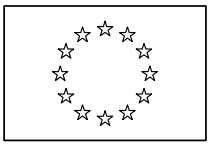

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,

COMMISSION DECISION

of

14 September 2005

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

Commission Decision C(2005)3452 of 14 September 2005 was amended by Commission Decision C(2005)3765 of 13 October 2005

(Case COMP/38337/E1/PO/Thread)

(notified under document number C(2005)3452 and document number C(2005)3765)

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

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to the Commission Decision of 15 March 2004 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 19(1) of Regulation No 17[2], Commission Regulation (EC) No 2842/98 of 22 December 1998 on the hearing of parties in certain proceedings under Articles 85 and 86 of the EC Treaty, Article 27(1) of Regulation (EC) No 1/2003 and Articles 10 and 12 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 Treaty[3],

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

Having regard to the final report of the Hearing Officer in this case[4]

WHEREAS:

1. SUMMARY

1. The findings in this Decision arise out of inspections carried out by the Commission on 7 and 8 November 2001 pursuant to Article 14(3) of Regulation No 17 at the premises of several Community producers of haberdashery products[5]. By means of these inspections and the subsequent investigation, the Commission discovered evidence that

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[1] OJ L1, 04.01.2003, p. 1-25 Regulation as amended by Regulation (EC) No411/2004 (L68, 6.3.2004, p.1)

[2] OJ 13, 21.2.1962, p. 204/62; the Regulation was repealed by Regulation (EC) No 1/2003. Article 34(2) of Regulation No 1/2003 states that procedural steps taken under Regulation No 17 are to continues to have effect for the purposes of applying Regulation 1/2003.

[3] OJ L 123, 27.4.2004, p.18.

[4] OJ C

[5] See Commission Decision of 26.10.2004, case 38.338 PO/Needles.

undertakings had taken part in the following three cartel agreements and concerted practices:

a) a cartel on the market in thread for industrial customers in Benelux[6] and the Nordic countries[7] (the total value of the market is estimated at EUR [40-60] million in 2000, the last full year of the infringement);

b) a cartel on the market in thread for industrial customers in the United Kingdom (the value of the market is estimated at EUR [60-100] million in 2000);

c) a cartel on the market in thread for automotive customers in the European Economic Area (EEA) (the value of the market is estimated at EUR [15-25] million in 2000).

2. For these three markets and for the periods specified in this Decision, the thread producers took part in regular meetings and had bilateral contacts to exchange sensitive information on price lists and/or prices charged to individual customers, to agree on price increases and/or on target prices and to avoid undercutting the incumbent supplier's prices with a view to allocating customers.

3. These horizontal agreements and concerted practices are contrary to Articles 81(1) of the Treaty and 53(1) of the EEA Agreement.

4. On account of their participation or the participation of their subsidiaries in the cartel agreement and concerted practices regarding the market in thread for industrial customers located in Benelux and the Nordic countries, this Decision is addressed to Ackermann Nähgarne GmbH & Co, Amann und Söhne GmbH & Co KG, Barbour Threads Ltd, Belgian Sewing Thread N.V., Bieze Stork B.V., Bisto Holding B.V., Coats

[6] Belgium, Luxembourg and the Netherlands.
[7] Denmark, Finland, Sweden and Norway.

Holdings Ltd, Gütermann AG, Hicking Pentecost plc and Zwicky & Co AG.

5. On account of their participation or the participation of their subsidiaries in the cartel agreement and concerted practices regarding the market in thread for industrial customers located in the United Kingdom (UK), this is addressed to Barbour Threads Ltd, Coats UK Ltd, Coats Holdings Ltd, Dollfus Mieg et Cie SA, Donisthorpe & Company Ltd, Gütermann AG, Hicking Pentecost plc, Oxley Threads Ltd and Perivale Gütermann Ltd.

6. On account of their participation or the participation of their subsidiary in the cartel agreement and concerted practices regarding the market in thread for automotive customers located in the EEA, the present Decision is addressed to Amann und Söhne GmbH & Co KG, Barbour Threads Ltd, Coats Holdings Ltd, Cousin Filterie SA, Hicking Pentecost plc and Oxley Threads Ltd.

