdean in order to reach agreement concerning the three removals for [*] which were to take place at the end of June 2000. [*], Manager of Ziegler’s International Moving

- (181) [*] sometimes the participants in the cartel fixed not just the commissions but the prices beforehand. In that event the company that was to secure the contract was known in advance. This method was followed particularly where there were one or more removal companies that were not interested in performing the move²⁷⁹.
- (182) It emerges from documents [*] that for some international removals the relevant companies did not just agree the number and level of commissions but were also aware of the prices being quoted by others of the relevant companies.
- (183) A handwritten table running to several pages, [*]²⁸⁰, lists the commissions agreed between some of the relevant removal companies for international removals between 20 January 1997 and 9 July 2002.
- (184) The table comprises the following headings: date (*datum*), name (*naam*, the name of the person moving), account (*account*, the name of the company or institution funding the removal), volume (*volume*), destination (*bestemm.*), competitors (*concur.*) and agreement (*afspraken*). Of the 239 removals, there are 20 for which the “destination” column gives the word “local” (*lokaal*, indicating a local removal)²⁸¹, or has been left blank²⁸². For three others the “agreement” column gives the words “no agreement” (*geen afspraken*)²⁸³ or has been left blank²⁸⁴. Thus the number of international removals listed in the table for which an agreement was reached between the relevant removal companies is 216. In its reply to the statement of objections, Interdean, the list’s compiler, did not dispute this interpretation²⁸⁵.
- (185) Of the 216 international removals referred to in this table, there are 26 for which the “agreement” column contains the prices of Compas, Ziegler, Allied Arthur Pierre and/or Interdean. These figures are always presented in the manner shown in the examples following:
- Under date, 3/5/01; under name, “[*]”; under account, “[*]”; under volume, “52m³ + Harley + scouter”; under destination, “Goteborg”; under competitors, “COMPAS”; and under agreement, “1 x 50.000, Compas 56 580.000 + 29.000, 270/m³/month (*maand*) 750/m³, ID²⁸⁶ 52 m³ + HD + SC 594.000 + 35.000, 210/m³/m 700/m³”²⁸⁷.

Department, [*] of Interdean, and [*] of Allied Arthur Pierre met on Ziegler’s premises and fixed the prices of each of these removals. They then decided who would carry out each removal by drawing lots. [*]’s removal was awarded to Allied Arthur Pierre, [*]’s to Interdean, and [*]’s to Ziegler. The three removal companies submitted estimates quoting the prices agreed for each of the removals [*].

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For example for 21 October 1999, removal of [*], paid for by [*].

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For example for 7 May 2001, removal of [*], paid for by [*].

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For example for 6 May 1997, removal of [*], paid for by [*].

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For example for 23 May 2001, removal of [*], paid for by [*].

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Paragraphs 3 and 17 of Interdean’s reply [*].

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“ID” refers to Interdean.

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- Under date, 7/5/98; under name, “[*]”; under account, “[*]”; under volume, “79 + 7”; under destination, “FR”; under competitors, “ZIEGLER”; and under agreement, “Z 426.000 82m³ 28.000 ID 409.000 79m³ 25.900”²⁸⁸.
- Under date, 18/6/98; under name, “[*]”; under account, “[*]”; under volume, “59 + 17m³”; under destination, “Madrid”; under competitors, “AP”²⁸⁹; and under agreement, “AP 54m³ 449.000 ID 53m³ 468.000”²⁹⁰.

- (186) This shows that Interdean was aware of its competitors’ prices.
- (187) Of the 216 international removals referred to in this Interdean table, there are eight for which the “agreement” column gives the words “*min prijs*”. The Commission understands this to stand for the Dutch words “*minimum prijs*”, in English “minimum price”. The words are entered where Interdean’s competitors were Compas or Transeuro. The information is presented as follows:
- Under date, 20/12/00; under name, “[*]”; under account, “[*]”; under volume, “70 m³”; under destination, “USA”; under competitors, “Compas”; and under agreement, “1 x 80.000 + *min prijs*”²⁹¹.
 - Under date, [Commission note: blank²⁹²]; under name, “[*]”; under account, “[*]”; under volume, [Commission note: blank]; under destination, “N.J. USA”; under competitors, “Transeuro”; and under agreement, “1 x 100.000 + *min prijzen*”²⁹³.
- (188) This shows that minimum prices were applied.
- (189) In its reply to the statement of objections, Interdean claimed that those prices were minimum prices internal to Interdean²⁹⁴. The Commission rejects this argument for the reasons given in paragraph (338).
- (190) From the Interdean table described in paragraphs (183) and (184) it emerges that in the years 1997 to 2001 the level of commissions for an international removal ranged from BEF 5 000²⁹⁵ to BEF 100 000²⁹⁶, and that from the introduction of the euro in 2002 the range was from EUR 350²⁹⁷ to EUR 2 500²⁹⁸. For each removal a company had one,

²⁸⁸ [*].
²⁸⁹ “AP” refers to Allied Arthur Pierre.

²⁹⁰ [*].
²⁹¹ [*].
²⁹² This removal is listed in the table after that of 3 April 2001 [*].

²⁹³ [*].
²⁹⁴ [*]. The Commission rejects this argument because most of the entries are in the plural. They refer therefore to the prices of all those removal companies which have agreed commissions for a particular removal.

²⁹⁵ For example for 11 September 1997, removal of [*] from Italy to Brussels, paid for by [*].

²⁹⁶ For example, removal of [*] to the United States, paid for by [*].

²⁹⁷ For example for 8 June 2002, removal of [*] to the United Kingdom, paid for by [*].

two or three competitors, so that if it secured the contract it had one²⁹⁹, two³⁰⁰ or three³⁰¹ commissions to pay.

- (191) The number and level of commissions for the 216 international removals indicated in the table are shown in the “agreement” column.
- (192) That commissions were agreed is also shown by other documents [*]. For example, a handwritten memo [*], manager in Ziegler’s International Moving Division, shows the figure “3 x 650” against the name [*], and “3 x 500” against the name [*]. The names of Allied Arthur Pierre, Interdean, Putters and Ziegler are linked by a bracket, beside which is entered “OK”³⁰². In the file found at Ziegler concerning [*]’s removal from Brussels to Helsinki, for the account of [*]³⁰³, there is a report of a survey on 10 July 2003 in which under the English heading “competition” there are the names of Putters, Allied Arthur Pierre and Interdean, followed by the words “commission 3 x 500” and “OK Putters, [*]³⁰⁴, [*]³⁰⁵, [*]^{306,307}. In [*]’s diary there is a note for 9 July 2003, “Allied, Putters, Interdean concerning [*]”; for 10 July 2003 “call [*]³⁰⁸ about [*] and [*] + [*]”; and for 16 July 2003 “quotation [*], quotation [*]” (*offre* [*], *offre* [*])³⁰⁹.
- (193) In a document concerning [*]’s removal to London or Lucerne³¹⁰, for example, under the heading “competition”, a Ziegler representative has entered by hand the words “Mozer commission 1 x 600 Euro 17/01/02”³¹¹. The following page of the file on [*]’s removal gives two calculations of price, one for the removal to London and one for Lucerne. The prices are made up among other things of equipment, packing, parking, ferry, distance, customs and profit margin. To the total of these components a sum of BEF 24 000 is added, marked “Comm Mozer”. This gives a “total” price amounting to BEF 182 625 or EUR 4 527 for London and BEF 209 625 or EUR 5 172 for Lucerne³¹². The quotation that Ziegler gave to [*] on 20 January 2003

298 For example for 20 March 2002, removal of [*] to the United States, paid for by [*].

299 For example for 5 September 1997, removal of [*] to Kuala Lumpur, paid for by [*]: Interdean agreed a commission of BEF 10 000 with Ziegler.

300 For example for 18 September 1997, removal of [*] to Luxembourg, paid for by [*]: Interdean agreed commissions of BEF 10 000 each with Compas and Ziegler. [*]

301 For example for 17 September 1997, removal of [*] to Italy, paid for by [*]: Interdean agreed commissions of BEF 10 000 each with Compas, Ziegler and Transeuro.

302 [*].

303 [*].

304 [*], Allied Arthur Pierre.

305 [*], Ziegler [*].

306 [*], Interdean.

307 [*].

308 Putters [*].

309 [*].

310 [*]’s destination had not been finally decided, and a price was to be quoted for both of these destinations.

311 [*].

312 [*].

shows the two prices, in euros³¹³. In the file kept by Ziegler it has been noted on Ziegler's quotation that [*] (Mozer) has secured (*booké*) the removal, and a handwritten note is glued to the page saying, "invoice Mozer, for the attention of [*], removal of [*] 600 euros for provision of equipment and labour and invoice from Ziegler to Mozer date 31 March 2003 for 600 euros"³¹⁴.

- (194) Another example of the implementation of the agreement on commissions has been indicated [*]. This was for the removal of the offices of a company, [*], from Brussels to Varese in Italy and other destinations. On a document entitled "Quotation Follow-up Sheet" there is the handwritten note: "Ind³¹⁵ + [*]³¹⁶: 2 x 75.000 = 150.000. Lot Zaventem = 2 x 25 000 Lot Italy = 2 x 50 000 (25 000 per phase)"³¹⁷. On a document entitled "Price calculation", under the figures for "Italy Phase 1" are the handwritten words "2 x 50 000 (1 x per phase) to be shown in the costs"³¹⁸. [*] had contacted Interdean, [*] and Allied Arthur Pierre asking for estimates for the removal of its offices. [*], Interdean then contacted the general manager of [*] to tell him that Interdean was not interested in performing this removal and was prepared to submit an "uncompetitively" (original English) high quotation against payment of a commission. The general manager of [*] then contacted [*] of Allied Arthur Pierre to inform him of Interdean's request and to ask the volume of the removal so as to be able to calculate a budget and on that basis to determine the level of the commission. The general manager of [*] contacted [*] a second time after the on-the-spot survey by Allied Arthur Pierre. They agreed that a commission of BEF 25 000 (about EUR 625) would be paid to each of the removal companies submitting an unsuccessful quotation for the section consisting of the removal to Zaventem, and BEF 50 000 (about EUR 1 250) for the section consisting of the removal to Varese³¹⁹.
- (195) In the handwritten memo of 1987 described in paragraph (140), the level of commissions is set at 10% of the price paid by the customer for an international removal.
- (196) In the document that the Commission dates after May 1990, described in paragraphs (146) to (153), the commission is a fixed sum depending on the volume of the removal.

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[*].

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"Ind" refers to Interdean.

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[*] is a removal company which, for the reasons given in paragraph (4), is not an addressee of this Decision.

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[*].

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[*], no commission was in fact paid, because the financial arrangements with the customer came to diverge too far from the initial arrangements on the basis of which the value of the removal had been estimated and the commissions determined [*].

- (197) In Interdean's table of commissions agreed from 1997 to 2002, the commissions indicated appear to be set at a flat rate³²⁰.

12.1.3 The practical handling of commissions

- (198) In many cases the evidence in the file shows that the companies in question invoiced the commissions on a one-off basis. In other cases the evidence shows that they invoiced them periodically. There is also evidence of commissions being offset, with only the balance being invoiced between the companies.
- (199) From the companies' internal documents it is clear that the commissions formed an integral part of the price to be paid by the customer. Typically, the participants in the cartel first calculated the price for the removal service, then added the profit margin expressed as a percentage, which could be as high as 38%³²¹, and then increased this intermediate sum by the sum of all the commissions in order to arrive at the price to be paid by the customer³²². To the world outside, in the quotation submitted to the customer, the commissions as such did not appear³²³.
- (200) The principle was that the removal company that performed an international removal had to pay a commission to the other removal companies involved in the same removal. Some of the methods used to this end are explained in this section.
- (201) The evidence shows that, in the case of a large number of commissions, the removal companies whose quotations were not accepted invoiced the amount of the commission to the successful company. The invoice for a commission indicated the name of the customer for whom the removal was being performed, and the amount of the commission, under a vague title such as "provision of equipment"³²⁴, "assistance with loading"³²⁵ or "assistance with removal"³²⁶.

³²⁰ See paragraphs (183), (184) and (190).

³²¹ Examples of profit margins on international removals for which commissions were agreed are 16.83% [*], c. 30% [*], 30% [*], 38% [*], min. 22% [*], 30% [*], 15% [*], or 26% [*].

³²² See for example [*]'s removal from Kortenbergh to Madrid, paid for by [*], planned for April 2000. A table drawn up on a computer with the heading "Price Calculation Form" followed by "Ziegler Moving Division" lists all the charges for the removal. The sum of these charges gives the "cost price" of BEF 330 256. A percentage of 15%, giving BEF 49 538, is added as "profit", to arrive at the figure for the "sale", BEF 379 794. The next line in the table has the word "commission" in the second column, the figure "2" in the third column, the figure "25 000" in the fourth column, marked "unit price", and the figure "50 000" in the fifth column, marked "total". The sum of the "sale" and the "commission" is the "quote to client" of BEF 429 794 [*].

³²³ For [*]'s removal, already referred to, Ziegler's quotation of 28 February 2000, under "services" (*diensten*) lists all the aspects of the removal - packing, transport, delivery - but does not show a price for each. The next section, "price" (*prijzen*) contains just one sentence: "Our price for the services referred to above is BEF 429 000" (*Onze prijs voor hogervermelde diensten bedraagt : BEF 429.000*) [*].

³²⁴ See for example the invoice dated 31 March 2003 from Ziegler to Mozer for [*]'s removal [*], the invoice dated 24 September 1999 from Ziegler to Putters for [*]'s removal [*], the invoice dated 19 July 2000 from Ziegler to Gosselin for [*]'s removal [*], the invoice dated 31 January 2000 from Ziegler to Interdean for [*]'s removal [*], the invoice dated 29 March 2001 from Ziegler to Trans Euro

- (202) In the case of the removal of [*], for example, Ziegler's estimate of 18 May 2000, addressed to [*], carries the handwritten note: "2 x 25 000 ID ([*]) + Compas"³²⁷. The following information is written by hand on a piece of paper stuck to the page: "30/10 Commission invoice BEF 25 000 to Interdean item 134/11 70.0006"³²⁸. A handwritten memo attached to this estimate contains the following: "Invoice 134/11/700006, Interdean [*], Re: Dossier [*], provision of equipment 24 800 + VAT". The actual invoice from Ziegler to Interdean is numbered 134/11/70/0006, and dated 6 November 2000; the subject is indicated as "RE: dossier [*] provision of equipment", and the total sum as BEF 30 008 (24 800 + 21% VAT)³²⁹.
- (203) The invoices for commissions can be distinguished from invoices for services genuinely provided to a competitor. When removal companies do help one another by lending staff or equipment, their invoices give details of the service provided, such as the number of staff or the time the staff or equipment or both were at the competitor's disposal.
- (204) A real invoice dated 13 December 1999 was drawn up by Ziegler and addressed to Mozer for a service Ziegler had provided to Mozer on 26 October 1999. The description in the invoice is as follows: "For the attention of [*], 26 October: provision of a van and driver from 06.00 to 19.00, driver 8 hours x 725 per hour (5 800 + 21%) 5 hours x 725 per hour x 150% (5 438 + 21%), van: 13 hours x 550 per hour (7 150 + 21%)". The sum before VAT is BEF 18 388, the amount of VAT is 3 861 and the total is BEF 22 429³³⁰.
- (205) An example is provided by the payment of an invoice from Ziegler to Interdean, dated 31 January 2000, in respect of the removal of [*]. The invoice is headed "Re: [*], provision of equipment", and is for a sum of BEF 59 532³³¹. A handwritten note is attached to the document, worded "Lost, comm. to Interdean c. BEF 50 000, from end January,

for [*]'s removal [*], or the invoice dated 29 November 2001 from Ziegler to Compas for [*]'s removal [*].

³²⁵ See for example the invoice dated 9 April 1998 from Ziegler to Interdean for [*]'s removal [*], or the invoice dated 9 February 2000 from Ziegler to Putters for [*]'s removal [*]. See also the invoice dated 26 October 1998 from Ziegler to Interdean: "Concerns: removal [*] from Waterloo to Courtices East Toronto, Canada, for help with loading of abovementioned removal BEF 50 000, incl. VAT 60 500" (*Betreft : verhuizing [*] van Waterloo naar Courtices East Toronto Canada voor hulp bij lading van hogervermelde verhuizing 50.000 T.V.A.C. 60500.00 BRF*) [*].

³²⁶ See for example the invoice dated 5 September 2002 from Transworld to Compas for [*]'s removal [*], the invoice dated 31 December 2002 from Transworld to Interdean for [*]'s removal [*], or the invoice dated 31 December 2002 from Transworld to Allied Arthur Pierre for [*]'s removal [*].

³²⁷ [*].

³²⁸ [*]. This item number does not refer to the file on [*]'s removal, but rather to the file on [*]'s removal, which Ziegler had already carried out. On the cover page of the sleeve containing the [*] file the following words have been entered under the heading "specials": "Invoice commission → Int. for file [*]." (*Facture Commission → Int. pour doss [*]*) [*]. A handwritten draft is attached to the estimate for [*]'s removal, at the end of which are the words "cc. [*] → about file 134/11/700006 – [*]" (*cc [*] → sur doss 134/11/700006 – [*]*) [*].

³²⁹ [*] and paragraph (208).

³³⁰ [*].

³³¹ [*].

file 134/20 14.0005”³³². This file number of Ziegler’s is shown in Ziegler’s accounting document concerning Interdean, against an item giving the date 31 January 2000 and a figure of BEF 59 532.00. The same sum, converted into euros (EUR 1 475.76), is entered in Interdean’s accounts with the date 31 January 2000³³³.

- (206) The document headed “Minimum Rates for European and Overseas Moves”, which the Commission dates to after May 1990 (see paragraphs (146) to (153)), provides for the settlement of commissions by way of set offs between the participants in the cartel every three months, and hence periodically, through the submission of a single invoice.
- (207) Documents [*] show instances of debts being settled periodically. Thus, [*], moving consultant at Ziegler, in an internal email message dated 15 January 2003 to [*] (manager, International Moving Department), [*] (sales person), [*] (manager, International Moving Department) and [*] (sales person) with the subject heading “Interdean”, says that she would like to centralise the commissions agreed between Ziegler and Interdean. This would give her an overall view that would enable her to settle accounts at the end of the year: “Dear colleagues, When a commission is agreed with [*] of Interdean Antwerp or anyone from Interdean Brussels, please let me know. I will keep an overall view and we will meet at the end of the year to settle accounts”³³⁴.
- (208) [*], accounting documents [*] showed a balance of “0.00” between Ziegler and the following of the relevant removal companies at certain dates between 1999 and 2003: Gosselin³³⁵, Putters³³⁶, Transworld³³⁷, Team Relocations³³⁸, Interdean³³⁹ and Allied Arthur Pierre³⁴⁰. Invoices for some of the items indicated in these documents [*]. Some of these invoices have proved to be bogus invoices for commissions for the

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333 [*].

334 *(Beste collega’s, Indien er commissie wordt afgesproken met [*] van Interdean Antwerpen of iemand van Interdean Brussel, gelieve mij dan te informeren. Ik houd een overzicht bij en op het einde van het jaar zitten we samen om de afrekening te maken)* [*].

335 Document indicating the dates 22 December 1999, 4 February 2000, 10 February 2000, 19 July 2000, 27 September 2000, 13 October 2000, 21 December 2000, 12 April 2001 and 8 June 2001 [*].

336 Document indicating the dates 31 August 1999, 27 September 1999, 24 November 1999, 24 March 2000, 21 April 2000, 22 August 2000, 22 September 2000, 21 May 2001, 31 May 2001, 30 September 2001 and 21 January 2002 [*].

337 Document indicating the dates 7 December 1999, 3 February 2000, 31 August 2001, 31 December 2001 [*].

338 Document indicating the dates 24 January 2002, 21 March 2002, 27 March 2000, 29 March 2001, 29 August 2002, and 18 February 2003 [*].

339 Document indicating the dates 1 September 1999, 20 October 1999, 31 January 2001, 19 July 2000, 23 August 2000, 13 October 2000, 6 November 2000, 30 November 2000, 8 June 2001, 21 August 2001, 20 September 2001, 2 May 2002, 29 May 2002, 18 June 2002, 21 June 2002, 31 July 2002, and 1 August 2002 [*].

340 Document indicating the dates 27 June 2001 and 14 June 2003 [*].

international removals of [*] (see paragraph (209)), [*]³⁴¹, [*]³⁴², [*]³⁴³, [*]³⁴⁴, [*]³⁴⁵ and [*]³⁴⁶.

- (209) An example is provided by the payment of an invoice from Ziegler to Interdean, dated 31 January 2000, in respect of the removal of [*]. The invoice is headed “Re: [*], provision of equipment”, and is for a sum of BEF 59 532³⁴⁷. A handwritten note is attached to the document, worded “Lost, comm. to Interdean c. BEF 50 000, from end January, file 134/20 14.0005”³⁴⁸. This file number of Ziegler’s is shown in Ziegler’s accounting document concerning Interdean, against an item giving the date 31 January 2000 and a figure of BEF 59 532.00. The same sum, converted into euros (EUR 1 475.76), is entered in Interdean’s accounts with the date 31 January 2000³⁴⁹.
- (210) Interdean also established a system of periodic settlement of commissions, as can be seen from handwritten memos covering the period 1997 to 2002 which were found in the office of [*]³⁵⁰, and Interdean accounting documents for the years 2000 to 2003 [*].
- (211) These Interdean accounting documents take the form of lists called “creditor cards” (*crediteurenkaarten*) in the name of the removal companies in question. A column headed “credit EUR” shows the commissions owed to Interdean by its competitors. A column headed “debit EUR” (*debet EUR*) shows commissions owed by Interdean to its competitors.
- (212) The lists show credit and debit between Interdean and Allied Arthur Pierre³⁵¹, Transworld³⁵², Coppens³⁵³, Gosselin³⁵⁴, Putters³⁵⁵, Team Relocations³⁵⁶ and Ziegler³⁵⁷.
- (213) An email message dated 24 January 2002 gives an example of a settlement of several commissions between Interdean and Team Relocations³⁵⁸. In it [*] of Team Relocations³⁵⁹ asks [*] of Interdean to

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 342 [*].
 343 [*].
 344 [*].
 345 [*].
 346 [*].
 347 [*].
 348 [*].
 349 [*].
 350 [*] showing who owes whom how much, between Interdean and Allied Arthur Pierre, Compas, Putters and Ziegler. These various memos cover a period running in total from 20 January 1997 to 9 July 2002.
 351 [*].
 352 [*].
 353 [*].
 354 [*].
 355 [*].
 356 [*].
 357 [*]. The names of the same companies also appear in a handwritten memo found with [*] of Interdean on debit and credit 2000-2003 [*].
 358 Called “Transeuro” at that time, see paragraph (77).

check that Team Relocations owes Interdean BEF 20 000 for the agreement between “[*]” and “[*]” concerning a removal for [*]. At the end of the message [*] lists customers and commissions for removals for which the contract has been secured by Interdean or Team Relocations: “booked Interdean: m. BEF 100 000, l. BEF 25 000, v. BEF 20 000, t. BEF 20 000, l. BEF 20 000”; “booked Transeuro: h. BEF 30 000, [*] BEF 20 000”. The last phrase is: “difference BEF 135 000”³⁶⁰. These removals are all recorded under the year 2001 in Interdean’s table of commissions agreed from January 1997 to July 2002³⁶¹.

- (214) Among the documents regarding Ziegler’s quotation of 17 February 2003 for [*]’s removal from Brussels to Bern, there is a sheet on which [*] has written by hand a calculation of the price of the removal, the commission for Putters, and the profit. At the bottom of the page there is a handwritten table giving the figure 16 for “Z” and 15 for “P”, with an arrow pointing to the words “Commission Euro 500”³⁶².
- (215) [*] the commissions were paid by the removal company that had secured the contract for an international removal to the other removal companies involved in the same removal against an invoice from those companies, or in some cases in periodic settlements³⁶³.

12.1.4 Arguments put forward by Gosselin in reply to the statement of objections and assessment by the Commission

- (216) In its reply to the statement of objections, Gosselin stated that the Commission had no evidence of its participation in the agreement on commissions in 1994, 1995 and 1996³⁶⁴. As can be seen from Table 1³⁶⁵, the file does not contain any documents demonstrating the implementation of the agreement during those years by Gosselin. However, this does not cast doubt on Gosselin’s continuous participation in the agreement on commissions, as is explained in paragraphs (218) and (224) to (227).
- (217) Gosselin is alone among the ten removal companies in question in claiming in its reply to the statement of objections that some of the evidence in Annex 1 to the statement of objections, namely 17 documents, does not constitute proof of its participation in the commission arrangements with competitors³⁶⁶. Several of the documents are invoices sent to competitors by Gosselin or received from competitors. Gosselin takes the view that nothing warrants the

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See paragraphs (183), (184) and (190).

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Table 1 contains, as far as Gosselin is concerned, the same information as Table 4 in paragraph 154 of the statement of objections.

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conclusion that, in the light of these invoices, it implemented the agreement on commissions. Other documents are handwritten memos, including the table concerning the agreement on commissions from 1997 to 2002, found on the premises of Interdean³⁶⁷.

- (218) The Commission has verified the content and the interpretation of all the documents thus called into question by Gosselin³⁶⁸. It would observe that Gosselin does not deny having been party to the agreement on commissions. The invoices called into question by Gosselin are flat-rate invoices demanding payment of a commission from the competitor which, as is explained in paragraphs (201) to (205), are clearly distinguishable from genuine invoices. Documents in the file bearing out this interpretation (see in particular the invoice from Ziegler to Gosselin dated 19 July 2000, to which a handwritten note bearing the words “*commissie doss.*” is affixed³⁶⁹) and the confirmation of this interpretation [*] leave no room for doubt as to the probative force of these documents. As regards the handwritten memos, including Interdean’s table concerning the agreement on commissions from 1997 to 2002, the Commission’s file also contains other documents which bear out the interpretation of that table. Moreover, Interdean, as the table’s compiler, has not disputed its content or the Commission’s interpretation thereof. As already indicated in paragraph (159), Compas has confirmed the veracity of the facts and their interpretation.
- (219) For the purposes of this Decision, the Commission therefore relies on these documents as proof of Gosselin’s participation in the implementation of the agreement on commissions.

12.1.5 Full example of the implementation of the agreement on commissions

- (220) The implementation of the agreement on commissions, as described in sections 12.1.2 and 12.1.3, on the basis of the documents in the Commission’s possession may be illustrated by the example of [*]’s removal from Belgium to Germany³⁷⁰.
- (221) On the document entitled “survey report” found on the premises of Ziegler³⁷¹ there is a handwritten entry under the heading “competition”: “ID³⁷² – Gosselin” and at the bottom of the page “2 x 20.000”. The meaning of this “2 x 20.000” becomes clear when we read another document, entitled “price calculation form”³⁷³. On the last line but two of the second column of this document there is the word “commission”, and then in the column headed “number” the figure “2”, in the column headed “unit price” the figure “20.000”, in the column headed “total”

³⁶⁷ See paragraphs (183) to (188).

³⁶⁸ [*].

³⁶⁹ [*].

³⁷⁰ [*].

³⁷¹ [*].

³⁷² “ID” refers to Interdean.

³⁷³ [*].

the figure “40.000”, and in the column headed “euro” the figure “992”. The quotation sent by Ziegler to [*] on 26 June 2000 indicates a price of BEF 205 000 plus 21% VAT³⁷⁴. This price comprises a “cost price” of BEF 131 700, a “profit” of 30% or BEF 39 510, and BEF 40 000 in “commission”³⁷⁵. Thus there are two commissions of BEF 20 000 to be given to the two removal companies that submitted an estimate but did not secure the contract. The commissions form an integral part of the final price to be paid by the customer.

- (222) On a copy of the first page of the quotation which has remained in the file at Ziegler there is the handwritten note, “LOST → Interdean”³⁷⁶. On 13 October 2000, after the removal, which was to take place in August or September 2000³⁷⁷, Ziegler sent Interdean an invoice headed “Re: [*] Provision of equipment” (*RE : [*] Levering van materieel*), for a sum of BEF 19 880 not including VAT, or BEF 24 055 including VAT, which converts to EUR 596.31³⁷⁸.
- (223) The same figure appears in an Interdean accounting document³⁷⁹. This is one of Interdean’s “creditor card” lists, bearing the name Ziegler. In the column headed “credit EUR” there is the figure EUR 596.31, dated 13 October 2000. The same figure is entered in the “debit EUR” column dated 23 January 2001. Given the double-entry bookkeeping, it can be inferred that Interdean had settled its debt to Ziegler in respect of this commission.
- (224) In its reply to the statement of objections, Gosselin disputed the Commission’s interpretation of the documents described in paragraph (221)³⁸⁰. In its view, the mere mention of the names of competitors, including Gosselin, in the internal documents of a company, in this case Ziegler, cannot be interpreted as proof of the existence of an agreement on commissions between the undertakings in question³⁸¹. The Commission is, it claims, wrong in assuming that, where a removal company sends an invoice to another removal company and the invoiced services are described only in vague terms, this automatically attests to the existence of an agreement on commissions³⁸².
- (225) The Commission rejects this argument. Firstly, during the investigation it found several types of document which, taken together, allow it to interpret internal memos and a certain type of invoice in the way it does³⁸³. Secondly, [*] has confirmed this interpretation of this type of

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See “survey report”, heading “planning” [*].