Part I – Facts

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The product markets

7. The product markets involved in this Decision are:

a) thread for automotive customers,

b) thread for industrial customers other than automotive customers.

8. "Thread and yarn" form a sub sector of the textile industry. Thread is primarily used by industries and consumers to sew apparel or goods. According to Coats Ltd, the world thread market amounted to EUR [6-7] billion[8] in 2000.

9. The thread business can be divided into two categories[9]:

a) Industrial thread is used by a variety of industries to sew or embroider all kinds of apparel or goods such as leather goods, automotive products and mattresses. Industrial thread sold in the world represents [60-70]% of the world thread market, i.e. EUR [4-5]billion in 2000[10];

b) Consumer thread is primarily used by families and individuals for sewing, mending and leisure activities. It represents [30-40]% of the world thread market[11].

10. According to most undertakings[12], industrial thread and consumer thread are two different product markets. Although production processes might

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8 See Coats' strategy presentation in April 2001 (38036, p. 3618). Exchange rate €/£= 0.609 in 2000 (source: European Central Bank).

9 See Coats' strategy presentation in April 2001 (38036, pp. 3615-3616) and Coats' replies to the Commission's requests for information (38337, p.7464).

10 See Coats' strategy presentation in April 2001 (38036, p. 3618). Exchange rate €/£= 0.609 in 2000 (source: ECB).

11 See Coats' strategy presentation in April 2001 (38036, p. 3618).

12 See replies to the Commission's request for information from Amann (38337, p. 8427), Coats (38337, p.7464). and Gütermann (38337, p.8767).

be the same, there are major differences in packaging and distribution[13]. Consumer thread would be sold in maximum 100 metre spools whilst industrial thread would be sold as a 5 000 or 10 000 metre cone. Consumer thread would be distributed through wholesale and retail outlets before reaching the final consumer, whilst industrial thread is often delivered directly to industrial customers who have the option to specify their own particular colour requirement. These differences in production and distribution costs result in different pricing structures.

11. Industrial thread can be divided into three categories according to their final uses and customers[14]:

a) apparel sewing thread is used for sewing all kinds of apparel. It represents [60-70]% of the industrial thread sold in the world[15];

b) embroidery thread is used on computerised industrial embroidery machines to embellish apparel, athletic footwear and home furnishings. It represents [0-10]% of the industrial thread sold in the world[16];

c) speciality thread is used in a variety of industries such as footwear, leather goods, automotive, mattresses, quilting, bed linen, sports goods, ropes and cables, filtration and body armour. It represents [20-30]% of the industrial thread sold in the world[17].

12. Industrial thread can also be divided into different categories according to the fibre type and the thread construction. In 2001, production of industrial sewing thread in Europe amounted to more than 20 000 tonnes

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13 See answer 2.1.1 in Coats' reply to the Commission's request for information (38337, p. 9489).

14 See Coats' strategy presentation in April 2001 (38036, p. 3615) and letter from the French Minister of Economy, Finance and Industry dated 29 December 2000 relating to the merger of Coats Viyella Plc and DMC, published in BOCCRF No 11 dated 23 August 2001.

15 See Coats' strategy presentation in April 2001 (38036, p. 3618).

16 See Coats' strategy presentation in April 2001 (38036, p. 3618).

17 See Coats' strategy presentation in April 2001 (38036, p. 3618).

and could be divided into the following categories: corespun yarns[18], synthetic high tenacity (HT) yarns, textile continuous filament (CF) yarns[19], staple spun polyester (SSP) fibre yarns[20], cotton and linen and other fibre types.

13. There is no strict correspondence between the end-use and the fibre type/thread construction and industrial thread can therefore be analysed, from a supply point of view, as one single product market[21].

14. However, the thread market for automotive customers must be differentiated from the rest of the industrial thread market. The reason for this is that, although thread for automotive customers and other industrial thread may have similar or easily substitutable production processes, automotive customers are large customers who have higher specification standards for some of the products which they use (e.g. thread for seat belt) and who request uniformity in the different countries where they need thread[22]. Only a few firms can address this type of demand. There are either specialised firms such as Cousin Filterie SA or non-specialised firms such as Coats Holdings Ltd or Amann und Söhne GmbH & Co KG. When firms are global, they generally have specialised managers[23] or even specific trademarks[24] for automotive customers.

15. This Decision therefore concerns two product markets:

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18 Cotton or staple polyester wrapped around a continuous filament of polyester: it can be poly/poly or cotton/poly.

19 Flat, textured and air-entangled yarns.

20 Including polyester tow.

21 See answer 2.1.1 in Coats' reply to the Commission's request for information (38337, p. 9489). According to Coats, the apparel category includes thread made from cotton, staple spun polyester and corespun. The speciality category includes thread made from continuous filament nylon or polyester. The embroidery category includes thread made from CF rayon. In spite of this classification, CF polyester is used by some apparel customers, corespun is used by some footwear, bedding and upholstery customers and staple spun polyester and/or cotton is used by some embroidery customers. Furthermore, according to Coats, a producer of one category of thread can with minimal incremental investment produce all categories of threads. Therefore, apparel thread, embroidery thread and the different types of speciality thread may have common or easily substitutable production processes.

22 See answer 2.2.1 in Coats' reply to the Commission's request for information (38337, p. 9489).

23 See answer 4.3.j in Coats' reply to the Commission's request for information (38337, p. 9530).

24 See Neophil: a special range of threads produced by Coats to meet automotive customers' needs.

a) thread for industrial customers other than automotive customers, hereinafter referred to as "industrial thread";

b) thread for automotive customers, hereinafter referred to as "automotive thread".

2.2. The geographic markets

16. The geographic markets involved in this Decision are:

a) the Benelux countries[25], the Nordic countries[26] and the United Kingdom (UK) for industrial thread,

b) the European Economic Area (EEA) for automotive thread.

2.2.1. The relevant geographic markets for industrial thread

17. First of all, it has to be noted that the market definition is not decisive in a cartel case. According to the information provided by the parties, the relevant geographic market for industrial thread is regional. The region can cover several Contracting Parties to the EEA (e.g. Benelux or Nordic countries) or just one (e.g. the UK).

18. Even if there are no major obstacles to intra-EEA trade, such as national regulatory standards or duties, there are several reasons why the relevant geographic market for industrial thread is not the EEA:

a) the ability to service an order within 1-2 days is a key customer requirement. Given the wide range of possible shades for each type of thread, this requires national stock points and in most countries requires dyeing and finishing capacity which can at least produce the less common shades[27];

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25 Belgium, Luxembourg and the Netherlands.

26 Denmark, Finland, Norway and Sweden.

27 See answer 2.2.2 in Coats' reply to the Commission's request for information (38337, p. 9491) and see the International Federation of Sewing Thread Manufacturers' reply to the Commission's request for

b) the market largely consists of small contractors placing frequent but relatively small orders. These customers will also from time to time require on-the-spot advice on the suitability of specific threads. The high number of customers and orders combined with the need for local advice can only be managed efficiently by a regional sales organisation[28]. Producers tend to have different distribution structures in different countries[29];

c) demand and product specifications for industrial thread vary greatly from one EEA country to another[30]. There are two main reasons for this: first, sewing machines vary from one EEA country to another and often require different thread specifications; second, each EEA country has a different economic specialisation (e.g. Denmark produces professional clothes for industry workers and therefore uses thread for technical textiles, Germany uses a lot of automotive thread, Italy mostly uses apparel thread)[31].

19. The regional character of the market for industrial thread is confirmed by the large range of prices for industrial thread within the EEA. The price range for industrial thread, combined with the differences in the product specifications, results in a range of turnovers being achieved from the sale of 1 kg of industrial thread in the different countries of the EEA For instance, the turnover Gütermann AG achieves by selling 1 kg of industrial thread in one EEA country can be nearly twice as much as the turnover it achieves by selling 1 kg of industrial thread in another EEA country[32]. Furthermore, the organisation of the cartel itself: the producers involved in the infringement set up specialised meetings for

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information, according to which thread suppliers, especially apparel thread and leather thread suppliers, have to deliver thread to their customers at very short notice (38337, p. 10577).