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[*]. See also paragraph (211).

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This paragraph corresponds to paragraph 197 of the statement of objections.

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See paragraphs (201) to (203), (208) to (212), (222) and (223).

document³⁸⁴. Thirdly and lastly, Compass expressly confirmed the facts and their interpretation by the Commission both in its reply to the statement of objections and at the hearing³⁸⁵. Coppens, Interdean, Mozer, Putters, Team Relocations, Transworld and Ziegler do not dispute this interpretation³⁸⁶.

- (226) As regards, for example, the 14 international removals in 2000 concerning which the Commission levelled objections against Gosselin, the latter referred in its reply to the statement of objections only to some, but not all, of the documents adduced by the Commission in support of its objections. The evidence in the Commission's file includes the table compiled by Interdean (see paragraph (183)) and seven other documents.
- (227) Gosselin's argument focuses on only two of these seven documents and ignores the other five. One of these five documents [*] is several pages long. The first page is an invoice dated 21 December 2000 from Ziegler to Gosselin for the sum of BEF 39 600 not including VAT for "provision of equipment"³⁸⁷. The third page is a fax dated 4 October 2000 from a customer informing Ziegler that it will not have the contract. Ziegler noted on this page "commission Gosselin 40 000 (39 600)" and "talk to me, this hasn't worked"³⁸⁸. The pages that follow are Ziegler's offer to the customer³⁸⁹. Then comes a data sheet marked "Please note: comm 1x 40 000 → Gosselin"³⁹⁰. The internal form used to calculate Ziegler's price includes the item "Commission 40 000"³⁹¹. And on a fax dated 11 September 2000 from the customer asking Ziegler to carry out a survey, Ziegler has noted by hand at the top of the page "Putters: NO Gosselin: YES Wait until week 13/9 → contact Gosselin" and at the bottom of the page "Only Gosselin: 1 x 40 000 (22/9: quotation + tel [*])"³⁹². The Commission interprets this document as being proof of Gosselin's participation in the agreement on a commission of 40 000 which Gosselin had to pay to Ziegler because it (Gosselin) had won the contract for this removal in 2000. The Commission takes the fact that Gosselin does not discuss this document to mean that Gosselin does not dispute the Commission's interpretation thereof. The other documents not discussed by Gosselin and the two discussed by it contain the same type of information and are interpreted in the same way by the Commission.

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See paragraph (159).

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See footnote 171.

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Including value added tax, precisely BEF 47 916.

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- (228) It is therefore concluded that Gosselin participated in the implementation of the agreement on commissions in respect of 14 international removals in 2000³⁹³.

12.2 The agreement on cover quotes

- (229) The evidence contained in the Commission's file shows that several estimates are generally requested for an international removal. When public institutions or undertakings want to have their employees' effects moved between countries,³⁹⁴ they generally pay removal expenses and look for several estimates from different removal companies, usually two or three, so as to take advantage of the competition.
- (230) The evidence in the Commission's file shows that a "cover quote" (known in French as a "*devis de complaisance*", abbreviated "DDC"³⁹⁵, in Dutch as a "*schaduwbestek*"³⁹⁶, and in English as a "cover quote", "shadow quote"³⁹⁷ or "covering quote"³⁹⁸) is a fictitious quotation submitted to the customer³⁹⁹ or the person who is moving by one of the relevant removal companies which does not in fact intend to carry out the removal. Through the submission of cover quotes, the removal company that wants the contract ensures that the institution or undertaking receives several quotes, either directly, or indirectly via the person who is moving. A cover quote indicates a price higher than the price being quoted by the firm that wants the contract. The employer will usually choose the removal company that offers the lowest price, and the companies involved in the same international removal will as a rule know in advance which of them will secure the contract⁴⁰⁰.
- (231) From the documents the Commission photocopied during the investigation, it is clear that the final price indicated in such a cover quote might be for example 5.5%⁴⁰¹, 7.7%⁴⁰² or even 16.75%⁴⁰³ higher than that in the quotation submitted by the removal company that was seeking cover quotes from the others.

³⁹³ See Table 1 in paragraph (173).

³⁹⁴ See footnote 6.

³⁹⁵ This term is used in French-language documents. It is abbreviated "DDC", and the same abbreviation is also used in Dutch-language documents, see section 12.2.2 and, for example, [*].

³⁹⁶ [*].

³⁹⁷ [*].

³⁹⁸ [*].

³⁹⁹ See footnote 239.

⁴⁰⁰ [*].

⁴⁰¹ In the example given in footnote 427, the difference between the highest of the cover quotes and the lowest price offered by the firm that wanted to secure the contract is 5.5%.

⁴⁰² See the example in footnote 424.

⁴⁰³ See the example in paragraph (278).

- (232) According to [*], the final price offered in a cover quote was between [*] and [*] higher than that of the removal company contacted by the customer⁴⁰⁴.
- (233) Because of the other removal companies involved in the same international removal submitting cover quotes, the price quoted by the company making the genuine bid could be higher than what it might otherwise have been. [*]⁴⁰⁵.
- (234) The percentage profit for international removals for which cover quotes had been submitted might, for example, be 15%⁴⁰⁶, 35%⁴⁰⁷ or 50%⁴⁰⁸.
- (235) [*]⁴⁰⁹.[*]⁴¹⁰.

12.2.1 Table summarising participation in the implementation of the agreement on cover quotes

- (236) The Commission has evidence demonstrating the existence of numerous instances of contact between the relevant removal companies regarding contracts for international removal services in respect of which cover quotes were submitted. It is clearly impossible to list these instances exhaustively in this Decision. They are summarised in statistical form in Table 2, and in more detail in Annex 2. Table 2 summarises the number of international removals for which the participation of each of the relevant removal companies in the implementation of the agreement on cover quotes for the period 1998 to 2003 has been demonstrated by the documents in the file⁴¹¹.

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For the removal of [*]'s personal effects in the example quoted in footnote 427.

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For the removal of [*]'s motor car in the example quoted in footnote 427.

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(237) **Table 2: Documented participation in the implementation of the agreement on cover quotes**

Company	First documented participation	'88	'89	'90	'91	'92	'93	'94	'95	'96	'97	'98	'99	'00	'01	'02	'03	Un-dated	Last documented participation	TOTALS
Allied Arthur Pierre	03.03.1988																		9.09.2003	
Compas	26.01.1996																		08.07.2003	
Coppens	13.10.1992																		29.07.2003	
Gosselin	07.04.1993																		18.09.2002	
Interdean	26.06.1990																		10.09.2003	
Mozer	16.05.2003																		04.07.2003	
Putters	26.07.2001																		27.06.2002	
Team Relocations	20.01.1997 ⁴¹²																		10.09.2003	
Transworld	13.05.1993																		15.07.1993	
Ziegler	03.03.1988																		08.09.2003	

(238) Annex 2 contains for each relevant removal company (in alphabetical order) a list setting out the evidence of its participation in implementing the agreement on cover quotes for international removals.

(239) Sections 12.2.2 to 12.2.5 outline the way in which the agreement on cover quotes was implemented, and give an example of its full implementation in respect of an international removal.

12.2.2 The implementation of the agreement on cover quotes

12.2.2.1 Requests for cover quotes made and accepted

(240) It is clear from the documents found during the investigation that in general when one of the relevant removal companies was asked to draw up a cover quote it agreed to do so⁴¹³.

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12.2.2.2 Exchanging information

- (241) The representative of the removal company asking for a cover quote sent a competitor who had agreed to submit such a quote all the information needed to draw it up and send it to the customer or the person moving. The request and the necessary information were often sent together, in an email message for example⁴¹⁴.
- (242) From the documents examined by the Commission it would appear that the requesting firm usually supplied the following information to its competitor: the name of the person moving⁴¹⁵, the name of the organisation paying for the removal⁴¹⁶, the date on which the international removal was to take place⁴¹⁷, the destination⁴¹⁸, the volume of the effects to be moved⁴¹⁹, special items such as a motor car or valuables⁴²⁰, special requirements⁴²¹ and the language in which the quotation was to be made out⁴²².
- (243) The requesting firm also indicated the price, the rate of insurance and the storage costs that the competitor was to quote⁴²³. This was so that the competitor's quotation could be higher than the requester's own⁴²⁴.

⁴¹³ Email from [*] of Allied Arthur Pierre to [*] of Interdean, "you know, for the EC, always OK for little cover quotes" (*ge weet, voor EG, altijd OK voor DDCKes*) [*].

⁴¹⁴ See for example the email message of 27 November 2002 from [*] of Ziegler to "[*]" of Allied Arthur Pierre [*]; the email message of 9 July 2002 from [*] of Ziegler to [*] of Interdean [*]; the email message of 19 March 2003 from [*] of Interdean to [*] of Allied Arthur Pierre [*]; or the email message of 8 July 2003 from [*] of Allied Arthur Pierre to [*] of Interdean [*].

⁴¹⁵ For example, "Customer: [*]" (*Klant : [*]*) [*]. There are many other examples in Annex 2.

⁴¹⁶ For example, "Account: [*]" [*]. There are many other examples in Annex 2.

⁴¹⁷ For example, "Planned dates: beginning of January" (*Planning : begin januari*) [*]. There are many other examples in Annex 2.

⁴¹⁸ For example, "Moving from: Brussels to: Agadir, Morocco" (*Verhuist van : Brussel naar : Maroc, Agadir*) [*]. There are many other examples in Annex 2.

⁴¹⁹ For example, "Volume: 38 m³" [*]. There are many other examples in Annex 2.

⁴²⁰ For example, "50 m³ + car (Fiat Marea), four items to be crated" (*50 cbm + auto (Fiat Marea), 4 items te kratten*) [*]. There are many other examples in Annex 2.

⁴²¹ For example, "Parking and lift needed in Brussels" (*Parking en lift nodig in Brussel*) [*]. There are many other examples in Annex 2.

⁴²² For example, "(...) quotation in English to [*] (...)" (*(...) Offerte in het Engels naar [*] (...)*) [*]. There are many other examples in Annex 2.

⁴²³ For example, in the case of the cover quote requested by Ziegler from Interdean for the removal of [*] from Brussels to Agadir in Morocco, by air and sea for the account of [*], [*], moving consultant at Ziegler, in an email message of 9 July 2002 to [*] of Interdean, calculates the price that Interdean is to indicate in its cover quote as follows: "Volume: 38 m³ (allowance). Price specification: 1. Sea €13 350 40-foot container (door-to-door), 2. air €15 500 (origin + destination, airfreight not included but by[*]), insurance: 2.75%. Planned dates: to be confirmed. My price calculation is based on a real volume of 45 m³, 20 m³ to be collected in London and 25 m³ in Brussels. Of course this is not to be mentioned in the quotation" (*Volume : 38 m³ (allowance) Prijsopgave : 1. Sea 13530 Euro 40'cont (door-to-door), 2. Air 15500 Euro (origin+destination, airfreight niet inbegrepen maar via[*]) Verzekering : 2.75% Planning : à confirmer Mijn prijsberekening is gebaseerd op een reël volume van 45m³ waarvan 20m³ in London wordt afgehaald en 25m³ in Brussel. Dit moet uiteraard niet in de offerte vermeld worden.*) [*]. Sometimes the price per unit of volume was given, rather than the total price: see for example [*]'s removal from Grand Lez in Belgium to Montreal for the account of [*]. [*] at Allied Arthur Pierre, indicates in an email message of 8 July 2003 to [*] of Interdean: "Removal of 51 m³/11 230 lbs loaded in bulk in 1x40 ft container ... offer full service ... Price: 95.70 euro/100 lbs. Extra: extra costs possible

- (244) The requesting firm sent its competitor contact information so that the competitor could send the cover quote either to the person whose effects were to be moved⁴²⁵ or to the employer who was paying for the removal⁴²⁶.
- (245) Sometimes the requester entered this information directly on the form used to submit a quotation to the Commission for the removal of its officials⁴²⁷, and passed the form to the competitor. There were other removals where special documents were to be used which were sent by the requesting company⁴²⁸.

at address of delivery. Insurance: 2.75%” (*Verhuis van 51m3/11.230 lbs LOS geladen in 1x40ft container ... full service aanbieden...Prijis : 95.70 euro / 100 lbs Extra : eventuele extra kosten op het afleveringsadres Verzekering : 2.75%*) [*].[*].

424 See for example the removal of [*] from Vossem in Belgium to Durham in the United Kingdom. On 26 May 2003 [*] of Interdean sent a quotation for EUR 17 500 to [*]. A week later, on 3 June 2003, [*] of Interdean sent two email messages, one to [*] of Allied Arthur Pierre, asking him for a quote of EUR 18 850 for [*], and one to [*] of Compas, asking her for a quote of EUR 18 100 for the same customer. The same day Allied Arthur Pierre and Compas sent Interdean quotations with the prices Interdean had requested [*].

425 See for example the email message of 19 March 2003 from [*] of Allied Arthur Pierre to [*] of Team Relocations: “Hello [*], Could you send this cover quote to the customer again. This time !!!signed!!! and by fax ... and by post to [*], [address], Belgium. Thanks in advance. Best wishes, [*]” (*Goede middag [*], Zou het mogelijk zijn om deze ddc nogmaals naar de klant te sturen. Ditmaal !!! ondertekend !!! en per fax (...) en per post naar: [*] (address) Belgium Alvast bedankt. Groetjes, [*]*) [*]. And for a quotation sent by email, see the email message of 13 March 2003 from [*] to [*]: “[*], cover quote is OK, as usual. Please send to the customer by email. Email: Thanks in advance, [*]” (*[*], ddc is ok, zoals gewoonlijk. Gelieve per e-mail door te sturen naar de klant. E-mail: (...) Alvast bedankt, [*]*) [*].

426 [*]’s removal: “Quotation in English to [*], for the attention of [*]” (*Offerte in het Engels naar [*], ter attentie van [*]*) [*].

427 Interdean’s report of 10 September 2003 concerning the removal of [*] to Bissau contains “[*]. [*], signed by Interdean, the price is given as EUR 12 556 for the removal by air of personal effects, and EUR 5 600 for the removal of a motor car by sea [*];[*] gives a price of EUR 13 253 for the personal effects, and EUR 6 735 for the car, and carries the handwritten note at the top of the page, “[*] given to [*] when he came for other cover quotes” (*[*] gegeven toen hij andere DDC kwam halen*) [*]; and [*] gives EUR 12 989.75 for the personal effects and EUR 5 870 for the car, and at the top of the page carries the handwritten word “Team” [*]. On another sheet of the same type [*] there are three handwritten columns, the first headed “IDX” (referring to Interdean/Interconex), the second headed “Team” (referring to Team Relocations) and the third headed “[*]”, with the prices already cited set out in the each column in the three versions [*]. A sheet headed “Preparation of quote – cost card data” (*VOORBEREIDING OFFERTE - COST CARD GEGEVENS*), which is completed by hand, gives the following information for customer [*] under the heading “Details”: “two cover quotes, one Team and one [*].” (*2 x DDC, 1 Team 1 [*]*). This sheet also shows that the profit margin on this removal, on the basis of which Interdean, sheltered from competition, calculated the price it quoted, was 35% for the removal of personal effects and 50% for the removal of the motor car [*]. In the document headed “INTERDEAN/INTERCONEX SURVEY REPORT” for the same removal, under the heading “Remarks”, there is the handwritten note “two cover quotes” (*2 x DDC*) [*]. Another example can be found among the documents [*]: by fax message of 1 August 2000, on the subject “covering quote for [*]” (original English), [*] of Allied Arthur Pierre asks [*] of Interdean to do a cover quote for [*]’s removal from Braga, Portugal to Brussels, as usual on their headed notepaper. [*] writes that the prices are already entered [*] and it will be enough to copy them (*Gelieve een DDC te maken voor de verhuis van [*] van Braga, Portugal naar Bruxelles, Belgique (zoals gewoonlijk op eigen lijsten). De prijzen zijn reeds ingevuld en zijn dus gewoon over te typen.*) [*].

428 Email message of 9 January 2003 from [*] of Allied Arthur Pierre to [*] of Ziegler, concerning a quotation for [*]: “It now emerges that the quote for [*] has to be made out on a special document. Could I ask you to sign the documents attached and stamp them with Ziegler’s stamp? Thanks in

12.2.2.3 Checking and approving cover quotes

- (246) In general the relevant removal companies asked that the removal companies they approached draw up a cover quote and send them a copy of it so that they could check it before it was sent to the person whose effects were to be moved or to the employer who was paying for the removal⁴²⁹. In some cases the removal companies that had been approached themselves sent the cover quote they had drawn up to the requesting firm, and suggested that they would wait for the requesting firm's approval before sending the quote to the customer⁴³⁰.
- (247) When the removal company that had requested a cover quote received a draft, it either agreed that the quote should be sent to the customer or the person moving⁴³¹ or it asked for changes, after which the firm that had drafted and then amended the cover quote could send it⁴³².

advance and sorry for the extra work!" (*Nu blijkt dat de offerte van [*] moet opgesteld worden op een speciaal document. Alvast bedankt en sorry voor het extra werk!.*) [*].

429 See for example the email message of 8 July 2003 from [*] of Allied Arthur Pierre to [*] of Interdean: "Please send this cover quote to me first, for checking, and then by post to the address indicated" (*Gelieve deze ddc eerst naar mij te sturen ter goedkeuring en daarna per post te versturen naar het opgegeven adres.*) [*]. See also the email message from [*] of Allied Arthur Pierre to [*] of Team Relocations concerning a cover quote for [*]'s removal: "Please send to me for checking" (*Gelieve naar mij te sturen ter controle*) [*].

430 See for example the email message of 19 March 2003 from [*] of Allied Arthur Pierre to [*] of Interdean on the subject "cover quote" (DDC): "Hi [*], I'll do that and send it to you first for checking best wishes [*]" (*Dag [*], zal die maken en je eerst doorsturen voor controle gtjs [*]Ann*) [*]. See also the email message of 27 February 2003 from [*] of Putters to [*] of Ziegler, subject "Quote for [*]" (*Devis pour [*]*). The message contains the estimate for [*] with the note "We will wait for your green light before sending to the customer" (*Attendons votre feu vert pour expédition à la cliente*) [*]. See also the email message of 7 June 2002 from [*] of Putters to [*] of Ziegler: "Subject: B. DDC [*], Enclose copy of our quotation. Will await your agreement before sending to customer. Best wishes [*]" (*Subject : B. DDC [*], en annexe copie de notre devis. Attendons votre accord pour expédition au client. Salutations [*]*) [*].

431 See email message of 21 March 2003 from [*] to [*], "Hi [*], It's perfect! Can you email it to ... Thanks! Have a nice weekend, Best wishes, [*]" (*dag [*], Ze is piccobello ! kan je ze emailen naar (...) bedankt! ook nog een prettig weekend gewenst groetjes [*]*) [*]. Another example is the email message of 8 July 2003 from [*] of Allied Arthur Pierre to [*], subject "cover quote [*]" (ddc [*]): "Morning [*], Thanks for the quote. Everything is OK, you can send it. Have a nice day, [*]" (*goede morgen [*], Bedankt voor de offerte. Alles is OK en ze mag verstuurd worden. Groetjes en een prettige dag [*]*).[*].

432 See for example the email message of 15 April 2003 in which [*] of Interdean asks [*] of Allied Arthur Pierre to change the volume and the insurance value while keeping the same final price: "Hi [*], A few weeks ago (quotation dated 21 March) you did a cover quote for us for [*]. Would you be able to change the volume to 24 m³, but change the insurance value to USD 40 000, with the same price of EUR 13 320 (this should actually be in dollars too)? Thanks, [*], Sales Coordinator" (*Dag [*], Enkele weken geleden (offerte dateert van 21/3) hebben jullie een DDC voor ons gemaakt voor [*]. Is het mogelijk dat jullie het volume kunnen veranderen naar 24 cbm, maar de verzekeringswaarde veranderen naar 40.000 USD, met nog steeds jullie zelfde prijs van 13.320 EUR (eigenlijk moet dit in Dollar ook staan)? Mercietjes [*] Sales Coordinator*) [*]. See also the email message of 4 April 2003, subject "Quotation [*]" (*Offerte [*]*), in which [*] of Allied Arthur Pierre, having received a draft, asks [*] of Interdean to increase the percentage for insurance from 1.5% to 1.75%. Once amended the quotation can be sent to the customer: "Hello [*], Thanks for the quotation. Could you please increase the insurance premium shown from 1.5% to 1.75%? Then you can send it" (*Goede namiddag [*], Dank U voor de offerte. Gelieve de vermelde verzekerings premie te verhogen tot 1.75 % ipv 1.5 % aub. Dan mag het wel verstuurd worden*) [*].

- (248) An example of the negotiation of a price in a cover quote is provided by an exchange of email messages from 14 to 18 March 2003 between Allied Arthur Pierre and Interdean. Allied Arthur Pierre indicated a price for storage which it asked Interdean to show in the cover quote. Interdean felt that the price was too high, and asked Allied Arthur Pierre to allow it to reduce the price to EUR 90 per cubic metre. Allied Arthur Pierre first replied that EUR 90 was less than its own price, and asked Interdean if the price for “air” or “car” could be increased. In support of its demand that the quote should not go below EUR 90 per cubic metre for storage, Allied Arthur Pierre told Interdean that otherwise the customer might choose Interdean for the storage only, and Allied Arthur Pierre for the overseas removal⁴³³.

12.2.2.4 Refusal to make out a cover quote

- (249) On the basis of the documents in the file, the Commission notes that some of the relevant removal companies refused to submit a cover quote for international removals in particular circumstances.
- (250) Allied Arthur Pierre thus decided at one stage on a provisional basis not to make out cover quotes for international removals paid for by the [*], because it was “too dangerous”. On 19 February 2003, it refused to draw up a cover quote requested by [*] of Team Relocations⁴³⁴. On 15 July 2003, it refused to draw up a cover quote for [*] requested by

⁴³³ Email message of 17 March 2003 from [*] of Interdean to [*] of Allied Arthur Pierre: “Hi [*], [*] has had a look at your cover quote and we can’t do it because the storage is still fairly dear. If you can change it to maximum EUR 90/m³ there will be no problem. Will you let us know? [*] Sales Coordinator” (*Dag [*], [*] heeft jullie DDC is bekeken en we kunnen ze niet maken aangezien de storage nogal redelijk duur is. Als jullie ze kunnen aanpassen tot max 90 EUR/m³ is het geen probleem. Laat je nog iets weten? [*] Sales Coordinator*) [*]. [*] answered [*]: “that is cheaper than our price, or otherwise can you increase the air or car price? Let me know. Thanks, [*]” (*dat is wel goedkoper dan onze prijs dan of kunnen jullie anders de prijs voor AIR en CAR verhogen? Laat je mij iets weten? Dank u gtjs [*]*) [*]. Asking [*] of Interdean to intervene, [*]: “Morning! Could you just check those storage prices, because EUR 90 is below our price. If you put EUR 90 they may ask you to do the storage part of the removal and ask us for the overseas. It would not be the first time. See you, Me” (*Morgen ! Kunt ge toch eens checken voor die storageprijzen, want 90 euro is onder onze prijs. Als julie 90 euro zetten kunnen ze jullie vragen de storageverhuis te doen en ons vragen voor de overzese. Da zou ni den eerste keer zijn. Cie ikke*) [*].

⁴³⁴ In an email message of 19 February 2003, [*] of Allied Arthur Pierre explains to [*] of Team Relocations that there have been difficulties with cover quotes for [*] and that she cannot provide a cover quote because it is too dangerous: “There has been lots of trouble with cover quotes for [*], we may not be able to provide a quote, because too dangerous” (*Er zijn al veel problemen geweest met DDC’s voor [*], kunnen misschien niet voor offerte zorgen, wegens te gevaarlijk*) [*]. See also the email message of 20 February 2003 between the same people, with the same reason given for refusal [*].

Interdean⁴³⁵ and on 2 July 2003 it refused a similar request by Ziegler⁴³⁶.

- (251) Interdean refused to submit a quotation requested by Allied Arthur Pierre for [*]'s removal, which was to be paid for by [*]. By email message of 3 July 2003, [*] of Allied Arthur Pierre sent [*] of Interdean two documents concerning a cover quote for [*]'s removal. [*] asked [*] to stamp these documents with Interdean's stamp and to fax them to the customer. On 9 July 2003, [*] replied that there was a problem with this cover quote because [*] had called Interdean to arrange a visit and Interdean had already been to the premises. It would therefore be difficult to draw up a cover quote for this removal; "next time!" she said.⁴³⁷
- (252) Ziegler refused a request from Allied Arthur Pierre for a cover quote for the removal of [*], paid for by [*]⁴³⁸. Initially [*] of Ziegler was prepared to provide one, and asked [*] to send him information. When he learnt that the customer's name was [*], he told [*] that Ziegler was to contact [*] the following week, and consequently would not be able to make out a cover quote for her. [*] confirmed that the customer was the same, and added "No luck, another time" (*pas de chance alors, une prochaine fois*).
- (253) [*]⁴³⁹.

12.2.2.5 Reciprocal provision of cover quotes

- (254) The documents photocopied during the investigation do not contain anything to indicate the existence of financial flows that could be considered systematic payment for providing cover quotes.
- (255) [*] removal companies providing cover quotes did not receive payment from the removal companies that had requested them⁴⁴⁰.
- (256) The reason why the relevant companies did not demand payment for making out cover quotes may be that the company that won the

⁴³⁵ By email message of 15 July 2003, subject "[*]", [*], sales coordinator at Interdean, requested a cover quote from [*] of Allied Arthur Pierre; [*] replied the same day that [*] of Allied Arthur Pierre, had asked that no cover quotes be made out for [*] for the present: "[*], I have checked and I'm afraid [*] has asked us not to do any more cover quotes for [*] for the moment. Best wishes, [*]" ([*], *Na te hebben gecheckt moet ik u spijtig genoeg melden dat [*] ons gevraagd heeft om voorlopig geen DDC's meer te maken voor [*]. Gtjs [*]*) [*].

⁴³⁶ By email of 2 July 2003, [*] of Allied Arthur Pierre explained to [*], manager in Ziegler's International Moving Division, that [*] could not draw up a quotation for the removal of [*]. for the account of [*]: "Hello [*], I got your request for a quotation for [*] ([*]). I'm afraid we don't do quotes for that account any more. Sorry, [*]" (*Bonjour [*] J'ai reçu votre demande pour un devis pour le [*] ([*]) Je suis désolée mais pour cet account on ne fait plus des devis. Sorry, [*]*) [*]. See also [*].

⁴³⁷ [*].

⁴³⁸ [*].

⁴³⁹ [*].

⁴⁴⁰ [*].

contract would behave in the same way towards the other participants in the cartel.

- (257) This reciprocity is illustrated in a fax of 16 May 2003 from [*] of Ziegler to [*] of Mozer: “Hello [*], we have received your request for a quotation and will take the necessary steps very rapidly. Could you prepare a quote for us too?”⁴⁴¹.
- (258) A handwritten memo found [*] concerns cover quotes requested by Ziegler from other relevant removal companies and cover quotes requested by those firms from Ziegler from 20 May 2002 onward⁴⁴². The information is presented in the form of a table according to which Ziegler has asked Putters for seven cover quotes, Allied Arthur Pierre for ten, Interdean for four, Gosselin for three, and Transworld for none. Likewise according to the table, Putters has asked Ziegler for five cover quotes, Allied Arthur Pierre has asked for eleven, and Interdean, Gosselin and Transworld have asked for one each. Some of the cover quotes mentioned by the author of the memo carry a date, mainly from mid-May to mid-July.

12.2.3 Arguments put forward by the parties in reply to the statement of objections, and assessment by the Commission

- (259) Allied Arthur Pierre⁴⁴³, Coppens⁴⁴⁴, Gosselin⁴⁴⁵, Team Relocations⁴⁴⁶ and Ziegler⁴⁴⁷ argued in their replies to the statement of objections that, in the case of most removals with cover quotes, the request for the cover quotes emanated from the person who was moving, almost all of whom were, according to Gosselin, officials, working for the most part for the Commission.
- (260) Gosselin referred in its reply to the statement of objections to 14 documents in Annex 2 to the statement of objections concerning Gosselin’s participation in the implementation of the agreement on cover quotes from which it was apparent that the person moving had asked for or needed cover quotes⁴⁴⁸.
- (261) On the basis of the evidence in the file, the Commission notes that the relevant removal companies contacted one another in order to identify their competitors for a particular removal, that they generally⁴⁴⁹ agreed to draw up cover quotes and that they agreed on the components of the quote regardless of whether or not such a quote was asked for initially

⁴⁴¹ (Bonjour [*], nous avons bien reçu votre demande de devis et ferons le nécessaire très rapidement. Pouvez-vous à votre tour nous préparer un devis ?) [*].