28 See answer 2.2.2 in Coats' reply to the Commission's request for information (38337, p. 9491).

29 See Gütermann's reply to the Commission's request for information (38337, p. 8781).

30 See answer 2.2 in Gütermann's reply to the Commission's request for information (38337, p. 8778).

31 See Gütermann's e-mail dated 9 October 2003. (38337, pp. 10989-10991).

32 See annex 1 of Gütermann's reply to the Commission's request for information (38337, p. 8785).

regional areas such as Benelux, the Nordic countries and the United Kingdom.

20. The Benelux and the Nordic countries could be considered to be two different markets since they are not geographically adjacent. However, because of the structure of the cartel and the similarity of participants and meetings, as presented below, the Commission decided to examine them together.

2.2.2. The relevant geographic market for automotive thread

21. The relevant geographic market for automotive thread is the EEA.

22. This can be explained by two main factors. Firstly, customers for automotive thread, which are far fewer than customers for industrial thread, purchase thread for manufacturing facilities in several countries and request uniformity of the thread in these different countries[33]. Secondly, customers for automotive thread have higher specification standards for some of the products they use (e.g. thread for seat belt) than other customers of industrial thread. It is generally necessary to achieve a minimum quality standard equivalent to ISO 9002 to enter the automotive thread industry. Product traceability is also a key factor due to product quality and liability issues[34]. This has the effect of restricting competition to a few suppliers which are able to make a standardised offer for the whole EEA. Customers for automotive thread can then request offers to supply from any of those suppliers, including suppliers located in other EEA countries.

23. The European character of the market for automotive thread is confirmed by the organisation of the cartel of suppliers of automotive thread: they set up one meeting for the whole of Europe.

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33 See answer 2.2.1 in Coats' reply to the Commission's request for information (38337, pp. 9490-9491).

34 See Oxley's reply to the Commission's request for information (38337, pp. 8722-8723).

2.3. Structure and size of the relevant markets

24. This section will focus on the following markets at issue in this Decision:

a) the markets for industrial thread in Benelux and the Nordic countries[35],

b) the market for industrial thread in the United Kingdom,

c) the market for automotive thread in the EEA.

2.3.1. Markets for industrial thread

2.3.1.1. General characteristics of the EEA markets for industrial thread

25. In the EEA, industrial thread is supplied by a few global players, active either in all business segments (e.g. Coats) or in only one segment (e.g. Madeira, which produces only industrial embroidery thread), and by several family-owned regional players (e.g. Amann und Söhne GmbH & Co KG, Gütermann AG). Significant consolidation has taken place in Europe in recent years through acquisitions of thread manufacturers by other thread manufacturers.

26. Industrial thread, in contrast to consumer thread, is bought by large customers such as apparel manufacturers, who purchase thread directly from the suppliers and negotiate rebates on price lists. Apparel manufacturers are numerous, meaning that apparel thread suppliers have scattered customers (the 10 biggest customers generally represent between 10% and 20% of the turnover of the thread supplier[36]). Apparel manufacturers choose their suppliers on the basis of (a) the choice and quality of the thread the supplier provides, (b) the supplier's ability to

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35 As it will be shown below, the Commission will consider these two markets together.

36 Source of information for this paragraph: letter from the French Minister of Economy, Finance and Industry dated 29 December 2000 relating to the merger of Coats Viyella Plc and DMC, published in BOCCRF No 11 dated 23 August 2001.

deliver thread at short notice (within 24 hours), (c) prices. Apparel manufacturers do not easily change thread suppliers because a shift in supplier involves adjustments to the sewing machines, whereas the cost of thread is very low compared to the total price of apparel (around 1.5%[37]). They generally have two or three suppliers. They negotiate prices and volumes twice a year.

27. Industrial thread business in the EEA is suffering from the decline of the European textile and clothing industries, even though sales are not declining as fast as consumption (the greater part of the industrial thread sold in the EEA is bought by customers who export the product to contractors outside the EEA[38]). According to the French competition authorities, the apparel thread market has declined by 8% each year since 1994. According to another survey, western European production of sewing threads has fallen from 34850 tonnes in 1992 to 18240 tonnes in 2002[39]. According to the parties, prices have tended to decrease since 1996.

2.3.1.2. Market for industrial thread in Benelux and in the Nordic countries

28. According to the replies to the Commission's requests for information, the sales for industrial thread excluding automotive thread in the EEA have been estimated by the parties at EUR [400-600] million. The sales of industrial thread excluding automotive thread in Benelux and in the Nordic countries have been estimated at around EUR [40-60] million in Benelux and in the Nordic countries in 2000. In 2004, the sales of industrial thread excluding automotive thread in Benelux and in the Nordic countries have been estimated by the parties at EUR [30-50] million[40].

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37 See Zwicky's reply to the Commission's request for information (38337 p. 9353).

38 See study provided by Coats on "The European textile and clothing industry" (38337, p. 9679).

39 KoSa Sewing threads European Study 2002, KoSa GmbH & Co. KG, p.22, quoted by BST in its reply to the Statement of Objections.

40 See replies of the parties to the Commission's request for information dated 16 March 2005.

29. The main industrial thread suppliers in Benelux and in the Nordic countries at the end of the 1990s were: Coats Viyella plc, Amann und Söhne GmbH & Co KG, Gütermann AG, Bieze Stork B.V., Belgian Sewing Thread N.V., Zwicky & Co AG, Barbour Threads Ltd before it was acquired by Coats Viyella plc, Älterfil Nähfaden, I. Börner KG (apparel thread in the Netherlands and Belgium), Dollfus Mieg et Cie SA, American and Efird Inc and Forbitex Industrial Threads (mainly in the Netherlands)[41].

2.3.1.3. Market for industrial thread in the United Kingdom

30. According to statistics compiled by the UK Thread Manufacturers Association (UKTMA), a trade association including all the United Kingdom's main industrial thread suppliers, the UK market for industrial thread including automotive thread in 1997 was worth £73.2 million[42], i.e. around EUR 106 million[43].

31. According to the replies to the Commission's requests for information, sales of thread for all industrial customers including automotive thread were between EUR 37 million and EUR 100 million in the United Kingdom in 2001. Amann und Söhne GmbH & Co KG / Donisthorpe & Company Ltd's estimate of EUR [30-45] million is too low. If the the turnovers of the main suppliers of industrial thread in the UK are added together, we learn that the UK market for industrial thread including automotive thread amounts to at least EUR 65.2 million. Bieze Stork B.V., Gütermann AG and Coats estimate the UK market for industrial customers including automotive customers at between EUR 70 million and EUR 100 million.

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41 According to Jimmy Mc Cullough's notes on a meeting held on 8 September 1998 in annex 8 of Coats' reply to the Commission's request for information (38337, p. 9597), Forbitex's total turnover in 1998 was estimated at €4 million, including €1.8 million in the Netherlands.

42 See 38337, p. 1183.

43 Exchange rate, 1997 £1= €1.445 (source: ECB).

32. Sales of automotive thread in the United Kingdom are estimated around EUR [1-5] million. This would imply that the market for industrial thread (excluding automotive thread) in the United Kingdom could be estimated between EUR [50-70] million and EUR [80-100] million.

33. The main industrial thread suppliers in the United Kingdom at the end of the 1990s were: Coats UK Ltd, Donisthorpe & Company Ltd, Oxley Threads Ltd, Barbour Threads Ltd before it was acquired by Coats plc, American and Efird Ltd, Gütermann AG, Amann und Söhne GmbH & Co KG and Somac Threads Ltd[44]. According to the minutes of the UKTMA meeting of 20 April 1998[45], market shares in the UK thread market were the following: Coats [30-40]%, Donisthorpe & Company Ltd [15-25]%, Oxley Threads Ltd [15-25]%, Barbour Threads Ltd [5-15]%, American & Efird [0-10]%, Perivale Gütermann Ltd [0-10]%. However, these market shares are slightly overestimated as the assumed total value of the market does not include the importers' UK sales.