⁴⁴² [*].

⁴⁴³ [*].

⁴⁴⁴ [*].

⁴⁴⁵ [*].

⁴⁴⁶ [*].

⁴⁴⁷ [*].

⁴⁴⁸ [*].

⁴⁴⁹ See section 12.2.2.4 for several instances of refusals in particular circumstances.

by the person moving. The Commission considers that these contacts between competitors with a view to organising cover quotes, their drawing up and their submission to the customer or his employee by the relevant removal companies constitute prohibited anti-competitive conduct because they form part of a system of providing cover quotes. The existence of this system in the present case in the form of cover quotes is, at all events, an essential element of the operation of the agreement on sharing customers.

- (262) Coppens⁴⁵⁰, Team Relocations⁴⁵¹ and Ziegler⁴⁵² argued in their replies to the statement of objections that cover quotes were drawn up only after the customer had chosen a removal company. The provision of cover quotes was a service offered by the successful company to the person moving.
- (263) The Commission rejects the argument that it was a service offered. It was first and foremost through their recourse to cover quotes that the participants in the cartel were able to share customers. The removal companies that submitted the quotes had agreed not to compete with one another for the customer to whom the cover quote was presented, and the system of providing cover quotes enabled the company making the lowest bid to increase its price artificially (see paragraph (233)).
- (264) For the same reason, the Commission rejects the argument that the cover quotes were submitted only after the customer had made his choice. It is for the undertaking or public institution that is paying for the removal to select a removal company. It is precisely in order to have a choice that many undertakings and international institutions require the submission of several bids. It is therefore only logical that the removal companies should all submit a quotation to the customer, and hence to the institution or undertaking that will be bearing the costs of the removal, before the customer makes its decision. This is all the more true where the said quotations are offers of cover which are essential to the smooth operation of a cartel aimed at establishing and maintaining high prices and sharing customers.
- (265) In any case, even if the person moving requests one or more quotations from a selected removal company and the agreement between the relevant companies does not, of itself, alter this choice, the cover quote gives the customer who is paying for the removal, in other words the undertaking or institution, the impression that competition has taken place. This allows the removal to go ahead, because authorisation for the removal to be carried out would be withheld in the absence of the required quotations.

450 [*].
451 [*].
452 [*].

- (266) Coppens argued in its reply to the statement of objections that the fact that it had asked competitors to draw up false estimates with higher prices did not mean that its own prices were artificially high⁴⁵³.
- (267) The Commission rejects this argument on the ground that the price asked for the service was the result, not of the normal interplay of competition, but of the agreement between competitors aimed at sharing customers. It is because of the cover quotes that the successful company could ask a certain (logically, high) price because it knew its competitors were asking even higher prices.
- (268) While it is true that, in the case of some international removals, the evidence in the file shows that cover quotes were requested by the person moving⁴⁵⁴, it also shows that, in the case of other international removals, cover quotes were not so requested⁴⁵⁵.
- (269) The interest of the competitors in the cover-quote arrangements is obvious, whereas that of the person moving is less so. The Commission considers that, be this as it may, the organisation, the drawing up and the submission to the customer of cover quotes form an integral part of the cartel arrangements aimed at establishing and maintaining high prices and sharing customers (for details, see sections 17.1 to 17.4).

12.2.4 Arguments put forward by Gosselin in reply to the statement of objections, and assessment by the Commission

- (270) In its reply to the statement of objections, Gosselin stated that the Commission had no evidence of implementation by it of the agreement on cover quotes in 1992, 1994 and 1995⁴⁵⁶. As can be seen from Table 2⁴⁵⁷, the file does not contain any documents demonstrating the implementation of the agreement on cover quotes during those years by Gosselin. However, this does not cast doubt on Gosselin's continuous participation in the agreement on cover quotes, as is explained in paragraphs (272) to (274).
- (271) Gosselin is alone among the ten removal companies in question in claiming in its reply to the statement of objections that some of the evidence contained in Annex 2 to the statement of objections does not constitute proof of its participation in some of the cover quote agreements with competitors⁴⁵⁸. Gosselin argues *inter alia* that, in the absence of other supporting evidence in the file, the mere fact that another removal company asked it to make out a cover quote does not

⁴⁵³ [*].

⁴⁵⁴ [*].

⁴⁵⁵ See the examples in section 12.2.2.

⁴⁵⁶ [*].

⁴⁵⁷ Table 2 contains, as far as Gosselin is concerned, the same information as Table 5 in paragraph 210 of the statement of objections.

⁴⁵⁸ [*].

mean that it made it out and hence implemented the agreement on cover quotes in respect of the removal in question⁴⁵⁹.

- (272) The Commission would observe that Gosselin does not deny having been party to the agreement on cover quotes. Nor does it deny having implemented that agreement in respect of removals for which the cover quote made out by it is in the Commission's file. And nor does it deny having participated in the implementation of the agreement on cover quotes in respect of removals for which the request made by Gosselin to competitors to make out cover quotes is in the file. In general, Gosselin does not dispute that the type of document which the Commission interprets as being proof of participation in the implementation of the agreement on cover quotes has that meaning. Gosselin merely argues that, in the absence from the file of the cover quote made out by it in respect of a given removal, the Commission cannot accuse it of having implemented the agreement on cover quotes in the case of that removal.
- (273) The Commission would stress that it is not disputed by the nine other participants in the cartel or, for that matter, seriously by Gosselin that an agreement aimed at establishing a system of exchanging cover quotes was introduced by the parties in the manner described in section 12.2. Viewed as a whole, the evidence in the file shows that that agreement was continuously implemented, including by Gosselin. There is nothing to indicate that Gosselin distanced itself from it.
- (274) The Commission has, however, verified the content and the interpretation of all the documents thus called into question by Gosselin and checked on those removals in respect of which the absence from the file of cover quotes emanating from Gosselin has been identified⁴⁶⁰. Even in the case of those removals for which Gosselin was approached by competitors for a cover quote which does not appear in the file, the presence of the name Gosselin in the documents concerning the cover quote arrangement for a given removal makes it possible to establish Gosselin's participation in this instance of implementation of the agreement on cover quotes. Where a competitor's request was turned down, this fact was mentioned in the file (see section 12.2.2.4). The mere fact that the cover quote does not appear in the Commission's file therefore does not mean that the quote was never drawn up and even less that its drawing up was refused. The evidence in the file shows that a cover quote was sometimes sent direct to the person moving. [*]⁴⁶¹.
- (275) Even if these arguments of Gosselin's were more convincing, they would not alter the finding arrived at on the strength of the other evidence contained in the file which indicates that Gosselin was party to the agreement on cover quotes.

459 [*].
460 [*].
461 [*].

- (276) For the purposes of this Decision, the Commission therefore relies on these documents as proof of Gosselin's participation in the implementation of the agreement on cover quotes.

12.2.5 Full example of the implementation of the agreement on cover quotes

- (277) The steps generally followed in practice with regard to cover quotes can be illustrated by the example of [*]'s removal from Brussels to Madrid in 2003, for the account of [*]⁴⁶².
- (278) On 20 June 2003, following a telephone call, it was agreed by [*] and [*] of Ziegler that the technical survey at [*]'s home would take place at 09.00 on 25 June 2003⁴⁶³. The inspection was carried out by a representative of Ziegler, who noted on the survey report the words "ask for two estimates" (*demandeur 2 devis*)⁴⁶⁴. On 27 June 2003, [*] of Ziegler contacted an international transport company in the country of destination to ask their best price for [*]'s removal⁴⁶⁵. Three days later, on 30 June 2003, the transport company sent an email message giving its price⁴⁶⁶. Once that reply had been received, handwritten calculations were made of Ziegler's price and the prices that Ziegler would indicate to Mozer and Allied Arthur Pierre for their respective cover quotes⁴⁶⁷. In [*]'s diary, for the date 30 June 2003, there is the note "Ask for quotes for [*]" (*Demandeur les devis pour [*]*)⁴⁶⁸. [*] drafted a handwritten memo for the attention of [*] of Mozer and another for the attention of [*] of Allied Arthur Pierre⁴⁶⁹. These memos asked each of them to draw up a cover quote for [*]'s removal, and gave information regarding the customer, the destination, the volume and the price. [*] received the typed version of the note addressed to her by email message of 1 July 2003⁴⁷⁰. The price indicated in the email message was 2 705 US dollars (USD) for packing, USD 5 895 for transport, USD 2 345 for unloading, and USD 2 025 for insurance, giving a total of USD 12 970. The same day [*] sent a quote with these components to [*], and asked him if he wanted to check it⁴⁷¹. [*] replied that she could send the quotation to the customer by fax, and thanked her⁴⁷². Likewise on 1 July 2003, [*] received the typed version of the memo addressed to [*] by fax⁴⁷³. [*] there indicated a price of USD 3 015 for packing, USD 6 240 for transport, USD 1 212 for unloading, and USD 1 900 for insurance, giving a total of USD 12 367. [*]'s quotation, dated 2 July 2003, is also in Ziegler's file, and shows the

462 [*].
463 [*].
464 [*].
465 [*].
466 [*].
467 [*].
468 [*].
469 [*].
470 [*].
471 [*].
472 [*].
473 [*].

price indicated by [*]⁴⁷⁴. [*] himself drew up a quotation in the name of Ziegler, proposing USD 2 310 for packing and loading, USD 5 350 for transport, USD 1 649 for delivery and unpacking, and USD 1 800 for insurance, giving a total of USD 11 109, which was the cheapest of the three quotes; he sent it to [*] on 2 July 2003⁴⁷⁵.

13. TABLE SUMMARISING PARTICIPATION OVERALL

(279) Table 3 summarises, on the basis of the evidence in the file, the participation of each of the relevant removal companies in the implementation of the agreements on prices, commissions and cover quotes during the period from 1984 to 2003.

(280) **Table 3: Documented participation by the relevant companies in the agreements on prices, commissions and cover quotes**

Company	First documented participation	'84	'85	'86	'87	'88	'89	'90	'91	'92	'93	'94	'95	'96	'97	'98	'99	'00	'01	'02	'03	Un-dated	Last documented participation	TOTALS ⁴⁷⁶
Allied Arthur Pierre	04.10.1984																						09.09.2003	
Compas	26.01.1996																						08.07.2003	
Coppens	13.10.1992																						29.07.2003	
Gosselin	31.01.1992																						18.09.2002	
Interdean	04.10.1984																						10.09.2003	
Mozer	31.03.2003																						04.07.2003	
Putters	14.02.1997																						04.08.2003	
Team Relocations	20.01.1997																						10.09.2003	
Transworld	04.10.1984																						31.12.2002	
Ziegler	04.10.1984																						08.09.2003	

⁴⁷⁴ [*].

⁴⁷⁵ [*].

⁴⁷⁶ [*].

E. APPLICATION OF ARTICLE 81 OF THE TREATY AND ARTICLE 53 OF THE EEA AGREEMENT

14. RELATIONSHIP BETWEEN THE EC TREATY AND THE EEA AGREEMENT

- (281) The cartel that is the subject of this Decision affected trade between the States parties to the Agreement on the European Economic Area (EEA) since the firms participating in the cartel provide international removal services in virtually all the Member States and in the States of the European Free Trade Association which are parties to the EEA Agreement.
- (282) The EEA Agreement, which contains competition rules similar to those set out in the EC Treaty, entered into force on 1 January 1994. This Decision therefore includes the application, as from that date, of those rules (essentially, Article 53(1) of the EEA Agreement) to the agreements which are the subject of this Decision.
- (283) In so far as the agreements affected competition in the common market and trade between Member States, Article 81 of the EC Treaty is applicable. In so far as the agreements affected competition in the EFTA countries which are part of the EEA and trade between the Community and those EEA contracting parties or between EEA contracting parties, Article 53 of the EEA Agreement is also applicable.

15. JURISDICTION

- (284) In this case, the Commission is the competent authority to apply Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement on the basis of Article 56 of the EEA Agreement, since the cartel had an appreciable effect on trade between the Member States⁴⁷⁷.

16. APPLICATION OF ARTICLE 81 OF THE TREATY AND ARTICLE 53 OF THE EEA AGREEMENT

- (285) Article 81 of the Treaty prohibits as incompatible with the common market all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or 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.

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See section 16.4 “Effect on trade between Member States of the Community and between contracting parties to the EEA Agreement”.

- (286) Article 53(1) of the EEA Agreement (which is modelled on Article 81(1) of the Treaty) contains a similar prohibition of agreements, decisions by associations of undertakings and concerted practices, but the references to trade “between Member States” and to competition “within the common market” are replaced by references to trade “between Contracting Parties” (in this context, “Contracting Parties” means the Member States and the various States which at that time formed part of EFTA⁴⁷⁸) and to competition “within the territory covered by this Agreement” (i.e. the EEA Agreement).
- (287) Where reference is made in this Decision to Article 81(1) of the Treaty, Article 53(1) of the EEA Agreement is also applicable, unless otherwise stated⁴⁷⁹.

16.1 Agreements

16.1.1 Principles

- (288) An “agreement” can be said to exist when the parties adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. It does not have to be made in writing; no formalities are necessary, and no contractual sanctions or enforcement measures are required. The fact of agreement may be express or implicit in the behaviour of the parties. Furthermore, it is not necessary, in order for there to be an infringement of Article 81 of the Treaty, for the participants to have agreed in advance upon a comprehensive common plan.
- (289) In its judgment in *PVC II*⁴⁸⁰, the Court of First Instance of the European Communities stated that “it is well established in the case law that for there to be an agreement within the meaning of Article [81] of the Treaty it is sufficient for the undertakings to have expressed their joint intention to behave on the market in a certain way”.
- (290) An “agreement” for the purposes of Article 81(1) of the Treaty does not require the same certainty as would be necessary for the enforcement of a commercial contract at civil law. Moreover, in the case of a complex cartel of long duration, the term “agreement” can properly be applied not only to any overall plan or to the terms expressly agreed, but also to the implementation of what has been

⁴⁷⁸ Switzerland is not a contracting party to the EEA Agreement.

⁴⁷⁹ The case law of the Court of Justice and of the Court of First Instance on the interpretation of Article 81 of the EC Treaty also applies to Article 53 of the EEA Agreement. See points 4 and 15, Article 6 of the EEA Agreement, Article 3(2) of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, and paragraphs 32 to 35 of Case E-1/94 of 16.12.1994. The references to Article 81 of the EC Treaty in the Community case law cited in this Decision thus also apply to Article 53 of the EEA Agreement.

⁴⁸⁰ Joined Cases T-305/94 etc. *Limburgse Vinyl Maatschappij N.V. and others v Commission (PVC II)* [1999] ECR II-931, paragraph 715.

agreed on the basis of the same mechanisms and in pursuance of the same common purpose⁴⁸¹.

- (291) As the Court of Justice of the European Communities (upholding the judgment of the Court of First Instance) has pointed out⁴⁸², it follows from the express terms of Article 81 of the Treaty that agreement may consist not only in an isolated act, but also in a series of acts or a course of conduct.
- (292) Article 81 draws a distinction between the concept of “concerted practices” and that of “agreements between undertakings”; the object is to bring within the prohibition of that Article a form of coordination between undertakings which, without having reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical cooperation between them for the risks of competition⁴⁸³.
- (293) It is not necessary, in the case of a complex infringement of long duration, for the Commission to characterise behaviour as exclusively belonging to one or the other of these forms of illegal behaviour. The concepts of agreement and concerted practice are fluid and may overlap. The anti-competitive conduct may undergo some changes from time to time, or its arrangements may be adjusted or reinforced to take account of new developments. Indeed, it may not even be possible realistically to make any such distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while considered in isolation some of its manifestations could 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 forms of infringement. A cartel may therefore be an agreement and a concerted practice at the same time. Article 81 of the Treaty lays down no specific category for a complex infringement of the type which is the subject of this Decision⁴⁸⁴.
- (294) In its judgment in *PVC II*⁴⁸⁵, the Court of First Instance stated that “in the context of a complex infringement which involves many producers seeking over a number of years to regulate the market between them the Commission cannot be expected to classify the infringement precisely, for each undertaking and for any given moment, as in any event both those forms of infringement are covered by Article [81] of the Treaty”.
- (295) It is also settled case law that “the fact that an undertaking does not abide by the outcome of meetings which have a manifestly anti-

⁴⁸¹ Case T-7/89 *Hercules Chemicals v Commission* [1991] ECR II-1711, paragraph 256.
⁴⁸² Case C-49/92 P *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125, paragraph 81.
⁴⁸³ Case 48/69 *Imperial Chemical Industries v Commission* [1972] ECR 619, paragraph 64.
⁴⁸⁴ Case T-7/89 *Hercules Chemicals v Commission* [1991] ECR II-1711, paragraph 264.
⁴⁸⁵ *PVC II*, paragraph 696.

competitive purpose is not such as to relieve it of full responsibility for the fact that it participated in the cartel, if it has not publicly distanced itself from what was agreed in the meetings”⁴⁸⁶. Such distancing should take the form of an announcement by the company that it is dissociating itself from the objectives of the cartel and the methods used to achieve them⁴⁸⁷.

16.1.2 Application

- (296) The facts set out in part D show that, during the relevant period, Allied Arthur Pierre, Compas, Coppens, Interdean, Gosselin, Mozer, Putters, Team Relocations, Transworld and Ziegler:
- in the case of some of them, drew up and signed written agreements stipulating the prices and other terms for the provision of international removal services in Belgium and the payment of commissions⁴⁸⁸;
 - in the case of some of them, agreed prices for the provision of international removal services in Belgium⁴⁸⁹;
 - in the case of all except Coppens, agreed on commissions, which are financial compensation which the company winning an international removal contract pays to the losing companies; such commissions form part of the price for the provision of international removal services in Belgium⁴⁹⁰;
 - all agreed to show prices and other terms dictated by competitors in cover quotes so as to allow a company to appear as the lowest bidder⁴⁹¹.
- (297) These activities constitute agreements within the meaning of Article 81 of the Treaty.
- (298) The Commission considers the whole of this cooperation and coordination between the relevant removal companies to be agreements, since the companies adhere to a generally applied common system which limits their individual commercial conduct and consequently behave on the international removal services market in Belgium in a way that is determined by a mutual understanding⁴⁹². The written commitments on prices signed by [*] in the mid-1980s clearly constitute agreements. Furthermore, it is implicit in the mechanism of

⁴⁸⁶ See, *inter alia*, Case T-141/89 *Tréfileurope Sales v Commission* [1995] ECR II-791, paragraph 85, Case T-7/89 *Hercules Chemicals v Commission* paragraph 232 and Joined Cases T-25/95 etc. *Cimenteries CBR and others v Commission* [2000] ECR II-491 (*Cement cases*), paragraph 1389.

⁴⁸⁷ Case T-329/01 *Archer Daniels v Commission* [2006], judgment of 27 September 2006, ECR II-3255, paragraph 247.

⁴⁸⁸ See section 11.

⁴⁸⁹ See paragraphs (177) to (181) and (187) to (188).

⁴⁹⁰ See section 12.1.

⁴⁹¹ See section 12.2.2.

⁴⁹² See *PVC II*, paragraph (289).

the systems of commissions and cover quotes that such systems are necessarily based on an agreement between [*] aimed at restricting price competition and/or sharing customers, whether the parties agree on the amount of the commission to be paid to the other removal companies, or whether they agree, at the request of one of the other parties, to draw up a cover quote.

- (299) At all events, these cooperation and coordination arrangements between the relevant undertakings, particularly as regards commission payments and cover quotes, could at least be described as “concerted practices” within the meaning of Article 81 of the Treaty, since the undertakings entered into concertation on the prices of the services to be provided, on the hidden price elements (the commissions), and on the submission of bids as part of the procedure for selecting the service provider. The participants in the cartel exchanged detailed information on the various aspects of the service to be provided, such as the customer’s name and the origin and destination of the international removal. In the system of cover quotes, the prices specified in the cover quotes were dictated by the removal company which had called for those quotes from its competitors, and negotiations sometimes took place in order to adjust these various prices⁴⁹³. In the system of commissions, the number and level of the commissions, which formed part of the final price the customer had to pay, were discussed and determined among the cartel participants⁴⁹⁴. In this way, they replaced the risks of competition with practical cooperation among themselves.
- (300) However, as stated in paragraph (293), it is not necessary, particularly in the case of a complex infringement of long duration such as the present one, for the Commission to characterise behaviour as exclusively belonging to one or the other of these forms of behaviour, since they are both caught by the ban in Article 81(1) of the Treaty.

16.2 The concept of single, continuous infringement

16.2.1 Principles

- (301) A complex cartel may properly be viewed as a single, continuous infringement for the period during which it exists. The Court of First Instance has held, notably in the *Cement* case, that the concept of “single agreement” or “single infringement” presupposes a complex of practices adopted by various parties in pursuit of a single anti-competitive economic aim⁴⁹⁵. The agreement may very well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. The validity of this assessment is in no way affected by the possibility that one or more elements of a series of actions or of a continuous course of conduct could, individually and in themselves, constitute an infringement of Article 81(1) of the Treaty.

⁴⁹³ See section 12.2.2.

⁴⁹⁴ See section 12.1.2

⁴⁹⁵ Joined Cases T-25/95 etc. *Cimenteries CBR and Others v Commission* [2000] ECR II-491, paragraph 3699.

- (302) It would be artificial to split up such continuous conduct, characterised by a single purpose, by treating it as consisting of several separate infringements, when what is involved is a single infringement which progressively manifests itself in agreements (and/or concerted practices).
- (303) As the Court of First Instance recently held, “the system of competition established by Articles 81 EC and 82 EC is concerned with the economic consequences of agreements, or of any comparable form of concertation or coordination, rather than with their legal form It follows that the duration of an infringement must be appraised not by reference to the period during which an agreement is in force, but by reference to the period during which the undertakings concerned adopted conduct prohibited by Article 81 EC”⁴⁹⁶.
- (304) Although a cartel is a joint enterprise, each participant in the agreement may play its own particular role.
- (305) The mere fact that each participant in a cartel may play a specific role appropriate to its own circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by the other participants, since such acts have the same unlawful purpose and the same anti-competitive effect. An undertaking which takes part in the common unlawful enterprise by actions which contribute to the realisation of the shared objective is equally responsible, for the whole period of its adherence to the common scheme, for the acts of the other participants pursuant to the same infringement. This is certainly the case where it is established that the undertaking in question was aware of the unlawful behaviour of the other participants or could have reasonably foreseen or been aware of them and was prepared to take the risk⁴⁹⁷.
- (306) In fact, as the Court of Justice stated in its judgment in *Commission v Anic Partecipazioni*⁴⁹⁸, the agreements referred to in Article 81 of the Treaty necessarily result from collaboration by several undertakings, who are all co-perpetrators of the infringement, but whose participation can take different forms according, in particular, to the characteristics of the market concerned and the position of each undertaking on that market, the aims pursued and the means of implementation chosen or envisaged. It follows, as the Court restated in the *Cement* case, that infringement of Article 81 of the Treaty may result not only from an isolated act, but also from a series of acts or from continuous conduct. That interpretation cannot be challenged on the ground that one or several elements of that series of acts or continuous conduct could also constitute in themselves an infringement of that provision. When the different actions form part of an “overall plan”, because their identical

⁴⁹⁶ Judgment of the Court of First Instance delivered on 12 December 2007 in Joined Cases T-101/05 and T-111/05 *BASF AG and others v Commission* (not yet reported), paragraph 187.

⁴⁹⁷ Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, paragraph 83.

⁴⁹⁸ See previous footnote.

object distorts competition within the common market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole⁴⁹⁹.

16.2.2 Application

- (307) The Commission considers that, in the case being dealt with here, the participation of Allied Arthur Pierre, Compas, Gosselin, Interdean, Mozer, Putters, Team Relocations, Transworld and Ziegler in the agreement on commissions and the agreement on cover quotes, the participation of Coppens in the agreement on cover quotes and the participation of Allied Arthur Pierre, Interdean, Transworld and Ziegler in the agreement on the prices for international removal services in Belgium, as described in part D in relation to the period from October 1984 to September 2003, correspond to the concept of a single, continuous infringement of Article 81 of the Treaty.

16.2.2.1 The Commission's findings

- (308) On the basis of the evidence in the file, the Commission finds that Allied Arthur Pierre, Interdean, Transworld and Ziegler signed written agreements setting the prices and other terms for the provision of international removal services in Belgium from October 1984 to 1990⁵⁰⁰. A number of these written price agreements contained references to the arrangements relating to commissions: the written agreements of July and November 1987 referred to a “double” commission as a penalty⁵⁰¹, which means a “single” commission was at all events customary between the participants in the cartel. In addition, the written agreements required the signatories to consult one another in order to agree on commissions when they were asked by overseas agents to submit a quote⁵⁰².
- (309) The document “Minimum Rates for European and Overseas Moves”, which the Commission dates after May 1990, sets out precise instructions on the arrangements relating to commissions for international removals, such as the number and amount of the commissions and how they are to be paid⁵⁰³.
- (310) The owners of Compas, [*] and [*], were employees of Allied Arthur Pierre before setting up their own company in 1994. [*]⁵⁰⁴.
- (311) The Commission also finds, on the basis of the documents in the file, that Allied Arthur Pierre, Interdean, Transworld and Ziegler agreed on

⁴⁹⁹ Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and Others v Commission* [2004] ECR I-123, paragraph 258. See also Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, paragraphs 78 to 81, 83 to 85 and 203.

⁵⁰⁰ See section 11. See footnote 200 for Transworld, which signed the written agreements under its previous name “Global”.

⁵⁰¹ See paragraphs (130) to (139) and in particular (133).

⁵⁰² See paragraph (134).

⁵⁰³ See paragraphs (146) to (153).

⁵⁰⁴ See paragraphs (159) and (163) and footnote 262.

commissions and cover quotes for the provision of removal services in Belgium as from 1988 and that they continued to do so until September 2003⁵⁰⁵.

- (312) The Commission also finds that in addition to these four removal companies (i.e. Allied Arthur Pierre, Interdean, Transworld and Ziegler), five other companies, namely Compas, Gosselin, Mozer, Putters and Team Relocations, also participated in the agreement on commissions in the period from January 1992 to August 2003⁵⁰⁶ and that these five removal companies and Coppens also participated in the agreement on cover quotes in the period from December 1991 to September 2003⁵⁰⁷.
- (313) All of the conduct of the ten removal companies from October 1984 to September 2003 is summarised in Table 3 (see paragraph (280)) and in Annexes 1 and 2.
- (314) The Commission considers that the evidence demonstrates the existence of a complex cartel of long duration in which the ten removal companies participated. The purpose of the cartel was to establish and maintain a high price level for the provision of international removal services in Belgium and to share this market. The mechanisms by which this objective was achieved were the agreement on prices, notably in the form of written agreements, the agreement on commissions and the agreement on cover quotes. Even if these mechanisms took different forms, their purpose was the same. The Commission therefore views the whole of the conduct as a cartel constituting a single, continuous infringement of Article 81 of the Treaty.

16.2.2.2 Arguments put forward by Interdean and its parent companies⁵⁰⁸, Team Relocations and Ziegler in reply to the statement of objections

- (315) Interdean and its parent companies, as well as Team Relocations and Ziegler, argued in their replies that the agreements did not constitute a single, continuous infringement, but constituted two, or indeed three, separate infringements, of which the first was time-barred⁵⁰⁹.
- (316) Interdean argued that the agreements, on the one hand, and the arrangements relating to commissions and cover quotes, on the other, were two distinct exercises having different objectives. While the written agreements were signed and formally presented with the aim of setting minimum prices, the arrangements relating to commissions and

⁵⁰⁵ Transworld from 1992 to 2002.

⁵⁰⁶ The date of the start and end of participation in implementation of the agreement on commissions for each of these removal companies is set out in Table 1 (see paragraph (173)) and in Annex 1.

⁵⁰⁷ The date of the start and end of participation in implementation of the agreement on commissions for each of these removal companies is set out in Table 2 (see paragraph (237)) and in Annex 2.

⁵⁰⁸ Namely Interdean Holding BV, Interdean AG, Interdean SA, Ronspant Holding BV, Amcrisp Limited, Interdean International Limited, Iriben Limited and Interdean Group Limited.