2.3.1.4. Trade in industrial thread between the EEA countries.

34. According to customs statistics[46], intra-Community trade in industrial thread (including automotive thread) amounted to EUR [150-250] million in the Community in 2001[47]. If the size of the EC industrial thread market is estimated at around EUR [400-600] million[48], then

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44 See Oxley Threads' reply to the Commission's request for information (38337, p. 8729).

45 See 38337, p. 2168.

46 See the International Federation of Sewing Thread Manufacturers' reply to the Commission's request for information (38337, p. 10581). These statistics also include trade originating from wholesalers and customers.

47 Interstate trade originates mainly from the increasing rationalisation of thread production. Owing to the cost of the machines and warehouses (thread production requires different steps in manufacturing), many thread suppliers tend to concentrate their production in a few EEA countries and to export their production to the rest of the EEA (Germany and Spain for Gütermann, the United Kingdom for Oxley Threads). Some large suppliers (e.g. Coats) have national sales organisations, so that these exports are intra-company flows. Other thread suppliers have distributors or send thread directly to their customers, so that these exports are taken into account in interstate trade. As a consequence, some addressees of this Decision export only a small part of their production to other EEA countries, whereas other addressees export most of their production.

48 See tables 2 and 3.

intra-Community trade[49] in industrial thread (including automotive thread) represents around one third of the Community market for industrial thread. There are no technical or regulatory barriers to trade in thread in the EEA. Furthermore, thread can easily be stocked and transported.

2.3.2. Market for automotive thread

2.3.2.1. General characteristics of the market for automotive thread

35. EEA sales of thread for automotive customers have been estimated by the parties to be around EUR [15-25] million in 1999[50].

2.3.2.2. Main suppliers of automotive thread in the EEA

36. The main suppliers of automotive thread in the EEA in 2004 were Amann und Söhne GmbH & Co - Cousin Filterie SA, Coats plc-Barbour Threads Ltd, Gütermann AG-Zwicky & Co AG, Oxley Threads Ltd and American and Efird Inc[51]. Amann und Söhne GmbH & Co - Cousin Filterie SA is a leading supplier of automotive thread.

2.3.2.3. Trade in automotive thread between the EEA countries.

37. The volume of trade in automotive thread between the EEA countries is high. Thread can easily be stocked and transported. As for industrial thread, there are no technical or regulatory barriers to trade in automotive thread in the EEA.

38. As for industrial thread, interstate trade originates mainly from the increasing rationalisation of thread production. Due to the cost of the machines and warehouses, many thread suppliers have concentrated

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49 Including interstate trade within the regions at stake in this Decision, such as Benelux and the Nordic area.

50 See replies from the parties to the Commission's request for information dated 16 March 2005.

51 See Zwicky's reply to the Commission's request for information (38337, p. 9359).

their production in only a few EEA countries and export their production to the rest of the EEA.

2.4. Undertakings which have taken part in the infringements described in the present Decision

2.4.1. Coats Viyella plc (later known as "Coats plc", then "Coats Ltd" and now known as "Coats Holdings Ltd"[52])

39. During most of the period of the infringement, the company's name was Coats Viyella plc, but this was changed in May 2001 to Coats plc and to Coats Ltd in November 2003, then to Coats Holdings Ltd in July 2004. Coats Ltd, now known as Coats Holdings Ltd, is the legal successor of Coats Viyella and Coats plc. Coats Ltd did not question this Commission finding. At least since 1990 and therefore during the period of the infringement, Coats Viyella plc (hereinafter Coats) has been a separate legal entity. Coats was not controlled by any parent company until 7 April 2003. Since that date, Coats has been controlled by Coats Holdings plc.

40. Coats has many subsidiaries which operate in the thread business[53]. Among them, Coats UK Ltd, its UK subsidiary, and Barbour Threads Ltd, which was acquired by Coats Viyella plc in September 1999, have taken part in the infringements described in this Decision.

41. Coats is the leader on the world thread market. It manufactures and distributes industrial and consumer sewing thread. Other activities include the manufacture and distribution of zips, as well as the distribution of hard haberdashery products.

42. According to Coats' annual report for 2001, Coats' world sales were £1 247 million (EUR 2 005 million[54]), Coats' world sales of thread were

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52 Coats Holdings Ltd, The Square, Stockley Park, Uxbridge, UK-Middlesex UB11 1TD.

53 See annex 2 of Coats' reply to the Commission's request for information (38337, p. 9541-9542).

54 Exchange rate £/€ = 1.608 in 2001 (source: Eurostat).

£844 million (EUR 1 357 million[55]) and Coats was the world's largest supplier of thread with a 22% global market share and operations in 63 countries. According to information provided by Coats[56], Coats' EEA sales of industrial thread in 2001 amounted to EUR [100-150] million.

43. Coats's total turnover was EUR 1375 million in 2004.

2.4.2. Amann und Söhne GmbH & Co. KG[57]

44. At least since 1990 and therefore during the period of the infringement, Amann und Söhne GmbH & Co KG (hereinafter Amann) has been a separate legal entity and has not been under the control of any parent company. Amann acquired Ackermann Nähgarne GmbH & Co in 1994, Cousin Filterie SA between 1996 and 2002 and Donisthorpe & Company Ltd in 2001.

45. According to the French competition authorities[58], Amann is the second largest supplier of apparel thread in Europe (after Coats), with a market share of between 20% and 30%, and the largest supplier of speciality thread in Europe, with a market share of between 40% and 50%.

46. According to information provided by Amann, Amann's world sales in 2001 were EUR 195 million[59] and Amann's EEA sales of industrial thread were EUR [100-150] million[60].

47. Amann's total turnover was EUR 154 million in 2004.

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55 Exchange rate £/€ = 1.608 in 2001 (source: Eurostat).

56 See Coats' reply to the Commission's request for information (38337, pp. 7472/9499 and pp. 7501/9538) and Coats' e-mail dated 24 July 2003 (38337, p. 10495).

57 Amann und Söhne GmbH & Co KG, Hauptstrasse 1, D-74357 Bönnigheim.

58 See letter from the French Minister of Economy, Finance and Industry dated 29 December 2000 relating to the merger of Coats Viyella Plc and DMC.

59 See answer 3.3.1 in Amann's reply to the Commission's request for information (38337, p. 8276).

60 See annex 2 of Amann's reply to the Commission's request for information (38337, p. 8286).

2.4.3. Gütermann AG[61]

48. At least since 1990, and therefore during the period of the infringement, Gütermann AG (hereinafter Gütermann) has been a separate legal entity and has not been under the control of a parent company. It controls Perivale Gütermann Ltd, its UK subsidiary, and Zwicky & Co AG, which was acquired in 2000.

49. According to information provided by Gütermann, Gütermann's world sales in 2001 were EUR 136 million[62] and Gütermann's EEA sales of industrial thread were EUR [10-50] million[63].

50. Gütermann's total turnover in 2004 was EUR 132 million.

2.4.4. Coats UK Ltd[64]

51. At least since 1990 and therefore during the period of the infringement, Coats UK Ltd (hereinafter Coats UK) has had legal personality and has been a wholly owned subsidiary of Coats[65].

52. According to information provided by Coats UK, Coats UK's world sales in 2001 were EUR 71 million[66] and Coats UK's EEA sales of industrial thread were EUR [10-50] million.

2.4.5. Cousin Filterie SA[67]

53. At least since 1995 and therefore during the period of the infringement, Cousin Filterie SA has had legal personality.

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61 Gütermann AG, Landstrasse 1, D-79261 Gutach-Breisgau.

62 See answer 3.3.2 in Gütermann's reply to the Commission's request for information (38337, p. 8770).

63 See annex 6 of Gütermann's reply to the Commission's request for information (38337, p. 9051).

64 Coats UK Ltd. 1 The Square, Stockley Park, Uxbridge, Middlesex, UB11 1TD, England.

65 See appendix 2 of Coats' reply to the Commission's request for information (38337, p. 9542).

66 Exchange rate £/€ = 1.608 in 2001 (source: Eurostat). See Coats' reply to the Commission's request for information (38337, p. 11003)

67 Cousin Filterie SA, 8 rue de l'abbé Bonpain, F-59117 Wervicq-sud.

54. In 1995, Cousin Filterie SA was a wholly owned subsidiary of Cousin Frères. From 1996, Amann progressively acquired Cousin Filterie SA (hereinafter Cousin).