⁵⁰⁹ Interdean NV and its parent companies: [*]. Ziegler: [*]. Team Relocations: [*].

cover quotes were informal agreements whose aim was to allow a given company to obtain the desired contract and to provide a service to the customer⁵¹⁰, which at the same time involved informal sharing of the market. Their objective was thus the allocation of the contract itself and not the setting of minimum prices⁵¹¹. Interdean disputed the Commission's interpretation of the content of the July 1987 agreement as regards the meaning of the term "commission" on the grounds that merely using the term was not sufficient proof of a link between that price agreement and subsequent agreements on commissions⁵¹².

- (317) In its reply to the statement of objections, Interdean also argued that the two types of conduct could not be deemed to be elements constituting a single infringement, since there was a significant lapse in time between the written agreements and the practices involving commissions and cover quotes⁵¹³. Interdean did not maintain this argument in its comments on the statement of facts setting out evidence of its participation in the agreement on commissions and in the agreement on cover quotes as from 1988⁵¹⁴.
- (318) In its reply to the statement of objections, Ziegler argued that the first infringement was the setting of prices in the form of written agreements, which ended in 1987, and that the other infringement was the arrangements on commissions and cover quotes, which began in 1992⁵¹⁵. In its comments on the statement of facts, Ziegler did not maintain the argument regarding the lapse of time⁵¹⁶. Ziegler claimed that the infringements were separate because there was no continuity in terms of methods and practices, that they were different in nature and that they had virtually no impact on competition as far as the cover quotes were concerned⁵¹⁷.
- (319) In its reply to the statement of objections, Ziegler also argued that the Commission could not deem the document "Minimum Rates for European and Overseas Moves" to be a price agreement since it was neither dated nor signed and was marked "draft". Nor, it argued, could the Commission base its case as far as Ziegler was concerned on the document entitled "Agreed rate from on November 1, 1987", since it was not signed by Ziegler and was not therefore valid proof of its participation in the agreement⁵¹⁸.
- (320) Team Relocations was the only undertaking to argue that the written agreements, the arrangements relating to commissions and the

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See paragraph (117).

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arrangements relating to cover quotes constituted three separate infringements⁵¹⁹.

16.2.2.3 Commission assessment of the arguments

- (321) The Commission rejects these arguments for the reasons set out in this section.
- (322) It should be noted firstly that, as from the mid-1980s, the participants in the cartel aimed to achieve a minimum profit for themselves and to protect one another against competition. The written agreements of 1985 and 1987 stipulate this explicitly (see paragraphs (129) and (135). The framework or, in other words, the “overall plan” of the cartel’s activities was therefore set.
- (323) On the basis of the description of the cartel participants’ activities contained in part D and reviewed in paragraphs (308) to (314), the Commission would point out that, from the beginning to the end of the cartel, the unlawful purpose of these activities deemed to be agreements and/or concerted practices within the meaning of Article 81 of the Treaty was the same: the participants in the cartel set prices, or exchanged information on prices or price elements for the provision of international removal services in Belgium and shared customers for a period of more than nineteen years.
- (324) The multiple forms of conduct involved here, namely the written agreements setting prices and other terms for the service, the system of commissions and the system of cover quotes have elements in common which show that all the conduct had the same anti-competitive economic purpose⁵²⁰. Thus, the agreements on the price of international removal came about not only in the form of written agreements as from 1984⁵²¹, but also when the participants agreed on commissions⁵²², because such commissions formed an integral part of the final price charged to customers; they were an element of the final price that was hidden from the customers⁵²³. The participants’ agreement on commissions was thus at the same time an agreement on an element of the price of the service, i.e. an indirect fixing of the price of the service.
- (325) The same objective of setting the price of the international removal was pursued through the system of cover quotes: as described in detail in section 12.2, the establishment and provision of cover quotes clearly necessarily entailed the exchange, and indeed the discussion and even the negotiation, of the various prices and various price elements. The example set out in paragraph (248) is telling: Interdean found the price

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Case C-105/04 P *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied v Commission* [2006] ECR I-8725, paragraphs 162 and 163.

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See section 11.

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See section 12.1.

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See paragraphs (167) and (199).

for the storage of goods which Allied Arthur Pierre had initially set for it in the cover quote too high. Interdean and Allied Arthur Pierre discussed, and indeed negotiated in detail, this “false” price compared to Allied Arthur Pierre’s real price in order to find a solution that would allow Allied Arthur Pierre to maintain in its quote its high price for storage of the goods.

- (326) The example of the three international removals carried out in 2000 on behalf of [*] described in paragraphs (178) à (180) combines all these elements at once: the undertakings involved set the price for each removal, they set the commissions and they shared the removals amongst themselves through cover quotes.
- (327) Another element linking the multiple activities of the cartel is the fact that the participants were identical in that the undertakings which began to take part in the cartel continued to do so until the end. The number of participants increased over the years, notably through the advent of newly set-up companies such as Compas and Team Relocations⁵²⁴.
- (328) The elements linking the multiple activities of the cartel participants in such a way that they have adopted complementary conduct aimed at achieving the same anti-competitive economic goal are presented in detail below.
- (329) The Commission has proved that the practice of commissions already existed at the time of the written price agreements, as is evident from the documents found during the investigation⁵²⁵ and [*]⁵²⁶.
- (330) A number of the written price agreements already refer to the fact that commissions had been agreed upon between the signatories. Thus, chapter V. “RULES, C. Penalty clause” of the agreement entitled “Agreed rate from on July 1 1987” provides for the payment of a “double commission” as a penalty⁵²⁷. A “double commission” does not have any meaning on its own, so that a single commission must have been agreed on.
- (331) In addition to chapter V of the written agreement of July 1987, chapter VI entitled “STATES-SIDE REQUEST” contains a reference to the commissions: it stipulates that the cartel members must, before submitting prices, consult each other in order to agree on commissions⁵²⁸.

⁵²⁴ See paragraphs (39) and (77).

⁵²⁵ See paragraphs (133) and (134).

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⁵²⁷ [*].

⁵²⁸ See paragraph (134). The statement of objections did not explicitly contain this quotation, but it referred to the page of the document on which it could be found and to the title of the chapter [*]. The quoted text was available to the parties.

- (332) Furthermore, part “D” of chapter V of the written agreement of July 1987 stipulates that “every member is obliged to check with his colleagues on every move where he knows the competition”⁵²⁹. This chapter also requires members to negotiate and not to alter the terms of contract without informing their competitors⁵³⁰. In addition, part “A” of chapter V explicitly states that “for every agreement reached, members also should fix the weight or volume of every individual move”⁵³¹. The written agreement of July 1987 also includes other rules in addition to those described above.
- (333) The same terms, the same rules and the same mechanisms regarding the use of commissions, prior coordination, negotiation, the exchange of information, penalties and other rules (chapters V and VI) can also be found in the written agreement of November 1987⁵³².
- (334) Precise instructions on agreeing on commissions and on their periodic settlement are also set out in the document entitled “Minimum Rates for European and Overseas Moves”, which the Commission dates after May 1990⁵³³.
- (335) Despite the apparently horizontal nature of the written agreements on prices, the actual implementation of all their rules provides mechanisms which are also used to reach agreement on commissions and cover quotes throughout the infringement: the international removal is considered individually, the competitors for an individual international removal are identified, the removal companies involved set the price and/or the volume and/or the insurance costs and/or storage costs and/or other components of the service, exchanges of information take place, the removal companies negotiate the terms of the contracts and monitor each other in accordance with the arrangement⁵³⁴. A comparison of these mechanisms with those applied in implementing the agreement on commissions and the agreement on cover quotes shows that it was the same type of mechanisms as those applied by the relevant companies in implementing these agreements throughout the duration of the infringement.
- (336) Furthermore, [*] the implementation of the agreements on commissions and on cover quotes by Allied Arthur Pierre, Interdean and Ziegler from 1988 to 1991; this shows that these activities involving the fixing of prices, the setting of commissions and the drawing up of cover quotes took place during the same period and in parallel. These activities are complementary and form part of an “overall plan”.

⁵²⁹ Original English [*].

⁵³⁰ See paragraph (133).

⁵³¹ Original English [*].

⁵³² See paragraph (139).

⁵³³ See paragraph (309).

⁵³⁴ For details, see the description of how these arrangements operated in sections 12, 12.1 and 12.2.

- (337) Moreover, it is not disputed that the system of commissions is a system for providing compensation as part of the sharing of customers (with or without the setting of prices and/or minimum prices), and that the drawing up of cover quotes is similarly an essential part of customer sharing where customers wish to have competing bids from several cartel participants.
- (338) Furthermore, the file contains evidence that minimum prices were applied not only at the time of the written agreements of 1984 to 1990⁵³⁵, but also subsequently, namely in 1999, 2000 and 2001. The Commission considers that it is justified in interpreting the words “*minimum prijs*” in the table [*] as meaning minimum price in the context of agreements between Interdean and its competitors⁵³⁶. These words are to be found in the column “*afspraken*” (agreement) along with the amount of the commissions agreed on for the relevant removal. These terms thus refer to the agreement reached with the competitor and not to an internal decision within Interdean. In the majority of removals involving commissions for which a minimum price was thus entered in the table, the minimum price and the commission were agreed between Interdean and Compas. Compas stated in its reply to the statement of objections that it had checked the facts and it confirms the Commission’s interpretation of them⁵³⁷. Interdean, the author of the table, did not deny having agreed on commissions for these removals. Its argument that the term “*minimum prijzen*” refers to Interdean’s internal pricing is therefore not convincing given the content of the document itself and the confirmation given by Compas.
- (339) Contrary to what Ziegler claimed in its reply to the statement of objections, the document “Agreed rate from on November 1, 1987” is signed by a representative of Ziegler: on page 1750TW, which is the last page of the document, there is a signature and below it the name of the represented company, “Ziegler NV”.
- (340) The existence of the agreement on prices for the provision of international removal services in Belgium, notably in the form of written agreements requiring the parties not to quote prices below the minimum prices set, means that competition between the parties was restricted, the aim being to establish a higher price level than that which would have existed in the absence of the agreement. The same objective and the same results were achieved by the participants in the agreements on commissions and cover quotes using methods which seem to be more effective, more flexible and more lucrative for them than the requirement under the written agreements that they should not charge less than the minimum prices.
- (341) By participating in the agreement on commissions, the relevant companies, including those which signed the written agreements setting

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See section 11.

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See paragraphs (187) and (188).

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minimum prices, indirectly established a higher price level than that which would exist in an environment of normal competition between them, because each company had included in its bid the amount of commission to be paid if it won the contract. Furthermore, the compensation paid to the companies which did not win the contract greatly reduced their incentive to break ranks by quoting a competitive price. In addition, where the companies exchanged information on their bids, as was often the case, they restricted price competition amongst themselves to an even greater extent⁵³⁸. Occasionally, minimum prices were actually charged⁵³⁹. In addition, the payment of a commission by the company winning the contract to the company or companies which did not may be regarded as a sort of financial contribution between companies, because the company paying the commission does not receive anything in return, such as a service actually rendered by its competitor. Such financial compensation would not result from an agreement setting the price of the service.

- (342) The agreement on cover quotes also means that competition between the parties was restricted and that the level of prices was higher than it would otherwise have been. The companies called upon to provide a cover quote received instructions on the amount of the prices and the other elements to be applied, and the companies requesting a cover quote from them could thus calculate and submit their own bid in the knowledge that the other quotes would not be competitive. At the same time, the system of cover quotes allowed the cartel participants to acquire information on the level of competitors' prices, to check it and to monitor one another⁵⁴⁰.
- (343) It is not apparent either from the documents found during the inspection or from the documents submitted and statements made as part of the leniency application that any of the removal companies in question refused to provide a cover quote or to agree to a commission on the grounds that it no longer wished to abide by these common activities⁵⁴¹. Furthermore, none of the ten companies claimed in its reply to the statement of objections that it had thus distanced itself from such activities.
- (344) The Commission understands that, starting from the agreement on prices in the form of written agreements setting minimum prices and other terms for international removal services, including provisions on commissions, the cartel, while still pursuing the same objective of high prices and market sharing, gradually developed into a more complex anti-competitive system. This complex system is based on the agreement on prices, the agreement on commissions and the agreement on cover quotes.

⁵³⁸ See, for example, paragraphs (185) and (186).

⁵³⁹ See paragraph (188).

⁵⁴⁰ See paragraphs (242), (243), (246) and (248).

⁵⁴¹ See paragraphs (249) to (252).

16.2.2.4 Commission conclusion

- (345) It is concluded that the complex of conduct in this case displays the characteristics of a single, continuous infringement within the meaning of Article 81 of the Treaty, committed from October 1984 to September 2003 by Allied Arthur Pierre, Compas, Coppens, Gosselin, Interdean, Mozer, Putters, Team Relocations, Transworld and Ziegler.

16.3 Restriction of competition

16.3.1 Principles

- (346) Article 81(1) of the Treaty expressly identifies as restricting competition agreements and/or concerted practices which:
- directly or indirectly fix purchase or selling prices or any other trading conditions;
 - share markets or sources of supply.
- (347) Price being the main instrument of competition, arrangements between competitors designed to coordinate prices will – by their very nature – restrict competition within the meaning of Article 81(1) of the Treaty.
- (348) The Court of Justice has held that concertation regarding the manner in which an invitation to tender is responded to, the protection of the undertaking which, following concertation between competitors, is the lowest bidder and the exchange of information between competitors also form part of agreements and/or restrictive practices within the meaning of Article 81 of the Treaty⁵⁴².

16.3.2 Application

- (349) The Commission finds that such are the essential characteristics of the agreements examined in this case. The **object** of the agreement on prices, the agreement on commissions and the agreement on cover quotes is to establish and maintain a high price level for the provision of international removal services in Belgium and to share that market.
- (350) The existence of the agreement on prices for the provision of international removal services means that the relevant removal companies were not free to determine their own prices or the other terms.
- (351) When the relevant companies agreed on commissions, they sometimes also set the prices which the removal companies involved in the same

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Case T-29/92, *Vereniging van Samenwerkende Prijsregelende Organisaties in de Bouwnijverheid and Others v Commission*, [1995] ECR II-289, which upheld Commission Decision 92/204/EEC of 5 February 1992 relating to a proceeding pursuant to Article 85 of the EEC Treaty (IV/31.572 and 32.571 - Building and construction industry in the Netherlands), OJ L 92 of 7.4.1992, p.1.

removal had to specify to the customer in their estimate⁵⁴³. When the relevant companies agreed on commissions, they sometimes also charged minimum prices for the removal in question⁵⁴⁴. This is indirect fixing of the price for the service.

- (352) The fact that the relevant removal companies agreed commissions forming an integral part of the price which customers had to pay for the services without receiving any compensatory benefit in return must be deemed to be indirect fixing of prices for international removal services in Belgium.
- (353) The agreeing of commissions between the companies involved in the same removals resulted in a higher price level for international removal services in Belgium than would have been the case in a competitive environment. Each removal company submitting a bid had to include in its price calculation the amount of the commission(s) to be paid if it won the contract. This fact was concealed because the amount of the commissions was not evident in the price presented to the customer⁵⁴⁵.
- (354) Furthermore, when agreeing commissions, the companies involved in the submission of bids for one and the same removal sometimes placed one company in the position of being the lowest bidder, which is the best position to be in to obtain a contract. Tenders were thus manipulated, and, where the company bidding the lowest price is chosen by the customer, there is also manipulation in the allocation of contracts for international removal services in Belgium.
- (355) Lastly, the fact that the participants in the cartel agreed on commissions in order to compensate the companies not winning the contract greatly reduced their incentive to break ranks by quoting a competitive price. The system of commissions thus helped to bind the members more closely to the cartel in order to establish and maintain high prices and share the customer base.
- (356) In order to be able to implement the agreement on commissions, the relevant removal companies exchanged information which they could not have obtained freely on the market, such as the date and details of specific international removals that were to be carried out and competitors' prices. They used such information to prepare, decide on and supervise the fixing of prices and the payment of commissions and the manipulation of tenders.
- (357) In cases where one of the removal companies involved in tendering for one and the same removal had been placed in the position of being the lowest bidder, it determined the various prices without being exposed to competition: knowing that there would not normally be any

⁵⁴³ See paragraphs (177) to (181).

⁵⁴⁴ See paragraph (188).

⁵⁴⁵ See paragraph (199).

competitive quotes, it calculated its own price at a high level⁵⁴⁶ and it fixed the prices which the other companies involved had to quote in their estimates. All the prices thus presented to the customer were therefore higher than they would have been in a competitive environment.

- (358) The submission of cover quotes to customers is a manipulation of the tendering procedure. The manipulation consists in the fact that the companies involved, except the one which is the lowest bidder, have no intention of winning the contract for the removal. This means that the customer is confronted with a false choice and that the prices quoted in all the bids which he receives are deliberately higher than the price of the company which is “the lowest bidder”, and at all events higher than they would be in a competitive environment.
- (359) The submission of cover quotes to customers occurs when a company has been placed in the position of lowest bidder by dint of a sharing of customers through the allocation of a contract for removal services in Belgium.
- (360) In order to draw up the cover quotes, the relevant removal companies exchanged information which they could not have obtained freely on the market, such as the date and details of specific international removals that were to be carried out as well as competitors’ prices and other conditions of their service provision. In addition, they used such information to prepare, decide on and supervise the fixing of prices and the manipulation of tenders.
- (361) The direct and indirect fixing of prices is, by its very nature, a restriction of competition within the meaning of Article 81 of the Treaty. Consequently, the fixing of prices and minimum prices by means of the written agreements, the setting of commissions and the drawing up of cover quotes (including the fixing of prices where commissions or cover quotes were agreed) restricted competition.
- (362) The sharing of part of the market for international removal services in Belgium was, by its very nature, a restriction of competition within the meaning of Article 81 of the Treaty. Placing one of the companies tendering for an international removal in the position of being the lowest bidder, which is the best position to be in to obtain a contract, meant, in principle, that the companies involved were allocating contracts for international removal services in Belgium on a case-by-case basis. Such allocation of contracts amounted to the sharing of customers in individual international removal operations. This manner of sharing customers resulted in the sharing of part of the market for international removal services in Belgium.
- (363) The manipulation of tenders submitted to customers was a restriction of competition within the meaning of Article 81 of the Treaty, since

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See paragraphs (233) and (248).

competition was distorted. By including in the tenders price elements (commissions) which did not represent any service, price elements which moreover were not visible to the customer, the relevant companies manipulated the submission of tenders for a given removal. In addition, when companies which had no intention of winning the contract submitted cover quotes, they simulated a choice, in other words competition, which did not in fact exist, to the detriment of the customer.

- (364) The customer, whether an employer or a private individual, assumed that he was choosing the cheapest tender from amongst a number of valid and competitive bids, whereas all the tenders but one were bogus. The relevant companies thus distorted competition amongst themselves and artificially restricted any real choice on the part of the consumer.
- (365) The exchanging of information between the relevant companies was inherent in the illicit practices described in part D and formed an integral part of them. Such exchanges made it possible to prepare and implement the agreements on prices, on commissions and on cover quotes⁵⁴⁷.
- (366) The Commission concludes that this complex of agreements had as its object the restriction of competition within the meaning of Article 81 of the Treaty.
- (367) It is settled case law that, for the purpose of the application of Article 81 of the Treaty, there is no need to take into account the actual effects of an agreement when it has as its object the prevention, restriction or distortion of competition within the common market. Consequently, it is not necessary to show actual anti-competitive effects where the anti-competitive object of the conduct in question is proved⁵⁴⁸.
- (368) In this instance, however, the Commission has also established, on the basis of the facts set out in part D, that the anti-competitive agreements involved in the cartel were implemented and, consequently, that actual anti-competitive effects were produced⁵⁴⁹.
- (369) The agreements on the fixing of prices, the payment of commissions and the use of cover quotes were such as to make the prices invoiced to customers higher than they would have been in a competitive environment⁵⁵⁰.

⁵⁴⁷ See footnote 542.

⁵⁴⁸ Case T-62/98 *Volkswagen AG v Commission* [2000] ECR II-2707, paragraph 178 and the case law cited therein.

⁵⁴⁹ See Joined Cases T-259/02 to T-264/02 and T-271/02 *Raiffeissen Zentralbank Österreich and Others v Commission* (“Lombard Club”), judgment delivered by the Court of First Instance on 14 December 2006, paragraph 285.

⁵⁵⁰ See paragraphs (167), (168) and (231) to (234).

- (370) Any consumer using international removal services in Belgium that involved illicit conduct on the part of the relevant removal companies could not make any real choice on the basis of objective and pertinent information and was not faced with competitive tenders offering the best service at the best price.

16.4 Effects on trade between Community Member States and between contracting parties to the EEA Agreement

16.4.1 Principles

- (371) The Court of First Instance and the Court of Justice have consistently held that, in order that an agreement may affect trade between Member States, it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or fact that it may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States, such as might prejudice the realisation of the aim of a single market in all Member States⁵⁵¹. Article 81 of the Treaty does not require that it be established that such agreements have actually affected trade between Member States, but it does require that it be established that the agreements are capable of having that effect⁵⁵².

16.4.2 Application

- (372) The service supplied by the relevant removal companies is cross-frontier in nature. In order to be able to provide an international removal service, it is necessary to cross the frontier from one country to another, whether the frontiers are with other Member States or other countries. This cross-frontier character is inherent in the service of providing international removals⁵⁵³.
- (373) The effect of the agreements may be presumed to be appreciable if the total amount of the market shares of the relevant removal companies in Belgium exceeds 5% of the market for international removal services in Belgium and if the turnover achieved by the parties through the services concerned exceeds EUR 40 000 000⁵⁵⁴. In this instance, the parties achieved a turnover of more than EUR 41 000 000 in 2002. Their total market share is about 50%⁵⁵⁵.

⁵⁵¹ Case 56/65 *Société Technique Minière* [1966] ECR 337, paragraph 7; Case 42/84 *Remia and others v Commission* [1985] ECR 2545, paragraph 22; Joined Cases T-25/95, etc. *Cimenteries CBR* [2000] ECR II-491, paragraph 3930.

⁵⁵² Case C-306/96 *Javico* [1998] ECR I-1983, paragraphs 16 and 17 and Joined Cases T-374/94, T-375/94 and T-388/94 *European Night Services* [1998] ECR II-3141, paragraph 136.

⁵⁵³ See paragraph (2).

⁵⁵⁴ See in particular points 52 and 53 of the Commission notice on guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty, OJ C 101, 27.4.2004, p. 81.

⁵⁵⁵ See paragraph (86).

- (374) Consequently, the Commission considers that the agreements were liable to have an appreciable effect on trade between Member States and between parties to the EEA Agreement.

16.5 Application of Article 81(3) of the Treaty and of Article 53(3) of the EEA Agreement

- (375) The parties **did not present any argument** suggesting that the tests of Article 81(3) of the Treaty or Article 53(3) of the EEA Agreement are met in this case. The Commission does not consider that those tests are met.

16.6 Duration of the infringement and participation in the infringement

- (376) On the basis of the evidence in the file, it is established that the infringement lasted from 4 October 1984 to 10 September 2003⁵⁵⁶.
- (377) The Commission establishes the duration of the participation of each removal company in the infringement taking account of the following factors. In determining when the infringement began, in the case of the removal companies which participated in the agreement on prices in the form of written agreements (see section 11) the Commission assumes that it began on 4 October 1984, the date on which the first written agreement was signed. In the case of the other removal companies, the Commission takes the starting date to be that in respect of which it has the first documentary proof of participation in the agreement on commissions or in the agreement on cover quotes.
- (378) In the case of each participant, the Commission assumes the date on which the infringement ended to be the date corresponding to the last documentary proof of participation in the agreement on commissions or in the agreement on cover quotes.
- (379) Gosselin argued, in its reply to the statement of objections, that the Commission had not provided any evidence of its participation in the implementation of the agreement on commissions and in the implementation of the agreement on cover quotes during certain periods⁵⁵⁷. As indicated in Table 3, the file does not contain any documents establishing the implementation of the agreements by Gosselin during a given period. The beginning and end of its participation in implementing the agreements are precisely documented. The evidence is set out in detail in Tables 1, 2 and 3 (see paragraphs (173), (237) and (280)) and in Annexes 1 and 2. However, this does not call into question Gosselin's continuous participation in the agreements on commissions and cover quotes.

⁵⁵⁶ See paragraph (280).

⁵⁵⁷ [*].

- (380) For the reasons set out in section 16.2, the complex of anti-competitive agreements in this case displays the characteristics of a single, continuous infringement. The Commission therefore considers that this argument on the part of Gosselin is not pertinent since it has shown that the infringement must be regarded as having existed from October 1984 to September 2003 and that this finding is based on objective and corroborating evidence. As the Court of Justice has held, “in the context of such an infringement, extending over a number of years, the fact that the infringement is demonstrated at different periods, which may be separated by more or less long periods, has no impact on the existence of that agreement, provided that the various actions which form part of the infringement pursue a single aim and come within the framework of a single and continuous infringement”⁵⁵⁸. Such is the case here.
- (381) Furthermore, Gosselin did not at any time dissociate itself from the infringement. It is settled case law that the undertaking must dissociate itself openly and unequivocally from the cartel so that the other participants are aware of the fact that it no longer supports the general objectives of the cartel⁵⁵⁹.
- (382) Consequently, the removal companies participated in the infringement during the following periods at least:
- Allied Arthur Pierre : from 4 October 1984 to 9 September 2003⁵⁶⁰ ;
 - Compas : from 26 January 1996 to 8 July 2003⁵⁶¹;
 - Coppens : from 13 October 1992 to 29 July 2003⁵⁶²;
 - Gosselin : from 31 January 1992 to 18 September 2002⁵⁶³;
 - Interdean : from 4 October 1984 to 10 September 2003⁵⁶⁴;
 - Mozer : from 31 March 2003 to 4 July 2003⁵⁶⁵;

⁵⁵⁸ Case C-113/04 P *Technische Unie BV v Commission* [2006] ECR I-8831, paragraph 169.
⁵⁵⁹ Case T-7/89 *SA Hercules Chemicals NV v Commission* [1991] ECR II-1711, paragraph 232, Case T-12/89 *Solvay et Compagnie SA v Commission* [1992] ECR II-907, paragraphs 98-100, Case T-141/89 *Tréfileurope Sales SARL v Commission* [1995] ECR II-791, paragraphs 85 and 86, Case T-15/89 *Chemie Linz AG v Commission* [1992] ECR II-1275, paragraph 135, Case T-61/99 *Adriatica di Navigazione SpA v Commission* [2003] ECR II-5349, paragraph 135, Joined Cases T-25/95 etc. *Cimenteries CBR SA and Others v Commission* [2000] ECR II-491, paragraph 3199. See also Case C-199/92 P *Hüls AG v Commission* [1999] ECR I-4287, paragraph 155, Case C-49/92 P *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125, paragraph 96, Joined Cases C-204/00, etc., *Aalborg Portland A/S and others v Commission* [2004] ECR I-123, paragraphs 81-86, Joined Cases T-259/02 to T-264/02 and T-271/02 *Raiffeissen Zentralbank Österreich and Others v Commission* ('Lombard Club') [2006] ECR II-5169, paragraph 486, and Case C-291/98 *Sarrió v Commission* [2000] ECR I-9991, paragraph 50.

⁵⁶⁰ [*].

⁵⁶¹ [*].

⁵⁶² [*].

⁵⁶³ [*].

⁵⁶⁴ [*].

- Putters : from 14 February 1997 to 4 August 2003⁵⁶⁶;
- Team Relocations : from 20 January 1997 to 10 September 2003⁵⁶⁷;
- Transworld : from 4 October 1984 to 31 December 2002⁵⁶⁸;
- Ziegler : from 4 October 1984 to 8 September 2003⁵⁶⁹.

16.7 Addressees of the Decision

16.7.1 Principles

- (383) The subject of Community competition rules is the “undertaking”, a concept that has an economic scope and that is not identical with the notion of corporate legal personality in national commercial or fiscal law. The “undertaking” that participated in the infringement is therefore not necessarily the same entity as the precise legal entity within a group of companies whose representatives actually took part in the cartel. The term “undertaking” is not defined in the Treaty. However, in *Shell International Chemical Company v Commission*, the Court of First Instance held that “in prohibiting undertakings *inter alia* from entering into agreements or participating in concerted practices which may affect trade between Member States and have as their object or effect the prevention, restriction or distortion of competition within the common market, Article 85(1) [now Article 81(1)] of the EEC Treaty is aimed at economic units which consist of a unitary organisation of personal, tangible and intangible elements which pursues a specific economic aim on a long-term basis and can contribute to the commission of an infringement of the kind referred to in that provision”⁵⁷⁰.
- (384) According to case law, “Community competition law recognises that different companies belonging to the same group form an economic unit and therefore an undertaking within the meaning of Articles 81 EC and 82 EC if the companies concerned do not determine independently their own conduct on the market”⁵⁷¹. If a subsidiary does not determine its own conduct on the market independently, the company which directed its market strategy forms a single economic entity with that subsidiary and may be held liable for the infringement on the ground that it forms part of the same undertaking.

⁵⁶⁵ [*].
⁵⁶⁶ [*].
⁵⁶⁷ [*], see footnote 412.

⁵⁶⁸ [*].
⁵⁶⁹ [*].

⁵⁷⁰ Case T-11/89 *Shell International Chemical Company Ltd v Commission* [1992] ECR II-757, paragraph 311. See also Case T-352/94 *Mo Och Domsjö AB v Commission* [1998] ECR II-1989, paragraphs 87 to 96.

⁵⁷¹ Court of Justice in Case 48/69 *Imperial Chemical Industries v Commission* [1972] ECR 619, paragraphs 132 and 133 and in Case 170/83 *Hydrotherm* [1984] ECR 2999, paragraph 11, and Court of First Instance in Case T-102/92 *Viho v Commission* [1995] ECR II-17, paragraph 50, cited in Case T-203/01 *Michelin v Commission* [2003] ECR II-4071.

- (385) It is settled case law that the fact that a subsidiary has separate legal personality is not sufficient to exclude the possibility that its conduct may be attributed to the parent company⁵⁷². However, a parent company cannot in principle be held liable for the infringing conduct of its subsidiaries before they formed part of the group⁵⁷³.
- (386) According to the settled case law of the Court of Justice and the Court of First Instance, the Commission can generally assume that a wholly owned subsidiary essentially follows the instructions given to it by its parent company. The Commission can therefore assume that, at the time of the infringement, the parent company was capable of exercising decisive influence over its wholly owned subsidiary, without needing to check whether the parent company in fact exercised that power⁵⁷⁴. However, the parent company and/or the subsidiary may refute this assumption by producing sufficient evidence that “the subsidiary does not, in essence, comply with the instructions which [the parent company] issues and, as a consequence, acts autonomously on the market”⁵⁷⁵.
- (387) When an undertaking that has committed an infringement of Article 81 of the Treaty subsequently disposes of the assets which contributed to the infringement and withdraws from the market in question, it continues to be answerable for the infringement where the infringement continues to exist⁵⁷⁶. If the undertaking which has acquired the assets carries on the infringement of Article 81 of the Treaty, liability for the infringement should be apportioned between the seller and the acquirer of the infringing assets, each undertaking being responsible for the period of infringement in which it participated through these assets in the cartel.
- (388) Despite the fact that Article 81 of the Treaty is applicable to undertakings and that the concept of undertaking has an economic scope, only entities with legal personality can be held liable for infringements. Since an “undertaking” within the meaning of Article 81(1) of the Treaty is not necessarily the same as a company having legal personality, it is necessary for the purposes of applying and enforcing decisions to identify an entity possessing legal

⁵⁷² Case 48/69 *Imperial Chemical Industries v Commission* and PVC II judgment.

⁵⁷³ Case C-279/98 P *Cascades v Commission* [2000] ECR I-9693, paragraphs 78 and 79.

⁵⁷⁴ Judgment delivered by the Court of First Instance on 12 December 2007 in Case T-112/05 *Akzo Nobel and Others v Commission* (not yet reported), paragraphs 57-62; Joined Cases T-71/03, etc., *Tokai Carbon and Others v Commission* [2005] ECR II-10, paragraph 60, and Case T-354/94 *Stora Kopparbergs Bergslags v Commission* [1998] ECR II-2111, paragraph 80, upheld by the Court of Justice in Case C-286/98P *Stora Kopparbergs Bergslags v Commission* [2000] ECR I-9925, paragraphs 27 to 29; Case 107/82 *AEG v Commission* [1983] ECR 3151, paragraph 50. Judgment delivered by the Court of First Instance on 12 September 2007 in Case T-30/05 *William Prym and Prym Consumer v Commission*, paragraph 147 (not yet reported).

⁵⁷⁵ Case T-112/05 *Akzo Nobel and Others v Commission*, cited above, paragraph 62; Joined Cases T-71/03 etc. *Tokai Carbon and Others v Commission*, cited above, paragraph 61.

⁵⁷⁶ Case T-6/89 *Enichem Anic v Commission (Polypropylene)* [1991] ECR II-1623; Case C-49/92P *Commission v Anic Partecipazioni* [1999] ECR I-4125, paragraphs 47 to 49.

personality to be the addressee of the measure. This Decision must therefore be addressed to legal entities⁵⁷⁷.

- (389) The same principles hold true, *mutatis mutandis*, for the purposes of the application of Article 53 EEA.

16.7.2 Application

- (390) It has been established in part D that the ten removal companies, namely Allied Arthur Pierre, Compas, Coppens, Gosselin, Interdean, Mozer, Putters, Team Relocations, Transworld and Ziegler, have participated in the cartel under review in this Decision. For this reason, the present Decision must be addressed to them.
- (391) The removal companies Allied Arthur Pierre, Gosselin, Interdean and Team Relocations belong to European or international groups operating in the logistics, removals and relocations sector. The firms within the group that have exercised a decisive influence over the Belgian subsidiary's commercial policy and that, therefore, form part of the undertaking that has committed the infringement of Article 81 of the Treaty need to be identified. To this end, the Commission identified the parent companies of Allied Arthur Pierre, Gosselin, Interdean and Team Relocations in the statement of objections⁵⁷⁸.
- (392) In their replies to the statement of objections, a number of parent companies claimed that the Commission was not accusing them of having participated directly in the infringement⁵⁷⁹ or of having been aware of it⁵⁸⁰ and they stated that they neither participated in it nor were aware of it. Even if it is true that the Commission is not accusing them of having participated directly in the infringement, it must be borne in mind that, according to the wording used by the Court of Justice, "It falls, in principle, to the legal or natural person managing the undertaking in question when the infringement was committed to answer for that infringement"⁵⁸¹. There is no need to prove that the parent company participated directly in the infringement or that it was aware of the anti-competitive activities. It is sufficient that the parent company and its subsidiary form part of a unitary organisation which pursues a specific economic aim on a long-term basis and which can contribute to an infringement of competition law. This finding is confirmed by settled case law⁵⁸² that requires, as regards the undertaking, an absence of autonomy in determining its course of action on the market and not, more specifically, the absence of autonomy in relation to the infringement committed.

⁵⁷⁷ Case T-305/94 *PVC* [1999] ECR II-931, paragraph 978.

⁵⁷⁸ [*]

⁵⁷⁹ Amertranseuro [*], Exel [*], Interdean paragraph 33 [*], Sirva [*].

⁵⁸⁰ Amertranseuro [*], Interdean paragraph 33 [*], Sirva [*]

⁵⁸¹ Case C-279/98P *Cascades v Commission* [2000] ECR I-9693, paragraph 78.

⁵⁸² Case T-112/05, *Akzo Nobel and Others v Commission*, cited above, paragraphs 58 and 83; see also Case 48/69 *ICI v Commission* [1972] ECR 619, and in particular paragraph 134, or Case 107/82 *AEG v Commission* [1983] ECR 3151, paragraph 50.

- (393) The Commission also notes that the fact that the parent company has not itself participated in the provision of international removal services in Belgium is not crucial when it comes to considering whether it has to be regarded as a single economic entity together with the group's operating unit which is directly involved in providing those services in Belgium. It is only natural that tasks should be shared out within a group of companies. By definition, an economic entity performs all the principal functions of an economic operator within the constituent legal entities.
- (394) The parent companies have attempted to refute the presumption of responsibility arising from the fact that they owned directly or indirectly 100% (or close on 100%) of the subsidiaries that were directly involved in the anti-competitive activities. They have also stated that their subsidiaries carried on their day-to-day activities irrespective of any detailed instructions from the parent company, and in particular the activities of the cartel. The Commission rejects this argument. The fact that the subsidiaries carry on their day-to-day activities with no detailed instructions from the group management is quite normal for any well-managed group and does not prove that the subsidiary in question operates independently on the market. It is not at the level of the subsidiary's normal day-to-day activities that the presumption must be refuted by proving the subsidiary's autonomy, and even less so at the level of the cartel's specific activities, but at the level of the most important strategic decisions with which a company can be faced⁵⁸³. It is not sufficient here to make general claims regarding commercial autonomy not supported by convincing evidence concerning this type of fundamental commercial decision⁵⁸⁴.
- (395) In their replies to the statement of objections, a number of the parent companies took the view that the presence of a parent company on the board of directors of the subsidiary is not sufficient to attribute any responsibility whatsoever to the parent company. The Commission refutes this argument. The members of a company's board of directors have a mandate and a role laid down in the company's articles of association. The presence of representatives of the parent company on the management boards of the subsidiary during the period of the infringement necessarily puts the parent company in a position to exercise decisive influence over its subsidiary's commercial policy⁵⁸⁵.
- (396) A number of parent companies argued in their replies to the statement of objections that the Commission's intention, as stated therein, of regarding them as being responsible for the infringement would be contrary to Commission practice and to case law. They referred to Commission decisions in which only the subsidiary and/or a parent

⁵⁸³ Case T-112/05 *Akzo Nobel and Others v Commission*, cited above, paragraph 83.

⁵⁸⁴ Case C-286/98 P *Stora Kopparbergs Bergslags AB v Commission* [2000] ECR I-9925, paragraphs 27 to 29.

⁵⁸⁵ Joined Cases T-109/02, T-118/02, T-122/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02 *Bolloré SA and Others v Commission*, paragraph 138 (not yet reported).

company which was not the company heading the group was regarded as being responsible⁵⁸⁶. The Commission, however, has some discretion in deciding which are the entities of an undertaking that it regards as being responsible for an infringement⁵⁸⁷. The fact that, in an earlier case, the Commission chose not to hold the company heading the group responsible for the infringement does not mean that it is prevented from doing so in the case under review. Moreover, the firms concerned by this case have not presented any arguments that would limit this discretion.

16.7.2.1 Allied Arthur Pierre

- (397) It has been established in part D that Allied Arthur Pierre participated in the infringement from 4 October 1984 to 9 September 2003. This Decision must, therefore, be addressed to it.

16.7.2.2 Exel⁵⁸⁸

16.7.2.2.1 The findings of the Commission

- (398) It has been established in section 2.1.1 that Exel International Holdings (Belgium) NV directly held 100% of the shares in Allied Arthur Pierre from 9 November 1992 to 19 November 1999 and that Exel Investments Limited, Exel International Holdings Limited, Realcause Limited, Exel International Holdings (Netherlands I) BV and Exel International Holdings (Netherlands II) BV held indirectly during the same period 99.99% of the shares in Allied Arthur Pierre.
- (399) In the light of the case law referred to in paragraph (386) and given the shareholder relationship between Exel and Allied Arthur Pierre from 9 November 1992 to 19 November 1999, Exel can be presumed to have exercised a decisive influence over Allied Arthur Pierre's commercial policy and that, consequently, Exel and Allied Arthur Pierre formed part of the undertaking which committed the infringement during the period from 9 November 1992 to 19 November 1999.
- (400) There is other evidence that Exel exercised a decisive influence over Allied Arthur Pierre.
- (401) For instance, Exel International Holdings (Belgium) NV⁵⁸⁹ and a total of 11 of its representatives⁵⁹⁰ were members of Allied Arthur Pierre's

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[*].

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Joined Cases T-259/02 to T-264/02 and T-271/02 *Raiffeisen Zentralbank and Others v Commission* ("Lombard Club") [2006] ECR II-5169, paragraphs 331 and 332.

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For the purposes of this section and of section 17, the term "Exel" designates the following six firms except where otherwise indicated: Exel Investments Limited, Exel International Holdings Limited, Realcause Limited, Exel International Holdings (Netherlands I) BV, Exel International Holdings (Netherlands II) BV and Exel International Holdings (Belgium) NV.

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See paragraph (13).

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See paragraphs (16), (17), (18), (19), (20), (21), (22), (23), (24), (25) and (26).

board of directors for a certain period between 9 November 1992 and 19 November 1999.

- (402) Meetings to discuss the main developments affecting Allied Arthur Pierre's activities were held in an irregular fashion in the course of the period from 1 January 1998 to 9 November 1999 between Allied Arthur Pierre and [*] in his capacity as Operations Director Continental Europe of the NFC/Allied European moving services business. [*] was a director and thus a board member of Exel International Holdings (Belgium) NV from 15 May 1999 to 20 January 2000⁵⁹¹.
- (403) In 1998 Allied Arthur Pierre sent Exel International Holdings (Belgium) NV information concerning the reciprocal nature of the commercial relationship between Allied Arthur Pierre, on the one hand, and [*], on the other⁵⁹². Allied Arthur Pierre also sought the advice of Exel International Holdings (Belgium) NV regarding its participation at a meeting to establish commercial contacts⁵⁹³.

16.7.2.2.2 Arguments put forward by Exel in reply to the statement of objections

- (404) In its reply to the statement of objections⁵⁹⁴, Exel put forward a number of arguments to show that it could not be regarded as being jointly and severally liable with Allied Arthur Pierre for the infringement committed by the latter.
- (405) Exel contested the existence of a presumption in Community law on the basis of which the Commission could hold a parent company responsible for a subsidiary's participation in an infringement on the ground that it held directly or indirectly virtually all the shares of the subsidiary that was directly involved in the anti-competitive activities⁵⁹⁵. Exel took the view that, even in a case such as the present case, where Exel held virtually all the capital of Allied Arthur Pierre, it was for the Commission to prove that Allied Arthur Pierre followed the policy laid down by Exel. In Exel's opinion, the Commission had not provided evidence of such a decisive influence over Allied Arthur Pierre.
- (406) Besides, even if the Commission could base itself on a presumption that was linked to the shareholder structure, the burden of proof would not be reversed and such a presumption would be refutable. Exel considered that the presumption was refuted since evidence had been provided showing that Allied Arthur Pierre acted autonomously as regards its day-to-day activities and its commercial decisions in general⁵⁹⁶. It considered that it had provided the necessary proof by

⁵⁹¹ See paragraph (25).

⁵⁹² See paragraphs (28) and (29).

⁵⁹³ See paragraph (31).

⁵⁹⁴ [*].

⁵⁹⁵ Section 3.2 [*].

⁵⁹⁶ Section 3.4.1 [*].

pointing out that Allied Arthur Pierre itself stated that it enjoyed independence when it came to deciding its commercial strategy. It underscored the fact that during the period 1992-1999 it “had in place at AAP a corporate command structure to monitor AAP’s financial performance, the standards of quality of service AAP provided and the observance of the use of logistical possibilities within the network”⁵⁹⁷.

- (407) Exel explained that this panoramic view stemmed from the nature of the removal services. It had acquired Allied Arthur Pierre in 1992 because the latter was a company that had been well managed by the same family for close on 100 years and offered numerous contacts that had been developed by its managers. There was no cumbersome structure for dictating to local managers how they should do their work. Local activities had, to a large extent, been left in the hands of local managers. Exel had focused on financial management and had, at the same time, encouraged the introduction of and compliance with certain international standards for its removal services as such.
- (408) Exel stated that during the period 1992-1999 commercial and financial reporting meetings had taken place at high level. It pointed out that such general reporting, most of which related to financial matters and did not amount to specific involvement in the day-to-day running of Allied Arthur Pierre’s commercial operations, could not and should not be treated as the exercise of a decisive influence over its conduct on the market within the meaning of Community case law with a view to making Exel responsible for the infringement committed by Allied Arthur Pierre⁵⁹⁸.
- (409) Exel made the point that, simply because a parent company or its representatives sat on the board of directors of Allied Arthur Pierre, this did not mean that the parent company was involved in the day-to-day management or was aware of the existence of the cartel. It also referred to the fact that none of the individuals sitting at the time on the board of directors of Allied Arthur Pierre and representing Exel International Holdings (Belgium) NV were based at the premises of Allied Arthur Pierre or were involved in practice in its day-to-day management before September 2003⁵⁹⁹.
- (410) As to its relationship with Allied Arthur Pierre, Exel referred in its reply to the statement of objections to paragraph 300 concerning the relationship between Allied Arthur Pierre, on the one hand, and Exel International Holdings (Belgium) NV and Exel Investments Limited, on the other, and to the statement by Allied Arthur Pierre indicating that it enjoyed commercial autonomy in its day-to-day operations and in its decisions on commercial operations. Exel stated that, on the basis of the Commission file, the only issues which had been the subject of reports and which related to general developments were the key

⁵⁹⁷ [*].

⁵⁹⁸ [*].

⁵⁹⁹ [*].

commercial and financial data and that such information was normally the subject of reports addressed by undertakings to their parent companies. In its view, such a relationship neither indicated nor suggested that one of the companies in the Exel group “would have directed AAP to participate in a cartel” or would have been aware of this⁶⁰⁰.

16.7.2.2.3 Assessment of the arguments by the Commission

- (411) The Commission rejects the arguments put forward by Exel for the reasons set out in this section.
- (412) Firstly, the Commission recalls the settled case law of the Court of Justice and the Court of First Instance referred to in paragraph (386), according to which the Commission may, in substance, presume that a wholly owned subsidiary applies for the most part the instructions given to it by its parent company without its having to ascertain whether the parent company actually exercised this power. This presumption exists, therefore, in Community law. In the case under review, the Commission had established that 100% of the shares in Allied Arthur Pierre Exel were held by Exel International Holdings (Belgium) NV and that close on 100% were held by the other five companies in the “Exel” group, and so it can presume that Exel (and thus the six parent companies) exercised a decisive influence over Allied Arthur Pierre.
- (413) Exel did not provide any evidence to show that Allied Arthur Pierre decided autonomously how to conduct itself on the market. On the contrary, in both its reply to the statement of objections⁶⁰¹ and in its subsequent reply to a request for information⁶⁰², Exel not only confirmed but also supplemented information already contained in the Commission file, and in particular the fact that 11 individuals in total performed duties at one and the same time within Allied Arthur Pierre and within one or even more of its parent companies. It also stated which reports had been sent by Allied Arthur Pierre to it. It also had in place within Allied Arthur Pierre a corporate command structure which enabled it to monitor financial performance, the standards of quality of service that Allied Arthur Pierre provided and the latter’s actual use of logistical possibilities within the group network. The monitoring by Exel of the quality of service provided by Allied Arthur Pierre and of the use of logistical possibilities by it directly concerned Allied Arthur Pierre’s conduct on the market.
- (414) The Commission notes that, during the relevant period from 9 November 1992 to 19 November 1999, Exel International Holdings (Belgium) NV was itself for a time a member of Allied Arthur Pierre’s

600 [*].
601 [*].
602 [*].

board of directors⁶⁰³. Moreover, 11 representatives of Exel International Holdings (Belgium) NV in total were directors (board members) of Allied Arthur Pierre and, at the same time, directors (board members) of Exel International Holdings (Belgium) NV⁶⁰⁴. One person was also a director (board member) of Exel International Holdings (Netherlands I) BV and Exel International Holdings (Netherlands II) BV during the period from December 1993 to September 1995.

- (415) As the articles of association of Allied Arthur Pierre stipulate, the board of directors is empowered to carry out all the relevant acts of administration and decision-making for the company. Moreover, without prejudice to the board's power of general representation, two board members are empowered to represent the company jointly vis-à-vis third parties. Still within the context of the powers conferred on the board and its members, the day-to-day administration of the company and the related representative duties are delegated to a board member⁶⁰⁵. Whether the individual board members are based physically on the premises of Allied Arthur Pierre or not, as claimed by Exel, is not relevant since these circumstances could not prevent them from performing their duties by other means of communication.
- (416) As explained in paragraph (394), the relevant level of autonomy of the subsidiary is that of its general conduct on the market and not that of the infringement. Reports containing key commercial and financial figures were sent to Exel International Holdings (Belgium) NV by Allied Arthur Pierre. This point is not challenged since such information is part of the means whereby the parent company controls its subsidiary.
- (417) The Commission takes the view that the systematic presence of representatives of Exel International Holdings (Belgium) NV on the board of directors of Allied Arthur Pierre between 1992 and 1999, i.e. throughout the entire period when Exel International Holdings (Belgium) NV was the parent company of Allied Arthur Pierre, a period which also coincided with part of the period of Allied Arthur Pierre's participation in the cartel, and the presence of Exel International Holdings (Belgium) NV on Allied Arthur Pierre's board of directors during part of the relevant period⁶⁰⁶ are additional evidence to support the presumption that Exel International Holdings (Belgium) NV exercised a decisive influence over the conduct of Allied Arthur Pierre.
- (418) The Commission considers that the reports presented by Allied Arthur Pierre to Exel International Holdings (Belgium) NV are also further

⁶⁰³ See paragraph (14).

⁶⁰⁴ See in detail paragraphs (13) to (26).

⁶⁰⁵ See Articles 13 to 15 of the articles of association [*].

⁶⁰⁶ See paragraph (14).

evidence supporting the presumption that Exel exerted a decisive influence over the behaviour of Allied Arthur Pierre⁶⁰⁷.

- (419) Exel did not contest the fact that reports were presented by Allied Arthur Pierre to Exel International Holdings (Belgium) NV and to Exel Investments Limited (see paragraph (416)).
- (420) The Commission also notes that, as shown by the examples given in paragraphs (29) and (31) and concerning the reciprocal nature of the commercial relationship between Allied Arthur Pierre and a competing company and the question as to whether or not Allied Arthur Pierre attended an international conference with a view to establishing commercial contacts, the information sent to Exel by Allied Arthur Pierre is detailed and directly concerns the management of Allied Arthur Pierre's commercial activities.

16.7.2.2.4 The conclusions of the Commission

- (421) In the light of these considerations, it is concluded that Exel has not refuted the presumption that it exercised a decisive influence over the commercial policy of Allied Arthur Pierre. Consequently, from 9 November 1992 to 18 November 1999, Exel and Allied Arthur Pierre formed part of the undertaking that committed the infringement. They are, therefore, jointly and severally liable for the infringement of Article 81 of the Treaty during that period. For this reason, the present Decision must be addressed to Exel.

16.7.2.3 Sirva⁶⁰⁸

16.7.2.3.1 The findings of the Commission

- (422) It has been established in section 2.1.1 that Sirva, i.e. Sirva Inc. indirectly, North American Van Lines indirectly and North American International Holding Corporation directly, held 100% of the shares in Allied Arthur Pierre between 19 November 1999 and 9 September 2003.
- (423) In the light of the case law referred to in paragraph (386) and given the shareholder relationship between Sirva and Allied Arthur Pierre during the period indicated, the Commission takes the view that Sirva can be presumed to have exercised a decisive influence over Allied Arthur Pierre's commercial policy and that, consequently, Sirva and Allied Arthur Pierre formed part of the undertaking which committed the infringement during the period from 19 November 1999 to 9 September 2003.

⁶⁰⁷ See paragraphs (12) and (28).

⁶⁰⁸ For the purposes of this section and section 17, the term "Sirva" designates the following companies unless otherwise stipulated: Sirva Inc., North American Van Lines Inc. and North American International Holding Corporation.

- (424) There is other evidence that Sirva exercised a decisive influence over Allied Arthur Pierre.
- (425) Thus, [*] was a member of Allied Arthur Pierre's board from 19 November 1999 to 9 September 2003 and performed from 1992 to the end of the period of the infringement several executive functions in the three parent companies of Allied Arthur Pierre. [*]⁶⁰⁹.
- (426) [*]⁶¹⁰.

16.7.2.3.2 Arguments put forward by Sirva in reply to the statement of objections

- (427) Sirva stated in its reply to the statement of objections that it had participated neither directly nor indirectly in the infringement of Community competition rules committed by Allied Arthur Pierre, that it had not been aware of the infringement and that the Commission – quite rightly – was not blaming it. Sirva challenged the Commission's conclusion in the statement of objections that it was responsible for the infringement committed by Allied Arthur Pierre, putting forward the arguments set out in this section.
- (428) Sirva did not exercise any management power over Allied Arthur Pierre and considered that it could refute the presumption that it did so with the argument that it did not intervene in the activities of Allied Arthur Pierre on the Belgian market during the relevant period, that the name of Sirva was not linked to Allied Arthur Pierre's unlawful conduct by customers or competitors, that the administrative structures of Sirva and Allied Arthur Pierre were separate and independent, that no formal or informal report was made to Sirva during the relevant period and that Sirva never gave instructions to Allied Arthur Pierre.
- (429) Sirva also took the view that, on the basis of some of its previous decisions, the Commission does not, in principle, hold an international parent company responsible for a purely national infringement committed by a subsidiary in the country concerned.
- (430) Moreover, the presence of a parent company on the subsidiary's board of directors would not be sufficient to hold the parent company responsible in any way. Although it held directly or indirectly 100% of the capital of Allied Arthur Pierre, Sirva did not, in practice, exercise any management powers over Allied Arthur Pierre during the relevant period and the circumstances referred to and identified in the case law as key elements to be taken into account by the Commission in assessing Sirva's responsibility were, it is claimed, not present in the case at issue⁶¹¹.

⁶⁰⁹ [*].

⁶¹⁰ [*].

⁶¹¹ [*].

- (431) Sirva claimed that, when it acquired Allied Arthur Pierre in 1999, the latter was an established company that had long been present on a local market. In practice, Allied Arthur Pierre operated with commercial autonomy and without any involvement by Sirva in its day-to-day management, which, as permitted by Belgian law, was delegated to a local director⁶¹² who was responsible for the local operations of the company and for relations with customers, pricing, marketing and commercial strategy. This director was not obliged under Belgian law to inform Allied Arthur Pierre's board of directors or its members of operational matters.
- (432) Sirva considered that the Commission could not hold it responsible for the fact that the [*], [*], sat on Allied Arthur Pierre's board of directors. [*]. If there were no sign of performance anomalies, Belgian company law did not require members of the board of directors to look into the day-to-day running of the company. At no time did [*] give any commercial instructions to Allied Arthur Pierre, [*].
- (433) [*]⁶¹³. [*]⁶¹⁴. [*]⁶¹⁵. [*]⁶¹⁶.

16.7.2.3.3 Assessment of the arguments by the Commission

- (434) The Commission rejects Sirva's arguments to the extent that they are the same as those set out in paragraphs (392) to (396) and for the reasons explained in the said paragraphs.
- (435) The Commission also rejects Sirva's argument regarding Article 525 of the Belgian Company Code, which states that the day-to-day management of a company's affairs may be delegated to one or more persons⁶¹⁷, since the concept of undertaking within the meaning of Article 81 of the Treaty cannot be defined by a national law. In the alternative, the content of Article 525 of the Belgian Company Code must be taken to mean that it does not define the mandate, role and responsibilities of the members of Allied Arthur Pierre's board of directors, which are governed by the articles of association as described in paragraph (415).
- (436) Sirva's argument which endeavours to show that [*]'s presence on Allied Arthur Pierre's board of directors could not be used to assign any responsibility whatsoever to Sirva must be refuted. On the

⁶¹² Article 525 of the Belgian Company Code [*]: "The day-to-day management of the company's affairs and the representation of the company in respect of such management may be delegated to one or more persons, whether or not shareholders, acting alone or jointly. Their appointment, their dismissal and their functions shall be laid down in the articles of association. However, restrictions imposed on their powers of representation for the purposes of day-to-day management shall not be enforceable vis-à-vis third parties, even if they have been published."

⁶¹³ [*].

⁶¹⁴ [*].

⁶¹⁵ [*].

⁶¹⁶ [*].

⁶¹⁷ For the full text of that article, see footnote 612.

contrary, his presence clearly illustrates the overlapping of responsibilities between Allied Arthur Pierre and Sirva. [*]⁶¹⁸, [*]⁶¹⁹. [*].

(437) [*].

(438) Lastly, contrary to what Sirva claimed and as indicated in paragraph (396), the Commission is not bound by its previous decisions and is carrying out here an analysis and assessment of the facts and arguments specifically concerned with this case. Nothing prevents it, therefore, from holding responsible an ultimate parent company established in a country other than in which the infringement was centred⁶²⁰.

16.7.2.3.4 The conclusions of the Commission

(439) In the light of these considerations, it is concluded that Sirva Inc., North American Van Lines Inc. and North American Holding Corporation have not refuted the presumption that they exercised a decisive influence over the commercial policy of Allied Arthur Pierre. Consequently, Sirva Inc., North American Van Lines Inc., North American Holding Corporation and Allied Arthur Pierre formed part of the undertaking that committed the infringement. They are, therefore, jointly and severally liable for the infringement of Article 81 of the Treaty during the period from 19 November 1999 to 9 September 2003. For this reason, the present Decision must be addressed to Sirva.

16.7.2.4 Compas

(440) It has been established in part D that Compas participated in the infringement from 26 January 1996 to 8 July 2003. For this reason, the present Decision must be addressed to it.

16.7.2.5 Coppens

(441) It has been established in part D that Coppens participated in the infringement from 13 October 1992 to 29 July 2003. For this reason, the present Decision must be addressed to it.

16.7.2.6 Gosselin

(442) It has been established in part D that Gosselin participated in the infringement from 31 January 1992 to 18 September 2002. For this reason, the present Decision must be addressed to it.

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See Commission Decision 2007/534/EC of 13 September 2006 relating to a proceeding under Article 81 of the Treaty establishing the European Community [Case No COMP/F/38.456 — Bitumen (Netherlands)] (OJ L 196 of 28.7.2007, p. 40), paragraph 202, and Case T-203/01 *Michelin v Commission* [2003] ECR II-4071, paragraph 290.

16.7.2.7 Stichting

16.7.2.7.1 The findings of the Commission

- (443) It has been established in section 2.4 that from 1 January 2002 to 18 September 2002 Stichting held virtually all the capital of Gosselin, 92% directly and the rest indirectly through the company Vivet en Gosselin NV, in which it holds 99.87% of the capital⁶²¹.
- (444) In the light of the case law referred to in paragraph (386) and given the shareholder relationship between Stichting and Gosselin during the period indicated, the Commission takes the view that Stichting can be presumed to have exercised a decisive influence over Gosselin's commercial policy. Consequently, Stichting and Gosselin formed part of the undertaking which committed the infringement during the period indicated.
- (445) There is other evidence that Stichting exercised a decisive influence over Gosselin.
- (446) The managers of Gosselin and Stichting are the same individuals. Thus, [*] is manager and chairman of Stichting's board of directors ("*Bestuurder A en voorzitter van het bestuur*") and executive director of Gosselin. [*] is a director of Stichting ("*Bestuurder B*") and director of Gosselin. [*] is a director ("*Bestuurder C*") of Stichting and executive director ("*Gedelegeerd bestuurder*") of Gosselin⁶²².
- (447) The Commission classifies Stichting and Gosselin as undertakings within the meaning of Article 81 of the Treaty since the object of Stichting is portfolio management, including the shares in Gosselin⁶²³, since the objective of Stichting is to ensure the uniform management of Gosselin and other subsidiaries⁶²⁴ and since the management of both Stichting and Gosselin is carried out by the same individuals⁶²⁵.

16.7.2.7.2 Arguments put forward by Stichting in reply to the statement of objections

- (448) Stichting indicated that it was a foundation ("*stichting*") and a trust company ("*administratiekantoor*") and that, as a result, it could not be the parent company of Gosselin. As a trust company, Stichting acquired shares in exchange for which it issued certificates. The shares were included in the assets of the trust company, which holds them only for management purposes (*fiducia cum amico*) for the account of certificate holders. Stichting acted as a trust company in respect of the shares and the financial and economic prerogatives attaching to the

⁶²¹ See paragraph (44).

⁶²² [*].

⁶²³ See paragraph (46).

⁶²⁴ See paragraph (45).

⁶²⁵ See paragraph (48) and Case C-222/04 *Cassa di Risparmio di Firenze* [2006] ECR I-289, paragraphs 107 to 112.

certificate holder. The trust company enjoyed no financial or economic prerogatives of its own. The relationship between Stichting and Gosselin would not, therefore, constitute any form of cooperation of the company or association type, with the result that Stichting could not be regarded as a holding company or a parent company⁶²⁶.

- (449) Stichting also argued that it was not an undertaking within the meaning of Article 81 of the Treaty because a foundation, with no members or shareholders, was, by its very nature and legal form, non-commercial. Moreover, Stichting at present acted solely as a trust company. It did not pursue any financial or economic interests. Lastly, its object stipulated that it could manage only shares (trust company status)⁶²⁷.
- (450) Stichting made the point that, even if it were regarded as being Gosselin's parent company, Gosselin would have determined its conduct on the market independently. Stichting did not give any instructions to Gosselin or to Gosselin's board of directors and it did not manage Gosselin. What is more, giving instructions would have run counter to its corporate purpose and to its objective as a trust company. The current management of Gosselin was already in place prior to the acquisition by Stichting, in its capacity as a trust company, of the shares of Gosselin⁶²⁸.

16.7.2.7.3 Assessment of the arguments put forward by Stichting

- (451) In its reply to the statement of objections⁶²⁹, Stichting did not provide any new fact or argument that could be used to refute the presumption of responsibility. On the contrary, it confirmed its object of acquiring bearer shares against the issue of bearer certificates, the management of shares acquired in this way, the exercise of all the rights attaching to the shares such as collection of any remuneration, the exercise of voting rights and the carrying out of any measure having a link – within the broadest meaning of the word – with the above or capable of contributing to that end.
- (452) Stichting also confirmed that its directors were the same as Gosselin's from 1 January 2002 to 18 September 2002. In particular, it did not deny that its objective was to ensure the uniform management of Gosselin and other subsidiaries.

16.7.2.7.4 The conclusions of the Commission

- (453) In the light of these considerations, it is concluded that Stichting has not refuted the presumption that it exercised a decisive influence over Gosselin's commercial policy. Consequently, Stichting and Gosselin formed part of the undertaking that committed the infringement. They

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are, therefore, jointly and severally liable for the infringement of Article 81 of the Treaty from 1 January 2002 to 18 September 2002. For this reason, the present Decision must be addressed to Stichting.

16.7.2.8 Interdean NV

- (454) It has been established in part D that Interdean NV participated in the infringement from 4 October 1984 to 10 September 2003. For this reason, the present Decision must be addressed to it.

16.7.2.9 The parent companies of Interdean NV

- (455) The responsibility of the parent companies of Interdean NV, namely Interdean Holding BV, Interdean AG, Interdean SA, Rondspant Holding BV, Amcrisp Limited, Interdean International Limited, Iriben Limited and Interdean Group Limited, for Interdean NV's participation in the infringement is examined in this section.

16.7.2.9.1 The findings of the Commission

- (456) The Commission has established that Interdean Holding BV held directly 100% of the shares in Interdean NV from 2 November 1987 to 24 June 1999. From 24 June 1999 and beyond 10 September 2003, Interdean Holding BV held directly 0.01% of the capital of Interdean NV and indirectly the remaining 99.99% through its subsidiaries Interdean SA and Interdean AG, which, in its turn, held directly 99.99% of the capital of Interdean NV from 24 June 1999 to 3 December 2004⁶³⁰. Interdean NV's other parent companies from 24 June 1999 and beyond 10 September 2003 were in ascending order, i.e. above Interdean Holding BV, Rondspant Holding BV, Amcrisp Limited, Interdean International Limited, Iriben Limited and IGL⁶³¹.
- (457) In the light of the case law referred to in paragraph (386) and given the shareholder relationship between Interdean NV and its parent companies during the periods indicated in paragraph (456), the Commission takes the view that these parent companies can be presumed to have exercised a decisive influence over Interdean NV's commercial policy. Consequently, Interdean NV and its parent companies form part of the undertaking which committed the infringement during the period indicated.
- (458) There is other evidence that Interdean Holding BV, Interdean AG, Interdean SA, Rondspant Holding BV, Amcrisp Limited, Interdean International Limited, Iriben Limited and Interdean Group Limited exercised a decisive influence over Interdean NV.
- (459) The Commission has also established that Interdean Holding BV (from 1995 to 2000), Interdean AG (from 1995 to 2003) and IGL (from 2000

⁶³⁰ See paragraphs (50) to (56).

⁶³¹ See paragraph (55).

to 2003) were members of Interdean NV's board of directors and represented by [*] (for details of the exact dates and attendances, see paragraphs (57) to (59))

- (460) The Commission notes that, prior to 17 June 1999 and since 1984 at least, [*], the founder and main owner of the Interdean group at the time, personally supervised and controlled the group's subsidiaries, including Interdean NV, with the assistance of [*] (Chief Financial Officer)⁶³².
- (461) The Commission has also established that the following persons performed duties not only at Interdean NV but also at one or more of its parent companies for part of the period during which Interdean NV participated in the infringement: [*]⁶³³.
- (462) Furthermore, the Commission has established the existence of reports presented by Interdean NV to Interdean International Limited starting in June 1999 and continuing beyond September 2003, i.e. during part of the period during which Interdean NV participated in the infringement. Interdean NV is required, among other things, to present annual budgets, monthly management accounts and, since 2003, information on sales, including a summary of each salesman's monthly activities and a summary of sales opportunities with prospective customers with a value in excess of EUR 250 000. Interdean NV also sent reports to IGL or intermediate parent companies on the variances between its budgeted and actual results and the variances between actual and forecast cash balances⁶³⁴.
- (463) The Commission has also established that [*] was the Chief Financial Officer of the Interdean group from 2002 and beyond 10 September 2003 and, at the same time, a member of the board of directors of five of Interdean's parent companies, including the ultimate parent company, IGL⁶³⁵.
- (464) The Commission has also established that [*] was the Chief Financial Officer of the Interdean group from 2001 to September 2002 and, at the same time, a director of IGL. He continued to perform the latter duty after 10 September 2003⁶³⁶.
- (465) The ultimate parent company IGL controls the decisions on commercial strategy and investments on the Belgian market taken by Interdean NV's management. It approves Interdean NV's budgets following scrutiny by the group's chief financial officer, the chief

⁶³² See paragraphs (60), (62), and (66).

⁶³³ See paragraphs (60) to (63).

⁶³⁴ See paragraph (70).

⁶³⁵ See paragraph (65).

⁶³⁶ See paragraph (64).

executive officer and also, more recently, by IGL's senior management committee⁶³⁷.

- (466) Interdean International Limited provides not only the financial control structure for the entire Interdean group but also management services relating to removal services, such as assistance in the areas of sales, marketing, advertising, strategy, cross promotion and operational matters such as van coordination⁶³⁸.

16.7.2.9.2 Arguments put forward by Interdean NV and its parent companies in reply to the statement of objections

- (467) Interdean NV and its parent companies, namely Interdean Holding BV, Interdean AG, Interdean SA, Rondspant Holding BV, Amcrisp Limited, Interdean International Limited, Iriben Limited and Interdean Group Limited ("Interdean and its parent companies"), submitted a joint reply to the statement of objections and are represented by the same counsel⁶³⁹.
- (468) Interdean and its parent companies asserted that the principle of "personal liability/principle of individual punishment", developed in connection with criminal penalties, would also apply to administrative penalties resulting from an infringement of Community competition law. According to this principle, a breach committed by a legal entity could not be attributed to a separate entity or, in other words, an entity could not be penalised for an infringement it had not committed. Any exception to this principle would have to be interpreted narrowly⁶⁴⁰.
- (469) Interdean NV's parent companies also considered that the Commission could not hold them responsible for Interdean NV's participation in the infringement on the sole basis of statutory control (share ownership) but that the Commission also had a duty to present evidence showing that the parent companies actually exercised a decisive influence over Interdean NV. The points set out in the statement of objections, namely the reporting obligation and the fact that certain parent companies or their representatives sat on Interdean's board of directors, would not be sufficient here. It was claimed that the reporting described in the statement of objections had existed only since 1999 and concerned above all financial matters but not operational management. Moreover, such reporting was characteristic of a multinational and was inherent in any relationship between a parent company and a subsidiary. The existence of such a reporting structure could not be interpreted as evidencing the exercise of any decisive influence over Interdean NV⁶⁴¹.

⁶³⁷ See paragraph (69).

⁶³⁸ See paragraph (71).

⁶³⁹ [*].

⁶⁴⁰ [*].

⁶⁴¹ [*].

- (470) Interdean NV's parent companies also argued that they were simply holding companies engaged solely in financial activities (except for Interdean AG and Interdean SA, which provided removal services) and, as such, did not carry out any commercial activities. Most of these holding companies had, it was claimed, no staff and could not, therefore, in any way influence the commercial behaviour of Interdean NV⁶⁴². Interdean and its parent companies asserted that Interdean AG and Interdean Holding BV joined Interdean NV's board of directors only on 19 December 1995, while IGL joined on 5 June 2000, i.e. 11 years and 16 years respectively after the alleged beginning of the infringement. It would, therefore, be difficult to imagine a situation in which Interdean AG, Interdean Holding BV and IGL exerted a decisive commercial influence over Interdean at the time the unlawful practices began some years previously⁶⁴³. Moreover, the board of directors was said to have met in practice on only a few occasions (on only five occasions from January 1999 to October 2003) when formal documents had to be signed for the company or arrangements agreed with the Interdean group's bankers⁶⁴⁴.
- (471) Interdean NV's parent companies have provided statements by their representatives showing, according to the parent companies, that they were not aware of their subsidiary's unlawful activities and that Interdean NV conducted business as an autonomous entity and itself largely determined its commercial strategy⁶⁴⁵.
- (472) Lastly, Interdean NV and its parent companies considered that the previous owners should pay the fine if the Commission decided to punish Interdean⁶⁴⁶.

16.7.2.9.3 Assessment of the arguments put forward by Interdean NV and its parent companies

- (473) The Commission rejects the arguments put forward by Interdean and its parent companies to the extent that they are the same as those set out in paragraphs (392) to (396) and for the reasons given in the said paragraphs.
- (474) The Commission also rejects the argument that IGL, Iriben Limited, Interdean International Limited, Amcrisp Limited, Rondspant Holding BV and Interdean Holding BV could not be held responsible because they were holding companies with no commercial activities and, with the exception of Interdean International Limited, no staff and could not in any way influence Interdean's commercial behaviour.

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 644 [*].
 645 [*].
 646 [*].

- (475) The Commission would point out that Interdean NV and its parent companies explained in detail the types of activities and decisions of Interdean NV that were subject to control by IGL, e.g. commercial strategy and investments. To this end, IGL has set up an entire system for monitoring the activities of its subsidiaries, including Interdean NV, so as to ensure that they behave in a manner consistent with IGL's commercial and strategic objectives⁶⁴⁷.
- (476) Furthermore, IGL delegated some of its responsibilities to Interdean International Limited, which monitors some activities and provides assistance. For instance, thanks to the annual and monthly reports provided by Interdean NV, Interdean International Limited received detailed information on the management of Interdean NV over a certain period as regards, among other things, sales made, sales performances by each salesman and certain sales forecasts⁶⁴⁸. Alongside these monitoring duties, Interdean International Limited provides support and assistance for the entire group, including van coordination, which was of indispensable operational importance for international removal services⁶⁴⁹.
- (477) The Commission notes that from June 1999 to September 2003, i.e. for a substantial part of the period of Interdean NV's participation in the infringement, the supervisory, monitoring and assistance tasks and duties were spread among several entities within the group which thus together pursued on a long-term basis the economic objective identified by IGL for the group.
- (478) As regards Interdean Holding BV, which was a direct parent company of Interdean from 2 November 1987 to June 1999, alongside its shareholders, the Commission notes that this company was represented on Interdean NV's board of directors⁶⁵⁰, one of its representatives being [*], i.e. the owner in person, who at the time was also personally responsible for the control and supervision of Interdean NV.
- (479) As to the principle of the personal nature of the legal responsibility invoked by Interdean NV and its parent companies, the Commission notes that, by holding responsible certain legal entities in their capacity as representatives of the company which committed the infringement, this principle is indeed complied with⁶⁵¹. Article 81 of the Treaty deals with "undertakings", which may comprise several legal entities. The principle is not breached as long as the legal entities are held responsible on the basis of circumstances pertaining to their own role and their own behaviour within the undertaking. In the case of a parent

⁶⁴⁷ See paragraph (69).

⁶⁴⁸ See paragraph (70).

⁶⁴⁹ See paragraph (70).

⁶⁵⁰ See paragraph (57).

⁶⁵¹ See, in a different context, the reasoning in Case C-49/92 P *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125, paragraphs 83 and 84.

company, responsibility is established on the basis of the exercise of a decisive influence over the subsidiary's commercial policy or on the basis of the presumption of such influence being exercised. This is the case here as regards Interdean NV and its parent companies.

16.7.2.9.4 The conclusions of the Commission

(480) In the light of these considerations, it is concluded that Interdean NV and its parent companies, namely Interdean Holding BV, Interdean AG, Interdean SA, Rondspant Holding BV, Amcrisp Limited, Interdean International Limited, Iriben Limited and Interdean Group Limited, have not refuted the presumption that they exercised a decisive influence over the commercial policy of Interdean NV. On the contrary, Interdean and its parent companies, in their reply to the statement of objections, provided information in support of the circumstantial evidence confirming the exercise of a decisive influence, notably by IGL, Interdean International Limited and Interdean Holding BV, on the commercial policy of Interdean NV. Consequently, Interdean NV and its parent companies formed part of the undertaking that committed the infringement. They are, therefore, jointly and severally liable for the infringement of Article 81 of the Treaty as follows:

- for the period from 2 November 1987 to 23 June 1999, Interdean NV and Interdean Holding BV;
- for the period from 24 June 1999 to 10 September 2003, Interdean NV, Interdean AG, Interdean SA, Interdean Holding BV, Rondspant Holding BV, Amcrisp Limited, Interdean International Limited, Iriben Limited and Interdean Group Limited..

(481) For this reason, the present Decision must be addressed to Interdean Holding BV, Interdean AG, Interdean SA, Rondspant Holding BV, Amcrisp Limited, Interdean International Limited, Iriben Limited and Interdean Group Limited.

16.7.2.10 Mozer

(482) It has been established in part D that Mozer participated in the infringement from 31 March to 4 July 2003. For this reason, the present Decision must be addressed to it.

16.7.2.11 Putters

(483) Following the facts presented by Putters in its reply to the statement of objections, the Commission notes that this company has existed only since 9 January 1997 and, consequently and contrary to what was indicated in the statement of objections, the Commission no longer accuses Putters of having participated in the agreement on prices in the

form of the written price agreements or in the agreements on commissions and cover quotes before 14 February 1997⁶⁵².

- (484) It has been established in part D that Putters participated in the infringement from 14 February 1997 to 4 August 2003. For this reason, the present Decision must be addressed to it.

16.7.2.12 Team Relocations NV

- (485) It has been established in part D that Team Relocations participated in the infringement from 20 January 1997 to 10 September 2003. For this reason, the present Decision must be addressed to it.

16.7.2.13 Team Relocations Limited, Trans Euro, Amertranseuro

- (486) The responsibility of Team Relocations Limited, Trans Euro and Amertranseuro as parent companies of Team Relocations NV is examined in this section.

16.7.2.13.1 The findings of the Commission

- (487) It has been established in section 2.8 that the capital of Team Relocations NV has been held since January 1994 by Team Relocations Limited, which is a wholly owned subsidiary of Trans Euro, which, in turn, has been owned by Amertranseuro since 8 September 2000⁶⁵³.
- (488) In the light of the case law referred to in paragraph (386) and given the shareholder relationship between Team Relocations NV, Team Relocations Limited, and Trans Euro since January 1994 and the shareholder relationship existing between these three companies and Amertranseuro since September 2000, the Commission takes the view that Team Relocations Limited, Trans Euro and Amertranseuro can be presumed to have exercised a decisive influence over the commercial policy of Team Relocations NV and that, consequently, Team Relocations NV, Team Relocations Limited, Trans Euro and Amertranseuro formed part of the undertaking which committed the infringement during the period indicated.
- (489) Other evidence confirms that Team Relocations Limited, Trans Euro and Amertranseuro exercised a decisive influence over Team Relocations NV.
- (490) Thus, between 1994 and September 2001, monthly meetings took place between the management of Team Relocations NV and the representatives of Trans Euro responsible for the Belgian subsidiary's operational and financial management and with the owner of the Trans Euro group at the time, who was Group Managing Director with

⁶⁵² [*], for the entire period, see paragraph (382).

⁶⁵³ See paragraphs (78) and (79).

overall responsibility for the Belgian subsidiary⁶⁵⁴. From 6 September 2001 to September 2003 and beyond, informal meetings were also held between Team Relocations NV and the representative of Amertranseuro, who was Group Continental Director with overview responsibility for the Belgian subsidiary⁶⁵⁵.

- (491) The Commission also notes that Team Relocations NV had to submit a number of reports, including the yearly management accounts, to Team Relocations Limited from 1 January 1994 to 7 September 2000 and to Amertranseuro after 8 September 2000⁶⁵⁶, i.e. during the period of its participation in the infringement.

16.7.2.13.2 Arguments put forward by Team Relocations Limited, Trans Euro and Amertranseuro in reply to the statement of objections⁶⁵⁷

- (492) In addition to arguments similar to those presented by the parent companies of other cartel participants and set out in paragraphs (392) to (396) and which the Commission rejects for the reasons given in the said paragraphs, the parent companies of Team Relocations Limited put forward the arguments set out in this section.
- (493) Amertranseuro claimed in its reply to the statement of objections that it was unaware of the international removal practices in Belgium and had no reason to suspect that they existed since this activity was of marginal importance compared with the turnover of the group for which it was responsible, that this activity required no agreement or investment or other form of support, and that these practices were hidden and were unknown on other markets such as the UK market, on which Amertranseuro and Trans Euro operated. It was alleged that the Belgian market was different from the UK market. Amertranseuro emphasised that none of the parent companies had given instructions to Team Relocations regarding these practices and that the Belgian management had not presented any report on the matter⁶⁵⁸. Amertranseuro also argued that the fact that a certain amount of financial control and meetings between Amertranseuro and Team Relocations had taken place was not sufficient to impute any responsibility whatsoever to Amertranseuro.
- (494) In its reply to the statement of objections, Amertranseuro explicitly confirmed that Team Relocations NV had reporting obligations towards Team Relocations Limited and Amertranseuro. To a certain extent, these two parent companies exercised financial control over Team Relocations NV⁶⁵⁹. Amertranseuro also stated in its reply that these “management services” consisted in organising meetings between

⁶⁵⁴ See paragraph (81).

⁶⁵⁵ See paragraph (82).

⁶⁵⁶ See paragraph (80).

⁶⁵⁷ [*].

⁶⁵⁸ [*].

⁶⁵⁹ [*].

the directors and the various subsidiaries' sales staff and that the reporting obligation was limited to financial matters. The meetings indicated by Team Relocations NV were, it was claimed, concerned essentially with organisational matters such as financial data and changes to the group's name and logo. It was argued that Amertranseuro had never exercised close control over Team Relocations NV since the interest in having a subsidiary on the Belgian market was to be able to demonstrate its presence in Belgium⁶⁶⁰.

16.7.2.13.3 Assessment of the arguments put forward by Team Relocations Limited, Trans Euro and Amertranseuro

- (495) The Commission rejects these arguments for the reasons given in this section.
- (496) Amertranseuro explained in its reply to the statement of objections that the financial results of the subsidiaries were consolidated with those of the group. This means that profits or losses in the international removal services sector in Belgium, regardless of their size compared with the group's overall results, are regarded as forming part of the group's turnover. Consequently, and contrary to what is claimed by Amertranseuro, the activities of Team Relocations NV in this sector are of interest to the group. Moreover, the argument that its activities and turnover were limited as far as Amertranseuro was concerned cannot be invoked as proof of the complete independence of Team Relocations NV vis-à-vis Amertranseuro⁶⁶¹.
- (497) As explained in paragraphs (392), (393), (394), (395) and (396), in order to be able to hold Amertranseuro, Trans Euro and Team Relocations Limited responsible for the participation of Team Relocations NV in the infringement, their argument that they were not aware of the infringement or had not given any instructions concerning the infringement is irrelevant. What does matter is that these parent companies were in a position to exercise a decisive influence on the commercial policy of Team Relocations and that the presumption that they did exercise such power has not been refuted. In their reply to the statement of objections, these companies confirmed that they exercised financial control over Team Relocations NV, in that the latter had reporting obligations towards Team Relocations Limited and Amertranseuro regarding finances and the results of its commercial activity.
- (498) The parent companies of Team Relocations NV also confirmed and clarified in their reply the points made in the statement of objections. They confirmed that meetings took place between Team Relocations NV and first Trans Euro and then Amertranseuro and were attended by

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Joined Cases T-109/02, T-118/02, T-122/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02 *Bolloré SA and Others v Commission*, paragraph 144 (not yet reported).

the directors and sales staff and dealt with financial questions and with the name and logo of the group (thus involving not only the parent company but also the subsidiaries).

16.7.2.13.4 The conclusions of the Commission

(499) In the light of these considerations, it is concluded that Amertranseuro, Trans Euro and Team Relocations Limited have not refuted the presumption that they exercised a decisive influence over the commercial policy of Team Relocations NV. Consequently, Amertranseuro, Trans Euro, Team Relocations Limited and Team Relocations NV formed part of the undertaking that committed the infringement. They are, therefore, jointly and severally liable for the infringement of Article 81 of the Treaty as follows:

- from 20 January 1997 to 7 September 2000, Team Relocations NV, Team Relocations Limited and Trans Euro;
- from 8 September 2000 to 10 September 2003, Team Relocations NV, Team Relocations Limited, Trans Euro and Amertranseuro.

(500) For this reason, the present Decision must be addressed to Team Relocations Limited, Trans Euro and Amertranseuro.

16.7.2.14 Transworld

(501) It has been established in part D that Transworld participated in the infringement from 4 October 1984 to 31 December 2002. For this reason, the present Decision must be addressed to it.

16.7.2.15 Ziegler

(502) It has been established in part D that Ziegler participated in the infringement from 4 October 1984 to 8 September 2003. For this reason, the present Decision must be addressed to it.

17. REMEDIES

17.1 Article 7 of Regulation (EC) No 1/2003

(503) In accordance with Article 7(1) of Regulation (EC) No 1/2003, where the Commission finds there is an infringement of the provisions of Article 81 of the Treaty or Article 53 of the EEA Agreement, it may require the undertakings concerned to bring such infringement to an end.

(504) If the facts show that, in all probability, the infringement ended at the very latest on 16 September 2003, when the Commission carried out investigations at some of the companies concerned, it should be ascertained whether they did indeed bring the infringement to an end.

Consequently, it is incumbent upon 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 all agreements, concerted practices or decisions by associations of undertakings that might have the same or a similar object or effect.

17.2 Article 23(2) of Regulation (EC) No 1/2003

- (505) Under Article 23(2) of Regulation (EC) No 1/2003, the Commission may impose fines on undertakings which, either intentionally or negligently, infringe Article 81 of the Treaty and/or Article 53 of the EEA Agreement. Under Article 15(2) of Regulation No 17, which was applicable at the time the infringement was committed, the fine imposed on each undertaking that participated in the infringement may not exceed 10% of its total turnover in the preceding business year. The same limitation flows from Article 23(2) of Regulation (EC) No 1/2003.
- (506) In accordance with Article 23(2) of Regulation (EC) No 1/2003 and with Article 15(2) of Regulation No 17, the Commission, in fixing the amount of the fine, must have regard to all relevant circumstances, and in particular to the gravity and duration of the infringement, these being the two criteria mentioned by those Regulations. To that end, it bases itself on the principles spelt out in the guidelines for setting fines imposed under Article 23(2)(a) of Regulation (EC) No 1/2003⁶⁶², hereinafter “guidelines for setting fines”.

17.3 Basic amount of the fines

- (507) The basic amount of the fine for each undertaking is related to a proportion of the value of sales, depending on the degree of gravity of the infringement, multiplied by the number of years of the infringement⁶⁶³.

17.3.1 Determining the value of sales

- (508) In determining the basic amount of the fine to be imposed, the Commission takes the value of the undertaking’s sales of goods or services during the last full business year of its participation in the infringement⁶⁶⁴ to which the infringement directly or indirectly relates in the relevant geographic area within the EEA.
- (509) In their reply to the statement of objections, several undertakings gave their views on the approach to be followed in determining the value of the sales of services to be applied in calculating the fine.

⁶⁶² OJ C 210, 1.9.2006, p. 2.

⁶⁶³ Point 19 of the guidelines for setting fines.

⁶⁶⁴ Point 13 of the guidelines for setting fines.

17.3.1.1 Arguments put forward by the parties in reply to the statement of objections

Allied Arthur Pierre

- (510) The turnover achieved by Allied Arthur Pierre on the international removal services market in Belgium and applied by the Commission in the statement of objections amounts to EUR 8 651 700. This figure is based on the information provided by Allied Arthur Pierre in March 2005⁶⁶⁵.
- (511) In its reply to the statement of objections⁶⁶⁶, Allied Arthur Pierre stated that the value of its sales of services in 2002 to which the infringement related was lower than the figure given in the statement of objections. It argued that sales in the United States, with Allied Arthur Pierre acting as subcontractor, and sales to its main customers and to private individuals were not linked to the infringement and should, therefore, be excluded (this argument was also put forward by Sirva⁶⁶⁷). Allied Arthur Pierre also stated that the turnover on “third-country” removals (i.e. international removals from an address outside Belgium to another address outside Belgium) had been underestimated in its reply to the request for information in 2005.

Compas

- (512) The turnover achieved by Compas on the international removal services market in Belgium and applied by the Commission in the statement of objections amounts to EUR 1 571 272. This figure is based on the information provided by Compas⁶⁶⁸.
- (513) In its reply to the statement of objections⁶⁶⁹ Compas stated that the value of sales of services to be used in calculating the fine should include only its turnover on removals for which its participation in the commission and cover quote arrangements is documented⁶⁷⁰.

Gosselin

- (514) The turnover achieved by Gosselin on the international removal services market in Belgium and applied by the Commission in the statement of objections amounts to EUR 10 067 246. This figure is based on the information provided by Gosselin in February⁶⁷¹ and

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May 2005⁶⁷². It includes the turnover on removals of the property of civilian and military personnel carried out on behalf of the United States Department of Defense (“military removals”).

(515) In its reply to the statement of objections, Gosselin argued that military removal services constituted a separate market. In its view, this distinction was justified by the following in particular⁶⁷³:

- Contracts for military removals are awarded only following an invitation to tender launched by the US Department of Defense, with only US companies being allowed to take part. Gosselin concludes a contract as a subcontractor with the US company awarded the contract for packing and transport to the port or for receipt at the local port and unpacking.
- Of the addressees of the statement of objections, only Gosselin operates on this market in military removals.
- Unlike Gosselin’s commercial department, its military removals department has no commercial staff in contact with the customer and invoicing is based on single prices by weight.
- No document in the Commission file relates to such military removals by Gosselin.

(516) Gosselin also took the view that the turnover achieved by it in its capacity as an agent⁶⁷⁴ should not be taken into consideration for the purposes of this proceeding since it did not fall within the scope of the market as defined in the statement of objections since it was not a “door-to-door” activity⁶⁷⁵.

(517) Gosselin also explained that the turnover applied by the Commission in the statement of objections included in part national removals of goods belonging to natural persons and national office removals. According to Gosselin, these removals should not be taken into consideration for the purposes of this procedure since they were not international removals⁶⁷⁶.

Interdean

(518) The turnover achieved by Interdean on the international removal services market in Belgium and applied by the Commission in the statement of objections amounts to EUR 8 859 210. This figure is based on the information provided by Interdean in February 2005⁶⁷⁷.

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The term “agent” is taken by the Commission to mean “subcontractor”.

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- (519) In its reply to the statement of objections⁶⁷⁸, Interdean argued that the turnover applicable on the basis of point 13 of the guidelines for setting fines should not take account of the turnover not related to international “door-to-door” removal services or of the turnover related to international “door-to-door” removal services but not linked to the infringement.
- (520) In practice, Interdean considered that national (residential and office) removals, “third-country” removals (from an address outside Belgium to another address outside Belgium), and storage and insurance services should be excluded from the value of sales to be applied in calculating the fines. In its view, the turnover achieved as agent or subcontractor for international “door-to-door” removals should also be excluded from the value of sales. Interdean acted as subcontractor at the request of third companies and other companies in the Interdean group. It argued that in all these cases it had played no role in the commercial negotiations with customers and that, as a result, these services could not be affected by the infringement.

Team Relocations

- (521) The turnover achieved by Team Relocations on the international removal services market in Belgium and applied by the Commission in the statement of objections amounts to EUR 4 423 974. This figure is based on the information provided by Team Relocations⁶⁷⁹.
- (522) In its reply to the statement of objections, Team Relocations indicated that the value of its sales of services to which the infringement relates was substantially lower. It argued, firstly, that the commission and cover quote arrangements were not applied to all its customers and, secondly, that for the customers to whom these arrangements were applied this was not done systematically. For this reason, it insisted that the value of sales of services to be applied in calculating the fine should include only the turnover on removals for which the Commission had shown that Team Relocations had participated in an arrangement involving commissions or cover quotes⁶⁸⁰.

Transworld

- (523) The turnover achieved by Transworld on the international removal services market in Belgium and applied by the Commission in the statement of objections amounts to EUR 1 703 791. This figure is based on the information provided by Transworld⁶⁸¹.

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- (524) In its reply to the statement of objections, Transworld indicated that the value of sales of services applied by the Commission in the statement of objections was somewhat excessive⁶⁸² and that only the last figure in the 2002 balance-sheet breakdown, “(TIR): removals (road transport) in Europe”, was relevant.

Ziegler

- (525) The turnover achieved by Ziegler on the international removal services market in Belgium and applied by the Commission in the statement of objections amounts to [*]. This figure is based on the information provided by Ziegler⁶⁸³.
- (526) In its reply to the statement of objections⁶⁸⁴, Ziegler indicated that the value of sales of services to be applied in calculating the fine should include only the turnover on removals where the Commission had shown that Ziegler had participated in an arrangement involving commissions or cover quotes.

Coppens, Mozer and Putters

- (527) In the statement of objections, the Commission applied for Coppens, Mozer and Putters a turnover on the international removal services market in Belgium of EUR 33 631⁶⁸⁵, EUR 448 858⁶⁸⁶ and EUR 1 725 000⁶⁸⁷ respectively. These figures are based on the information provided by the companies and have not been challenged by them.

17.3.1.2 Assessment of the arguments

- (528) As regards military removal services, the Commission takes the view that, on the basis of the information and explanations provided by Gosselin in its reply to the statement of objections⁶⁸⁸ (see paragraph (515)) and subsequently, the infringement under review does not relate directly or indirectly to such services. Consequently, the value of sales by Gosselin in connection with these military removals should not be included in the value of sales applied in calculating its fine.
- (529) Gosselin, Interdean and Transworld consider that national (residential and office) removals should be excluded from the turnover to be applied. The Commission would point out that its investigation was concerned neither with national removals nor with what are known as “third-country” removals (from one address outside Belgium to another

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address outside Belgium). Consequently, the value of sales in connection with national and “third-country” removals is not included in the value of sales to be applied in calculating the fines. However, the Commission sees no reason why the turnover on storage and insurance services should be excluded from the value of sales to be applied in calculating the fines provided that those services are linked to an international removal to or from Belgium⁶⁸⁹.

- (530) A number of parties, namely Allied Arthur Pierre, Gosselin and Interdean, argued that the value of sales in connection with subcontracting contracts for international removals should be excluded from the value of sales to be applied in calculating the fine since the participants in the cartel had not played any role in the commercial negotiations with customers and since, consequently, these services could not be affected by the infringement. According to these firms, a distinction has to be drawn between international removals for which the participants in the cartel themselves conducted the commercial negotiations and their activities as subcontractors in an international removal. The Commission accepts this distinction and does not, therefore, include the value of sales in connection with subcontracting contracts in the amount of the value of sales to be applied in calculating the fine.
- (531) Compas, Team Relocations and Ziegler stated that the value of sales of services to be applied in calculating the fine should include only the undertaking’s turnover on removals where their participation in the commission or cover quote arrangements was documented in the file. The Commission rejects this interpretation of point 13 of the guidelines for setting fines for the following reasons.
- (532) Point 13 of the guidelines for setting fines states that, in determining the amount of the fine to be imposed, “the Commission will take the value of the undertaking’s sales of goods or services to which the infringement directly or indirectly relates in the relevant geographic area within the EEA”. The Commission would emphasise firstly that use of the expression “goods or services to which the infringement ... relates”, instead of the expression “goods or services affected”, indicates that this point of the guidelines for setting fines does not refer to sales of goods or services where there is direct proof of their being affected by the infringement. In any case, such an interpretation of that point would mean that the Commission, in order to be able to determine the basic amount of the fine in cartel cases, would need to prove on each occasion which individual sales had been affected by the cartel, whereas, according to the case law, the practical effects of an agreement are not to be taken into account for the purpose of applying Article 81 of the Treaty where it transpires that the object of the agreement is to prevent, restrict or distort the interplay of competition within the common market.

⁶⁸⁹ See paragraphs (3), (128), (143), (243) and (335).

- (533) Secondly, the Commission takes the view that the term “relates” in point 13 of the guidelines for setting fines does not refer to the term “sales” but rather to the term “goods or services” found in the same point. In other words, this point must be taken to mean that, once the Commission has established which are the goods or services to which the infringement directly or indirectly relates, the value of sales of *all* such goods or services is taken into consideration in calculating the basic amount of the fine.
- (534) This interpretation is particularly appropriate in the context of this case since the investigations revealed the existence over several years of a complex and consolidated cartel between Compas, Team Relocations, Ziegler and the other cartel participants that was designed to prevent, restrict and distort the interplay of competition in the international removals sector in Belgium by fixing directly and indirectly prices for international removal services, by sharing part of the market and by manipulating the submission of bids during the periods indicated.
- (535) In this connection, it would be contrived to calculate the basic amount of the fine solely on the turnover achieved by the firms concerned on removals where their participation in the commission or cover quote arrangements is documented in the file.
- (536) Consequently, in calculating the basic amount of the fine in this case, the Commission will take account of the total value of sales by the firms concerned of services to which the infringement directly or indirectly relates and not only, as Compas, Team Relocations and Ziegler argue, of the value of the sales made by them in respect of removals where their participation in the commission or cover quote arrangements is documented in the file.
- (537) Allied Arthur Pierre put forward arguments for excluding certain types of customer, such as individuals or key accounts. The Commission rejects these arguments. It is evident from the file that international removals paid for by such customers were affected by the agreements on prices, commissions and cover quotes. There is some evidence in the file that commissions were arranged for international removals that were paid for by such customers. Of the 216 international removals indicated in the table found [*]⁶⁹⁰, for example, there are six for which the “account” column in the list contains the word “private”⁶⁹¹. The list also contains the names of several important customers who, nevertheless, were also victims of the infringement. What is more, the price agreements applied to all customers, without distinction.

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At least one firm, Allied Arthur Pierre, was among those that agreed to pay a commission ([*]’s removal on 10 January 2000). [*].

17.3.1.3 Last full year of participation in the infringement

- (538) The last full year of their participation in the infringement was 2003 for Mozer, 2002 for Allied Arthur Pierre, Compas, Coppens, Interdean, Putters, Team Relocations and Ziegler and 2001 for Gosselin and Transworld. In determining the basic amount of the fine, the Commission has taken into account the value of sales in 2003 for Mozer, in 2002 for Allied Arthur Pierre, Compas, Coppens, Interdean, Putters, Team Relocations and Ziegler, and in 2001 for Gosselin et Transworld.

17.3.1.4 Conclusion as to the value of sales

- (539) In the light of paragraphs (528) to (538) and on the basis of the information provided by the firms (and certified by external auditors) following the request for information dated 9 October 2007, the sales values shown in Table 4 are to be applied in calculating the fine.

- (540) **Table 4: Value of sales for each undertaking to be applied in calculating the fine**

Undertaking	Value of sales in EUR
Allied Arthur Pierre	6 175 793
Exel	6 175 793
Compas	607 550
Coppens	58 338
Gosselin	2 214 222
Interdean	3 929 611
Mozer	396 360
Putters	1 441 149
Team Relocations	2 569 709
Transworld	1 199 002
Ziegler	2 732 000

17.3.2 Gravity

- (541) As a general rule, the proportion of the value of sales taken into account is set at a level of up to 30% of the value of sales⁶⁹². In order to decide on the proportion of the value of sales to be taken into account in the present case, the Commission has examined the nature of the infringement.

17.3.2.1 Nature of the infringement

- (542) The infringement consists in the direct and indirect fixing of prices for international removal services in Belgium, the sharing of customers and the manipulation of the submission of bids for these services by means of an agreement on prices, notably in the form of written agreements setting minimum prices and the other conditions of service, as well as by means of agreements on commissions and cover quotes. By its very nature, this type of restriction ranks among the most serious infringements of Article 81 of the Treaty and Article 53 of the EEA Agreement. Case law has confirmed that, solely on the basis of their nature, agreements or concerted practices involving the type of restriction identified in this case may be classified as very serious without it being necessary for such conduct to cover a particular geographic area or have a particular impact⁶⁹³.

17.3.2.2 Conclusion as to the gravity of the infringement

- (543) In the light of the foregoing, the Commission takes the view that the proportion of the value of sales of each firm that will have to be applied in determining the basic amount has to be 17%.

17.3.3 Duration

- (544) In order to take fully into account the duration of each company's participation in the infringement, the amount determined on the basis of the value of sales is multiplied by the number of years in which the company participated in the infringement. Periods of less than six months are counted as one half-year; periods of more than six months but less than one year are counted as a full year.⁶⁹⁴ The duration of the participation by each of the ten international removal companies concerned is given in paragraph (382).

17.3.3.1 Allied Arthur Pierre

- (545) Allied Arthur Pierre is held responsible for an infringement committed over a period of 18 years and 11 months. Nevertheless, in accordance

⁶⁹² Point 21 of the guidelines for setting fines.

⁶⁹³ Joined Cases T-49/02 to T-51/02 *Brasserie nationale and Others v Commission* [2005] ECR II-3033, paragraphs 178 and 179; Case T-38/02 *Groupe Danone v Commission* [2005] ECR II-4407, particularly paragraphs 147, 148 and 152, and Case T-241/01 *SAS v Commission* [2005] ECR II-2917, particularly paragraphs 84, 85, 122, 130 and 131.

⁶⁹⁴ Point 24 of the guidelines for setting fines.

with point 23 of the leniency notice, the Commission will, in calculating the fine, take account of participation by Allied Arthur Pierre from 25 April 1997⁶⁹⁵ to 9 September 2003 (see paragraphs (614) to (616)), i.e. a period of 6 years and 5 months. In accordance with point 24 of the guidelines for setting fines, the amount determined under paragraph (543) needs, therefore, to be multiplied by 6.5.

17.3.3.2 Compas

- (546) The duration of the participation of Compas in the infringement is 7 years and 5 months. In accordance with point 24 of the guidelines for setting fines, the amount determined under paragraph (543) needs, therefore, to be multiplied by 7.5.

17.3.3.3 Coppens

- (547) The duration of the participation of Coppens in the infringement is 10 years and 9 months. In accordance with point 24 of the guidelines for setting fines, the amount determined under paragraph (543) needs, therefore, to be multiplied by 11.

17.3.3.4 Gosselin

- (548) The duration of the participation of Gosselin in the infringement is 10 years and 7 months. In accordance with point 24 of the guidelines for setting fines, the amount determined under paragraph (543) needs, therefore, to be multiplied by 11.

17.3.3.5 Interdean

- (549) The duration of the participation of Interdean in the infringement is 18 years and 10 months. In accordance with point 24 of the guidelines for setting fines, the amount determined under paragraph (543) needs, therefore, to be multiplied by 19.

17.3.3.6 Mozer

- (550) The duration of the participation of Mozer in the infringement is 3 months. In accordance with point 24 of the guidelines for setting fines, the amount determined under paragraph (543) needs, therefore, to be multiplied by 0.5.

17.3.3.7 Putters

- (551) The duration of the participation of Putters in the infringement is 6 years and 5 months. In accordance with point 24 of the guidelines for

⁶⁹⁵ Allied Arthur Pierre's first participation in the agreements on commissions or cover quotes is established by a document discovered during the investigation on 25 April 1997 [*]. As for the facts taken into account in determining the beginning and the end of the individual participation, see paragraphs (377) and (378).

setting fines, the amount determined under paragraph (543) needs, therefore, to be multiplied by 6.5.

17.3.3.8 Team Relocations

- (552) The duration of the participation of Team Relocations in the infringement is 6 years and 9 months. In accordance with point 24 of the guidelines for setting fines, the amount determined under paragraph (543) needs, therefore, to be multiplied by 7.

17.3.3.9 Transworld

- (553) The duration of the participation of Transworld in the infringement is 18 years and 2 months. In accordance with point 24 of the guidelines for setting fines, the amount determined under paragraph (543) needs, therefore, to be multiplied by 18.5.

17.3.3.10 Ziegler

- (554) The duration of the participation of Ziegler in the infringement is 18 years and 11 months. In accordance with point 24 of the guidelines for setting fines, the amount determined under paragraph (543) needs, therefore, to be multiplied by 19.

17.3.4 Additional amount

- (555) Irrespective of the duration of an undertaking's participation in the infringement and in accordance with point 25 of the guidelines for setting fines, the Commission has included in the basic amount a sum of between 15% and 25% of the value of sales in order to deter undertakings from even entering into horizontal price-fixing, market-sharing and output-limitation agreements.
- (556) To this end, in the light of the circumstances of the case and, in particular, the factor referred to in paragraphs (541) to (543), it is concluded that an additional amount equal to 17% of the value of sales should be included in the basic amount of the fine.

17.3.5 Conclusion regarding the basic amounts

- (557) In the light of the foregoing, the basic amounts for the undertakings on which a fine is being imposed under this procedure are as indicated in Table 5.

(558) **Table 5: basic amounts**

Enterprises	Basic amount in EUR
Allied Arthur Pierre	5 200 000
Exel	8 900 000
Compas	870 000
Coppens	119 000
Gosselin	4 500 000
Interdean	13 300 000
Mozer	100 000
Putters	1 830 000
Team Relocations	3 490 000
Transworld	3 900 000
Ziegler	9 200 000

17.4 Adjustments to the basic amount

(559) In calculating the fine the Commission must take account of any aggravating or mitigating circumstances.

17.4.1 Aggravating circumstances

17.4.1.1 The instigator

(560) In its reply to the statement of objections, and at the hearing, Compas claimed that Allied Arthur Pierre controlled the market and was in charge of the organisation and operation of the cartel⁶⁹⁶. Transworld claimed in its reply that the instigator was Allied Arthur Pierre⁶⁹⁷. Team Relocations said that it had become involved on the initiative of Interdean⁶⁹⁸.

(561) The undertakings did not supply any documents supporting these allegations. The Commission takes the view, therefore, that the role of instigator should not be taken into account as an aggravating circumstance in this case.

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17.4.2 Mitigating circumstances

- (562) All of the undertakings claim the benefit of mitigating circumstances. The main arguments put forward by several of them are that they have terminated the infringement, that they committed it as a result of negligence, that their involvement was substantially limited, that they have cooperated effectively with the Commission, and that the anti-competitive conduct was encouraged by the public authorities. These arguments and the Commission's position are explained in this section.

17.4.2.1 Negligence

- (563) In its reply to the statement of objections⁶⁹⁹, Coppens argued that the infringement was committed as a result of negligence or ignorance. It was not aware that to draw up or request cover quotes was an infringement of Article 81 of the Treaty.
- (564) The Commission rejects this argument. The Court of Justice and the Court of First Instance have consistently held that for an infringement to be regarded as having been committed intentionally it is not necessary for an undertaking to have been aware that it was infringing Article 81 of the Treaty. It is sufficient that it could not have been unaware that the contested conduct had as its object or effect the restriction of competition in the common market, and affected or might affect trade between Member States⁷⁰⁰.
- (565) Furthermore, the case evidence shows that the infringement was indeed committed intentionally. The measures taken to conceal the cartel, such as the drawing up of invoices with fictitious particulars to settle the payment of commissions (see paragraph (201)), prove that the participants were fully aware of the illicit nature of their activities. The Commission considers, therefore, that no participant in the cartel could have been unaware that its conduct had the deliberate object of restricting competition in the common market.
- (566) More generally, the Commission does not accept the argument that participants in very serious infringements such as cartels may not have been aware of the illicit nature of their conduct. These infringements are among the most serious infringements of Article 81 of the Treaty, and undertakings must be aware that such conduct is illegal.
- (567) In its reply to the statement of objections, Transworld is more specific, and claims that the bogus estimate it gave in 1993 should be regarded as an act of inattention on its part⁷⁰¹. The Commission considers that the very fact of drawing up a bogus estimate, which necessitates an exchange of information and consultation between competitors, is an

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See Court of Justice in Case 19/77 *Miller v Commission* [1978] ECR 131, paragraph 18, and Case C-279/87 *Tipp-Ex v Commission* [1990] ECR I-261.

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act which can be committed only with the intention of restricting competition.

17.4.2.2 Limited participation, minor player

- (568) In their replies to the statement of objections, most of the removal companies concerned emphasised that their role in the cartel had been minor, and asked that this be considered a mitigating circumstance if any fine was to be imposed.
- (569) Compas said in its reply that it had not played an active role and that its participation had been isolated⁷⁰².
- (570) Coppens claimed it had taken no part whatsoever in the written price agreements or in the price agreements associated with the commission system. It said its participation in the system of cover quotes had been very limited, and that it had been able to perform an international removal in only about 23% of the cases where it had asked for a cover quote from another removal company⁷⁰³.
- (571) Gosselin said it held only a limited share of the market, that it had not taken part in the first price agreements, and that its alleged participation in agreements on commissions had been sporadic⁷⁰⁴.
- (572) Mozer said that it had played only a very limited and sporadic part and that its role in the conduct complained of had essentially been passive⁷⁰⁵.
- (573) Team Relocations considered that its participation in the cartel had been very limited. It had not taken part in the written agreements, and it contended that it had not in fact provided cover quotes to a customer in 1994⁷⁰⁶.
- (574) Transworld said that its participation in the infringement had been very limited and that it had always sought to compete⁷⁰⁷.
- (575) Ziegler said that the transactions concerned were isolated and without any real structured organisation⁷⁰⁸.
- (576) The fact that in the Commission's file there are fewer documents relating to a particular company does not mean that that company's participation was limited. The inspection took place on the premises of Allied Arthur Pierre, Interdean, Transworld and Ziegler, and not on the premises of the other companies. In its application for leniency, Allied

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Arthur Pierre provided numerous documents, all of which mentioned Allied Arthur Pierre. The Commission's file accordingly contains more documents relating to the participation of the applicant for leniency and of the companies that were inspected, and fewer documents concerning the other removal companies involved.

- (577) Contrary to Transworld's contention, the file does contain sufficient examples of active participation by Transworld in the agreements on commissions and cover quotes. Transworld also signed the written agreements on prices [*]. The Commission therefore rejects the statement that Transworld always sought to compete. Similarly, there are several documents in the file to prove that Team Relocations implemented the agreement on cover quotes in practice⁷⁰⁹.
- (578) The fact that some undertakings have a small market share has already been taken into account in the method of setting fines, because companies with small market shares have lower sales figures.
- (579) In addition, the fact that the Commission has not alleged that some undertakings were party to the written agreements has already been taken into account in the method of setting fines, because when the basic amount is calculated the duration of their participation is shorter.
- (580) The case law makes it clear that an undertaking may be held responsible for an overall cartel even if it is shown that it did not take part directly in one or more of the constituent elements of the cartel, if it knew, or must have known, that the collusion in which it participated was part of an overall plan and that the overall plan included all the constituent elements of the cartel⁷¹⁰. That is the case here, because the cartel had the characteristics of a single, continuous infringement (see paragraph (345)).

17.4.2.3 Absence of advantage and partial non-implementation of the anti-competitive agreements

- (581) In their replies to the statement of objections, Coppens⁷¹¹ and Mozer⁷¹² emphasised the absence of any financial advantage.
- (582) Mozer also said that it had not always conducted itself on the market in the manner agreed with the other participants in the cartel⁷¹³.
- (583) The fact that an undertaking which has participated in collusion on prices with its competitors has not always behaved on the market in the manner agreed with its competitors is not necessarily a matter which must be taken into account as a mitigating circumstance when the

⁷⁰⁹ See for example [*].

⁷¹⁰ See Court of First Instance in Case T-294/94 *Buchmann v Commission* [1998] ECR II-813, paragraph 121.

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amount of the fine to be imposed is determined. An undertaking which, despite colluding with its competitors, follows a more or less independent policy on the market may simply be trying to exploit the cartel for its own benefit⁷¹⁴.

- (584) Furthermore, if the Commission is to consider whether a fine should be reduced on the ground that an undertaking did not in fact apply the infringing agreements, the undertaking must provide evidence showing that, during the period in which it was party to the offending agreements, it actually avoided implementing them by adopting competitive conduct on the market or, at the very least, clearly and substantially breached the obligations relating to the implementation of the cartel to the point of disrupting its very operation⁷¹⁵.
- (585) No evidence of this sort has been provided. Quite the reverse, the evidence in the case clearly shows that the undertakings adopted a competitive approach when they thought there was a strong chance that they could win the contract without applying the anti-competitive mechanisms⁷¹⁶.
- (586) The agreements on prices and/or the agreements on commissions and cover quotes benefited only the participants in the cartel. Nevertheless, it will be sufficient for the Commission to point out that for an undertaking to be considered to have committed an infringement it need not necessarily have derived any economic advantage from its participation in the cartel⁷¹⁷. The fact that an undertaking has derived no profit from the infringement cannot prevent it from being fined, as otherwise the fine would lose its deterrent effect. It follows that the Commission is not required, for the purpose of fixing the amount of fines, to establish that the infringement secured an improper advantage for the undertakings concerned, or to take into consideration, where it applies, the fact that no profit was derived from the infringement⁷¹⁸. Even if the parties who rely on this ground were able to show that they had not profited by the agreements, therefore, the Commission would have no reason to reduce the amount of the fine it proposes to impose on them.

⁷¹⁴ See previously cited cases of the Court of First Instance *Cascades v Commission* and *Tokai Carbon and Others v Commission*, paragraph 297; Case T-44/00 *Mannesmannröhren-Werke v Commission* [2004] ECR II-2223, paragraphs 277 and 278; and Case T-327/94 *SCA Holding v Commission* [1998] ECR II-1373, paragraph 142.

⁷¹⁵ Case T-26/02 *Daiichi v Commission* [2006] ECR II-713, paragraph 113.

⁷¹⁶ Statement by Team Relocations at the hearing on 22 March 2007 (original English), “No [cover quotes] were issued if felt that [Team Relocations] could get the business” [*].

⁷¹⁷ See Court of First Instance in Case T-304/94 *Europa Carton v Commission* [1998] ECR II-869, paragraph 141.

⁷¹⁸ See Court of First Instance in Case T-241/01 *Scandinavian Airlines System v Commission* [2005] ECR II-2917, paragraph 146.

17.4.2.4 Early cessation of the infringement

- (587) In their replies to the statement of objections several companies, and in particular Coppens⁷¹⁹ and Transworld⁷²⁰, say that they terminated the infringements before or as soon as the Commission intervened.
- (588) The Commission takes the view that termination of an infringement as soon as the Commission intervenes cannot be considered a mitigating circumstance in a case that concerns secret agreements, and in particular cartels⁷²¹.
- (589) By their very nature illegal cartels are very serious infringements of Article 81 of the Treaty. Those that take part in such infringements know very well that what they are doing is illicit. The Commission considers that in such cases of deliberate illicit behaviour the fact that an undertaking brings the offending conduct to an end before the Commission takes action does not merit any special reward, except that the duration of the infringement the undertaking has committed will be shorter than it would otherwise have been. Besides, continuation of the infringement after the Commission had intervened would have constituted an aggravating circumstance.

17.4.2.5 Cooperation with the Commission and the claim that companies have not contested the facts

- (590) Several undertakings have argued that the fact that they cooperated with the Commission by replying to requests for information or by acknowledging the facts, or at least most of them, should be considered a mitigating circumstance.
- (591) Putters⁷²² and Mozer⁷²³ say they cooperated fully with the Commission and provided it with all the necessary or useful information they had. They feel that their cooperation ought to be considered a mitigating circumstance. Compas confirmed the facts and supplied details on the commission and cover-quote agreements.⁷²⁴
- (592) The Commission finds that Mozer's and Putters's cooperation was confined to replying to requests for information regarding the structure of their undertakings and their financial data and that Compas's cooperation related to facts and evidence presented in the statement of objections.
- (593) The value of evidence of infringement that is produced voluntarily by undertakings is assessed by the Commission when it applies the Leniency Notice, whether the undertakings provided this evidence in

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See the first indent of point 29 of the guidelines for setting fines.

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See paragraph (159) and [*].

an official application for leniency or in the form of information incriminating them given voluntarily in reply to a request for information. If the cooperation justifies a reduction, the reduction will be granted under the Leniency Notice.

- (594) Mozer and Putters did not voluntarily provide evidence regarding the infringement. Compas's statements refer to the operation of the cartel as presented in the statement of objections. Consequently, there is no exceptional circumstance here that might justify a reduction in the amount of the fine on grounds of effective cooperation with the Commission apart from what may be provided for in the Leniency Notice.
- (595) The fact that after receiving a statement of objections an undertaking tells the Commission that it does not substantially contest the facts, as Interdean⁷²⁵ and Ziegler⁷²⁶ have done, does not in the Commission's view constitute a mitigating circumstance, especially because the probative value of the evidence in the file made it difficult to contest the facts and because these statements did not help the Commission to establish or interpret the facts.

17.4.2.6 Anti-competitive conduct authorised by public authorities

- (596) In their replies to the statement of objections several companies, namely Gosselin⁷²⁷, Interdean⁷²⁸, Ziegler⁷²⁹ and Sirva⁷³⁰, say that the public authorities, and the Commission in particular, were aware of the system of cover quotes and tolerated it. The absence of any reaction on the part of the Commission strengthened their legitimate impression that the practice did not constitute an infringement, because it was requested by officials, including Commission officials, and must therefore have been known to the Commission.
- (597) The Commission does not accept this allegation. These statements are not supported by any proof or evidence. None of the companies has supplied any tangible evidence that the system of cover quotes was known to or authorised or even encouraged by the public authorities before the inspection in 2003. There is nothing to show that the Commission departments dealing with removals were aware of illicit activities before the inspection in 2003.
- (598) The very fact that Belgian and international public bodies asked for the submission of three estimates shows that they wanted to take advantage of competition and had no interest in tolerating or indeed encouraging

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the system of cover quotes. Quite the reverse, they seem to have been among the main victims of the bogus estimates.

- (599) Interdean contends that its conduct was encouraged by the Belgian legislation which until 1993 required prior approval for increases in the prices of undertakings whose turnover exceeded a certain sum⁷³¹. A ministerial order enacted in 1993 replaced this requirement by an obligation to notify price increases. This order was annulled in 1994 by the Belgian Council of State⁷³². The Commission rejects this argument. The Belgian legislation referred to by Interdean cannot be taken to authorise the anti-competitive fixing of prices in this case.

17.4.2.7 Forced participation

- (600) In its reply to the statement of objections, Coppens said that it had been coerced into taking part in the cartel by Arthur Allied Pierre, and that it wanted to avoid reprisals on the part of the big players in the market⁷³³. It provided no evidence in support of this allegation.
- (601) There is nothing in the file to show that the conduct of the other participants in the cartel towards Coppens was of a coercive nature. Coercion consequently cannot be considered a mitigating factor. In any event, the Court of First Instance has held that an undertaking which participates in anti-competitive behaviour cannot rely on the fact that it did so under pressure from the other participants: “It could have complained to the competent authorities about the pressure brought to bear on it and have lodged a complaint with the Commission”⁷³⁴.

17.4.2.8 Conclusion on aggravating and mitigating circumstances

- (602) There are no aggravating or mitigating circumstances, and consequently no grounds for increasing or reducing the basic amount of the fines to be imposed on the companies.

17.5 The ceiling of 10% of turnover

- (603) Article 23(2) of Regulation (EC) No 1/2003 states that the fine imposed on an undertaking is not to exceed 10% of its total turnover. If “several addressees constitute the ‘undertaking’, that is the economic entity responsible for the infringement penalised ... at the date when the decision is adopted ... the ceiling can be calculated on the basis of the overall turnover of that undertaking, that is to say of all its constituent parts taken together. By contrast, if that economic unit has

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⁷³⁴ See Court of First Instance in Case T-23/99 *LR af 1998 v Commission* [2002] ECR II-1705, paragraph 142.

subsequently broken up, each addressee of the decision is entitled to have the ceiling in question applied individually to it”⁷³⁵.

- (604) The total turnover of the undertakings in 2006, and the ceiling of 10% of turnover, are shown in Table 6:

(605) **Table 6: total turnover in 2006 and 10% ceiling in EUR**

Undertaking	Total turnover in 2006	10% ceiling
Allied Arthur Pierre (Sirva)	3 078 448 547	307 844 000
Exel	5 261 600 000	526 160 000
Compas	1 342 576	134 000
Coppens	1 046 318	104 000
Gosselin	143 639 000	14 363 000
Interdean (Interdean Group Limited)	106 198 598	10 619 000
Mozer	15 331	1 500
Putters	3 950 907	395 000
Team Relocations (Amertranseuro)	44 352 733	4 435 000
Transworld	2 466 000	246 000
Ziegler	[*]	[*]

17.6 The Leniency Notice

17.6.1 Allied Arthur Pierre

- (606) As indicated in part C, Allied Arthur Pierre submitted an application for leniency under the Leniency Notice on 26 September 2003, that is to say after the inspection⁷³⁶.
- (607) Under point 21 of the Leniency Notice, applications are to be assessed in the light of the information in the Commission’s possession at the time they are received. The Commission inspection took place on 16, 17 and 18 September 2003, and assembled substantial evidence confirming the existence of the cartel and in particular its origin, nature, purpose, scope and modus operandi and the identities of nine of its participants.

⁷³⁵ Joined Cases T-71/03, T-74/03, T-87/03 and T-91/03 *Tokai Carbon and Others v Commission*, cited above, paragraph 390.

⁷³⁶ See paragraphs (97) to (99).

- (608) In its application for leniency, Allied Arthur Pierre provided evidence [*].
- (609) [*]⁷³⁷ [*]⁷³⁸.
- (610) Allied Arthur Pierre stated that it had ended its participation in the cartel on 16 September 2003⁷³⁹, the first day of the inspection on its premises, and thus before its application under point 21 of the Leniency Notice.
- (611) The Commission concludes that the evidence provided by Allied Arthur Pierre represents significant added value with respect to the evidence that was already in the Commission's possession. Accordingly, a 50% reduction of the fine should be granted to Allied Arthur Pierre.

17.6.2 Exel

- (612) Exel bears responsibility jointly and severally with Allied Arthur Pierre for the infringement from 9 November 1992 to 18 November 1999 (see paragraph (421)). In its reply to the statement of objections, Exel said that it should have the benefit of any leniency accorded to Allied Arthur Pierre⁷⁴⁰. In setting the amount of the fine to be imposed on Exel, the Commission will not take account of the reduction granted under the Leniency Notice to Allied Arthur Pierre, because at the time Allied Arthur Pierre submitted its application for leniency Exel was not Allied Arthur Pierre's parent company, and consequently the two companies were not part of the same undertaking. Exel could have submitted an application for leniency in the period when it exercised a decisive influence over the commercial policy of Allied Arthur Pierre, and when together with Allied Arthur Pierre it formed the undertaking that committed the infringement. The purpose of the Leniency Notice is to encourage undertakings involved in a cartel to cooperate with the Commission on their own initiative. This objective would be compromised if the Commission allowed Exel the benefit of the reduction granted to its former subsidiary Allied Arthur Pierre even though it could have submitted an application for leniency⁷⁴¹ but did not do so.

17.6.3 Sirva

- (613) Sirva bears responsibility for the infringement jointly and severally with Allied Arthur Pierre from 19 November 1999 to 9 September 2003 (see paragraph (439)). Sirva argues that the Commission ought to grant it the maximum reduction of 50% for the

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On the basis of the Commission Notice on the non-imposition or reduction of fines in cartel cases, 1996 (OJ C 207, 18.7.1996, p. 4).

significant added value brought to the inquiry⁷⁴². Sirva was Allied Arthur Pierre's parent company at the time it submitted its application for leniency, so that the two companies together form the undertaking that submitted the application, and the reduction should accordingly be granted to the undertaking formed by Allied Arthur Pierre and Sirva.

17.6.4 Third paragraph of point 23 of the Leniency Notice

- (614) The third paragraph of point 23 of the Leniency Notice states that “if an undertaking provides evidence relating to facts previously unknown to the Commission which have a direct bearing on the gravity or duration of the suspected cartel, the Commission will not take these elements into account when setting any fine to be imposed on the undertaking which provided this evidence”.
- (615) [*]⁷⁴³. In setting the amount of the fine to be imposed on Allied Arthur Pierre, therefore, the Commission will not take account of the period from 4 October 1984 to 24 April 1997⁷⁴⁴ (see paragraph (545)).

17.6.5 Conclusion on the application of the Leniency Notice

- (616) Allied Arthur Pierre must accordingly be held responsible for its participation in the cartel in the period 4 October 1984 to 9 September 2003. Nevertheless, in accordance with the third paragraph of point 23 of the Leniency Notice, when the amount of the fine to be imposed on Allied Arthur Pierre is set, the period 4 October 1984 to 24 April 1997 will be disregarded; and in accordance with point 21 of the Leniency Notice, Allied Arthur Pierre should be granted a reduction of 50% of the fine imposed on it in respect of the period 25 April 1997 to 9 September 2003. Exel bears responsibility for Allied Arthur Pierre's participation in the period 9 November 1992 to 18 November 1999. Sirva bears responsibility for Allied Arthur Pierre's participation in the period 19 November 1999 to 9 September 2003. Unlike Sirva, Exel should not have the benefit of the leniency accorded to Allied Arthur Pierre. Exel should therefore be required to pay the fine for the whole of the period from 9 November 1992 to 18 November 1999.

17.7 Ability to pay and special features of the case

- (617) In exceptional cases, the Commission may, upon request, take account of the undertaking's inability to pay in a specific social and economic context. It will not base any reduction in the fine which is granted for this reason on the mere finding of an adverse or loss-making financial situation. A reduction could be granted solely on the basis of objective evidence that imposition of the fine would irretrievably jeopardise the

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economic viability of the undertaking concerned and cause its assets to lose all their value⁷⁴⁵.

- (618) Requests for such treatment have been made by Coppens⁷⁴⁶, Sirva⁷⁴⁷, Transworld⁷⁴⁸, [*] and Interdean⁷⁴⁹.

17.7.1 Coppens

- (619) Annexed to its reply to the statement of objections, Coppens provided its annual accounts for 2005 and a statement by an outside accountant to the effect that if a disproportionate fine were indeed to be imposed on it, it would not be able to bear the cost, and would be in danger of insolvency⁷⁵⁰. On the basis of the annual accounts for 2006 which Coppens had to submit⁷⁵¹ in response to the request for information on turnover which was addressed to all the parties in October 2007⁷⁵², it emerges that Coppens achieved a total turnover of EUR 1 342 576 in 2006, that the undertaking posted a loss of EUR [*] and that its capital amounted to EUR [*].
- (620) Since the fine calculated for Coppens is limited by the ceiling of 10% of the undertaking's total turnover in 2006⁷⁵³, the Commission considers that this fine is unlikely to jeopardise Coppens's economic viability irretrievably. Consequently, Coppens's request for a reduction of the fine on the grounds of inability to pay must be rejected.

17.7.2 Sirva

- (621) In its reply to the statement of objections, Sirva indicated that it had recorded losses of USD [*] in 2004 and of USD [*] in 2005 and that it would face serious consequences if it had to pay a significant fine. Although Sirva was a large undertaking, in these conditions the effect of a significant fine would be disproportionately amplified and could have consequences that were disproportionate to the effects of the local infringement described in the statement of objections⁷⁵⁴.
- (622) [Summary of notified confidential information].
- (623) [Summary of notified confidential information].
- (624) [Summary of notified confidential information].

⁷⁴⁵ Point 35 of the guidelines for setting fines.

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⁷⁵² See paragraph (106).

⁷⁵³ See paragraph (605).

⁷⁵⁴ [*].

- (625) Sirva transmitted its press release of 5 February 2008⁷⁵⁵, which indicated that Sirva had, on that same day, filed for the initiation of the restructuring procedure under Chapter 11 of the US Federal Bankruptcy Code (“Chapter 11”). Sirva had reached an agreement with its lenders for the restructuring of “its senior secured debt through a voluntary, pre-packaged Chapter 11 reorganization which will allow it to finalize the restructuring of its debt while continuing to operate its business. Sirva’s operations outside the US are not part of the Chapter 11 filing.”
- (626) [Analysis of notified confidential information].
- (627) The Commission understands that, contrary to the procedure laid down in Chapter 7 of the US Federal Bankruptcy Code, which deals with liquidation, the purpose of the Chapter 11 procedure is the reorganisation of undertakings. The procedure authorises the pursuit of business activity and provides for the formulation of a recovery programme with creditors. “Chapter 11” is a judicial procedure that is open to all undertakings with unsecured debt amounting to at least USD 336 900 or secured debt of at least USD 1 010 650. It can be activated on the initiative of the undertaking or at the request of creditors. The undertaking presents the Bankruptcy Court with a reorganisation plan, which then has to be approved by the creditors and the court. This procedure also serves to avoid the risk of subsequent litigation for debt recovery. The debtor undertaking retains most of its powers, and its board of directors continues to function.⁷⁵⁶ The undertaking can therefore continue its business activity while being protected from certain demands for payment, particularly in cases where the satisfaction of a payment demand is not indispensable for the proper functioning of the reorganised undertaking and the pursuit of its business activity.
- (628) [Analysis of notified confidential information].
- (629) Although the data provided by Sirva show that the undertaking is experiencing serious financial difficulties, and although Sirva’s activities in the United States⁷⁵⁷ are currently the subject of judicial reorganisation proceedings under Chapter 11, its situation is not so critical as to warrant, of itself, an adjustment in the amount of the fine for which Sirva is held to be jointly and severally liable. This amount represents only 0.08% of Sirva’s total turnover in 2006⁷⁵⁸. Even in Sirva’s current difficulties, this fine is not likely to jeopardise irretrievably the economic viability of Sirva and cause its assets to lose all their value. Consequently, Sirva’s request for a reduction of the fine on the grounds of inability to pay must be rejected.

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See original text [*].

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See paragraphs (605) and (616).

17.7.3 Transworld

- (630) Transworld did not provide any evidence enabling the Commission to assess the legitimacy of its request. Consequently, Transworld's request for a reduction of the fine on the grounds of inability to pay must be rejected.

17.7.4 [*]

- (631) [Summary of notified confidential information].
- (632) [Analysis of notified confidential information]⁷⁵⁹.

17.7.5 Interdean

- (633) [Summary of notified confidential information].
- (634) [Summary of notified confidential information].
- (635) [Commission analysis of notified confidential information].
- (636) [Summary of notified confidential information].
- (637) [Summary of notified confidential information].
- (638) [Summary of notified confidential information].
- (639) [Summary of notified confidential information].
- (640) [Summary of notified confidential information].
- (641) [Summary of notified confidential information].
- (642) In the *Copper plumbing tubes* case⁷⁶⁰, the Commission considered that reducing the fine imposed on an undertaking which was mainly confronted with current general market conditions and whose losses mainly depended on the concentration of exceptional financial costs in one year would be tantamount to conferring an unjustified competitive advantage on that undertaking. The Commission observed, moreover, that the undertaking which had asked for its ability to pay to be taken into account had not presented sufficient arguments in support of its alleged inability to pay the fine. On the basis of these considerations, the Commission did not grant a reduction of the fine to the undertaking that had requested it on grounds of inability to pay.
- (643) The Commission notes that Interdean's situation differs from that of the undertaking which requested a reduction of its fine on the basis of inability to pay in the *Copper plumbing tubes* case.

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See the Commission's decision of 3 September 2004 in case COMP/38.069 – Copper plumbing tubes, paragraphs 816-833.

- (644) [Analysis of notified confidential information].
- (645) [Analysis of notified confidential information].
- (646) [Analysis of notified confidential information].
- (647) In its reply to the statement of objections, Interdean emphasised the difficult conditions in the international removals market at the time of the infringement and at the present time and submitted data relating to that market from the [*] database⁷⁶¹. These show that the average company in the sector sustained losses in 2005 and that the solvency of six out of the ten members of the cartel in the present case was deemed to be weak or to have deteriorated.⁷⁶² According to Interdean, the decline in the viability of the sector, a global phenomenon, had begun in the late 1990s, following the final bursting of the Internet bubble, and had been aggravated by the events of 11 September 2001 as well as by the current crisis in the sub-prime mortgage market.
- (648) Interdean also submitted market studies⁷⁶³ and other items of information⁷⁶⁴, which the Commission analysed.
- (649) In order to obtain a more complete assessment of the market context, the Commission also analysed the [*] data collected by [*]. These data cover a sample of 150 companies in Europe that operate in the field of international and intercontinental removals.
- (650) As far as the 150 companies in the sample are concerned, their solvency ratios, profit margins and returns on capital do not display a downward trend in performance that might be linked to a specific shock. Their profit margins and solvency ratios are low. This is consistent with the competitive environment and low entry barriers that characterise the market⁷⁶⁵.
- (651) On the basis of the foregoing, the social and economic context is not a specific one within the meaning of point 35 of the guidelines for setting fines.
- (652) When exercising its discretion on the method used for calculating fines, the Commission is required to carry out individual assessments in order to apply that method to different undertakings (see the judgment of the Court of Justice in the *Graphite electrodes* case.⁷⁶⁶).
- (653) In addition, the special features of a case may warrant the Commission's departure from the general methodology for setting

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Judgment of 29 June 2006 in Case No C-308/04 P, *SGL Carbon AG v Commission* [2006] ECR I-5977, paragraph 85.

finances as defined in the guidelines for setting fines (see point 37 of the said guidelines).

- (654) In its judgment in the *Beef* case, the Court of First Instance held that the Commission had been right to identify and take into account the various circumstances which warranted a reduction in the fines and that the very exceptional nature of those circumstances might arise not only from the circumstances inherent in the economic context of the particular case but also from the particular characteristics of the undertakings, their functions and their respective spheres of activity⁷⁶⁷.
- (655) As indicated in paragraph (651), the requests for a reduction of the fine on the basis of point 35 of the guidelines for setting fines, including the request made by Interdean NV and its parent companies, in which inability to pay is claimed, must be rejected, because the social and economic context is by no means specific.
- (656) On the other hand, the Commission notes that Interdean's individual situation is specific.
- (657) In fact, Interdean informed the Commission that the shares in IGL had been purchased on 21 December 2005 by [*] (known as [*] until 31 January 2006).⁷⁶⁸ Since 21 December 2005, the parent companies of Interdean NV have been, in ascending order, [*], holding 99.99% of its shares⁷⁶⁹, Interdean International Limited, Iriben Limited, IGL and [*], each holding 100% of the shares in the preceding company. All of the shares in the ultimate parent company, which is not an addressee of this Decision, are held personally by [*].
- (658) [Summary of notified confidential information].
- (659) [Summary of notified confidential information].
- (660) [Summary of notified confidential information].
- (661) [Analysis of notified confidential information].
- (662) In the light of the foregoing, the Commission takes account [*] of special circumstances concerning the individual situation of Interdean NV and its parent companies. Consequently, the fine payable by Interdean NV should be reduced by 70%.

⁷⁶⁷ Judgment of 13 December 2006 in Joined Cases T-217/03 and T-245/03, *Fédération nationale de la coopération bétail et viande (FNCBV) and Others v Commission*, [2006] ECR II-4987, paragraph 359.

⁷⁶⁸ [*].

⁷⁶⁹ On 3 December 2004, Interdean AG transferred its 99.99% shareholding in Interdean NV to Interdean International Limited [*]. Interdean Holding BV has the remaining 0.01% of Interdean shares; see paragraph (56).

17.8 Amounts of the fines imposed in this proceeding

(663) In accordance with Article 23(2) of Regulation (EC) No 1/2003 and on the basis of the foregoing, the fines to be imposed in the present case should be set as indicated in Table 7.

(664) **Tableau 7: fines imposed**

Fines imposed in EUR	Legal entities
2 600 000	Allied Arthur Pierre NV, of which Sirva Inc., North American Van Lines Inc. and North American International Holding Corporation are held jointly and severally responsible for the amount of EUR 2 095 000.
1 300 000	Jointly and severally, Exel Investments Limited, Exel International Holdings Limited, Realcause Limited, Exel International Holdings (Netherlands I) BV, Exel International Holdings (Netherlands II) BV and Exel International Holdings (Belgium) NV, for which Allied Arthur Pierre is held jointly and severally responsible.
7 600 000	Jointly and severally, Exel Investments Limited, Exel International Holdings Limited, Realcause Limited, Exel International Holdings (Netherlands I) BV, Exel International Holdings (Netherlands II) BV and Exel International Holdings (Belgium) NV.
134 000	Compas International Movers NV
4 500 000	Gosselin Group NV, of which Stichting Administratiekantoor Portielje is held jointly and severally responsible for the amount of EUR 370 000.
3 185 000	Interdean NV, of which Interdean Holding BV is held jointly and severally responsible for the amount of EUR 3 185 000, and Interdean Group Limited, Iriben Limited,

	Interdean International Limited, Amcrisp Limited, Rondspant Holding BV, Interdean Holding BV, Interdean SA and Interdean AG are held jointly and severally responsible for the amount of EUR 3 000 000.
1 500	Mozer Moving International SPRL
395 000	Putters International NV
3 490 000	Team Relocations NV, of which Trans Euro Limited and Team Relocations Limited are held jointly and severally responsible for the amount of EUR 3 000 000, and Amertranseuro International Holdings Limited, Trans Euro Limited and Team Relocations Limited are held jointly and severally responsible for the amount of EUR 1 300 000.
246 000	Transworld International NV
104 000	Verhuizingen Coppens NV
9 200 000	Ziegler SA

HAS ADOPTED THIS DECISION:

Article 1

By directly and indirectly fixing prices for international removal services in Belgium, sharing part of the market, and manipulating the procedure for the submission of tenders, the following undertakings have infringed Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement in the periods indicated:

- (a) Allied Arthur Pierre NV, from 4 October 1984 to 9 September 2003; with Exel Investments Limited, Exel International Holdings Limited, Realcause Limited, Exel International Holdings (Netherlands I) BV, Exel International Holdings (Netherlands II) BV and Exel International Holdings (Belgium) NV, from 9 November 1992 to 18 November 1999; with Sirva Inc., North American Van Lines Inc. and North American International Holding Corporation, from 19 November 1999 to 9 September 2003;
- (b) Compas International Movers NV, from 26 January 1996 to 8 July 2003;
- (c) Gosselin Group NV, from 31 January 1992 to 18 September 2002; with Stichting Administratiekantoor Portielje, from 1 January 2002 to 18 September 2002;
- (d) Interdean NV, from 4 October 1984 to 10 September 2003; with Interdean Holding BV, from 2 November 1987 to 23 June 1999; with Interdean Group Limited, Iriben Limited, Interdean International Limited, Amcrisp Limited, Rondspant Holding BV, Interdean Holding BV, Interdean SA and Interdean AG, from 24 June 1999 to 10 September 2003;
- (e) Mozer Moving International SPRL, from 31 March 2003 to 4 July 2003;
- (f) Putters International NV, from 14 February 1997 to 4 August 2003;
- (g) Team Relocations NV, from 20 January 1997 to 10 September 2003; with Trans Euro Limited and Team Relocations Limited, from 20 January 1997 to 7 September 2000; with Amertranseuro International Holdings Limited, Trans Euro Limited and Team Relocations Limited, from 8 September 2000 to 10 September 2003;
- (h) Transworld International NV, from 4 October 1984 to 31 December 2002;
- (i) Verhuizingen Coppens NV, from 13 October 1992 to 29 July 2003;
- (j) Ziegler SA, from 4 October 1984 to 8 September 2003.

Article 2

For the infringement referred to in Article 1, the following fines are imposed:

- (a) EUR 2 600 000 on Allied Arthur Pierre NV, of which

Sirva Inc., North American Van Lines Inc. and North American International Holding Corporation are held jointly and severally responsible for the amount of EUR 2 095 000.

- (b) EUR 1 300 000 jointly and severally on Exel Investments Limited, Exel International Holdings Limited, Realcause Limited, Exel International Holdings (Netherlands I) BV, Exel International Holdings (Netherlands II) BV and Exel International Holdings (Belgium) NV, for which

Allied Arthur Pierre is held jointly and severally responsible.

- (c) EUR 7 600 000 jointly and severally on Exel Investments Limited, Exel International Holdings Limited, Realcause Limited, Exel International Holdings (Netherlands I) BV, Exel International Holdings (Netherlands II) BV and Exel International Holdings (Belgium) NV.

- (d) EUR 134 000 on Compas International Movers NV.

- (e) EUR 4 500 000 on Gosselin Group NV, of which

Stichting Administratiekantoor Portielje is held jointly and severally responsible for the amount of EUR 370 000.

- (f) EUR 3 185 000 on Interdean NV, for which

Interdean Holding BV is held jointly and severally responsible for the amount of EUR 3 185 000, and

Interdean Group Limited, Iriben Limited, Interdean International Limited, Amcrisp Limited, Rondspant Holding BV, Interdean Holding BV, Interdean SA and Interdean AG are held jointly and severally responsible for the amount of EUR 3 000 000.

- (g) EUR 1 500 on Mozer Moving International SPRL.

- (h) EUR 395 000 on Putters International NV.

- (i) EUR 3 490 000 on Team Relocations NV, of which

Trans Euro Limited and Team Relocations Limited are held jointly and severally responsible for the amount of EUR 3 000 000, and

Amertranseuro International Holdings Limited, Trans Euro Limited and Team Relocations Limited are held jointly and severally responsible for the amount of EUR 1 300 000.

- (j) EUR 246 000 on Transworld International NV.

- (k) EUR 104 000 on Verhuizingen Coppens NV.

(l) EUR 9 200 000 on Ziegler SA.

The fines imposed shall be paid, within three months of the date of notification of this Decision, into the following bank account:

Account No 642-0029000-95 of the European Commission,
BBVA - Banco Bilbao Vizcaya Argentaria S.A.
Avenue des Arts, 43 - B-1040 BRUSSELS
IBAN: BE76 6420 0290 0095
SWIFT Code: BBVABEBB

After the expiry of that period interest shall be automatically payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Article 3

The undertakings referred to in Article 1 shall immediately bring the infringement referred to in that Article to an end, in so far as they have not already done so.

They shall refrain in future from any act or conduct referred to in Article 1 and from any act or conduct having the same or a similar object or effect.

Article 4

This Decision is addressed to:

Allied Arthur Pierre NV
Bosdellestraat, 120
1933 Sterrebeek
Belgium

Amcrisp Limited
Central Way, Park Royal
NW10 7XW London
United Kingdom

Amertranseuro International Holdings Limited
Russell Square House
10-12 Russell Square
WC1B5LF London
United Kingdom

Compas International Movers NV
Emmanuellaan 7
1830 Machelen
Belgium

Exel International Holdings (Belgium) NV
Zandvoortstraat 3
Industriezone Mechelen Noord
2800 Mechelen
Belgium

Exel International Holdings (Netherlands I) BV
Huygensweg 10
5460 AD Veghel
Netherlands

Exel International Holdings (Netherlands II) BV
Huygensweg 10
5460 AD Veghel
Netherlands

Exel International Holdings Limited
The Merton Centre
45 St. Peters Street
Bedford
MK40 2 UB
United Kingdom

Exel Investments Limited
Ocean House
The Ring
RG12 1AN Bracknell, Berkshire
United Kingdom

Gosselin Group NV
Belcrownlaan 23
2100 Deurne
Belgium

Interdean AG
Lerchenstraße, 26-28
80995 Munich
Germany

Interdean Group Limited
Central Way, Park Royal
NW10 7XW London
United Kingdom

Interdean Holding BV
A. Einsteinweg, 12
2408 AR Alphen aan den Rijn
Netherlands

Interdean International Limited
Central Way, Park Royal
NW10 7XW London
United Kingdom

Interdean NV
Jan-Baptist Vinkstraat, 9
3070 Kortenbergh
Belgium

Interdean SA
Im Langhag, 9
8307 Effretikon / ZH
Switzerland

Iriben Limited
Central Way, Park Royal
NW10 7XW London
United Kingdom

Mozer Moving International SPRL
Avenue de Jupille, 19
4020 Liège
Belgium

North American International Holding Corporation
5001 US Highway 30 West
Fort Wayne, Indiana 46818
United States of America

North American Van Lines, Inc.
5001 US Highway 30 West
Fort Wayne, Indiana 46818
United States of America

Putters International NV
Erasmuslaan 30
1804 Cargovil
Belgium

Realcause Limited
The Merton Centre
45 St. Peters Street
Bedford
MK40 2 UB
United Kingdom

Rondspant Holding BV
A. Einsteinweg, 12
2408 AR Alphen aan den Rijn
Netherlands

Sirva, Inc.
700 Oakmont Lane
Westmont, Illinois 60559
United States of America

Stichting Administratiekantoor Portielje
Prins Bernhardplein 200
1097 JB Amsterdam
Netherlands

Team Relocations Limited
Drury Way
London
NW10 0JN
United Kingdom

Team Relocations NV
Budasteenweg 2B
1830 Machelen
Belgium

Trans Euro Limited
Drury Way
London
NW10 0JN
United Kingdom

Transworld International NV
Clement Vanophemstraat 78
3090 Overijse
Belgium

Verhuizingen Coppens NV
Tiensesteenweg 270
3360 Bierbeek
Belgium

Ziegler SA
Rue Dieudonné Lefèvre 160
1020 Brussels
Belgium

This Decision shall be enforceable pursuant to Article 256 of the EC Treaty and Article 110 of the EEA Agreement.

Done at Brussels on 11 March 2008,

For the Commission,

Neelie KROES
Member of the Commission

ANNEXES

- **Annex 1** to this Decision contains a list which for each of the removal companies involved, in alphabetical order, shows the evidence of its participation in the implementation of the agreement on commissions for international removals. In some cases the same international removal may be the subject of more than one document.
- **Annex 2** to this Decision contains a list which for each of the removal companies involved, in alphabetical order, shows the evidence of its participation in the implementation of the agreement on cover quotes for international removals. In some cases the same international removal may be the subject of more than one document.

Annex 1

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Annex 2

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