Table: Acquisition of Cousin by Amann[68]

	Share of Cousin owned by Amann	Number of Directors employed by Amann on Cousin's Board/ number of Directors on Cousin's Board.
30/09/1996	[…]%	[…]
31/10/1998	[…]%	[…]
29/09/2001	[…]%	[…]
1/10/2002	100%	4/4

55. Cousin manufactures sewing threads, mostly synthetic continuous yarns. Its main customers are customers of speciality thread, in particular automotive customers. Its main geographic market is France.

56. According to information provided by Cousin[69], Cousin's world sales in 2001 were EUR 27 million and Cousin's EEA sales of industrial thread were EUR [10-27] million.

2.4.6. Oxley Threads Limited[70]

57. At least since 1990 and therefore during the period of the infringement, Oxley Threads Ltd (hereinafter Oxley Threads) has been a separate legal entity and has never been under the control of a parent company.

58. Its business is split approximately 50/50 between apparel and speciality threads (including automotive).

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68 See Cousin's reply to the Commission's request for information (38337, p. 380).
69 See Cousin's reply to the Commission's request for information (38337, p. 381 and p. 392).
70 Oxley Threads Limited, Guide Mills, UK - Ashton-Under-Lyne, OL7 OPJ.

59. According to information provided by Oxley Threads[71], Oxley Threads' world sales in 2001 were EUR 25.6 million and Oxley Threads' EEA sales of industrial thread were EUR [10-25.6] million.

60. Oxley's total turnover in 2004 was EUR 19.44 million.

2.4.7. Donisthorpe & Company Ltd[72]

61. Since it was founded in 1739, Donisthorpe & Company Ltd (hereinafter Donisthorpe) has had legal personality. From 1988 until 8 January 2001, Donisthorpe was a wholly owned subsidiary of Dollfus Mieg et Cie SA (hereinafter DMC)[73]. Until 2001, DMC used to supply industrial and consumer thread. DMC's worldwide sales amounted to EUR 234 million in 2000 and fell to EUR 95 million in 2002[74]. Since 9 January 2001, Donisthorpe has been a wholly owned subsidiary of Amann.

62. According to information provided by Donisthorpe[75], Donisthorpe's world sales in 2001 were EUR 18 million and Donisthorpe's EEA sales of industrial thread were EUR [10-18] million.

2.4.8. Belgian Sewing Thread N.V.[76]

63. At least since 1990 and therefore during the period of the infringement, Belgian Sewing Thread N.V. (hereinafter BST) has had legal personality. Until 1996, BST had no parent company. Since April 1996[77], BST has been entirely controlled by Flovest N.V.[78], either directly or through Vannesco N.V., a wholly owned company of Flovest.[79].

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71 See Oxley Threads' reply to the Commission's request for information (38337, pp. 874/8728).
72 Donisthorpe & Company Ltd, Bath Lane, Leicester, UK-LE1 9BQ Leicestershire.
73 Dollfus Mieg et Cie, 10 avenue Ledru Rollin, F-75579 Paris.
74 See DMC's reply to the Commission's request for information (38337, p. 431).
75 See Donisthorpe's reply to the Commission's request for information (38337, p. 3248) and Donisthorpe's e-mail dated 1 July 2003 (38337, p. 10087).
76 BST, Oude Heerweg 129, B-8540 Deerlijk.
77 See BST's e-mail dated 27 October 2003 (38337, p. 11005).
78 Flovest N.V., Burg. B. Dannelstraat 191 C, B-8500 Kortrijk.
79 Vannesco N.V., Louisalaan 522, 2 verdiep, B-1050 Brussel.

64. BST is a manufacturer of industrial thread for the apparel industry. Its main market is Belgium ([…]of its total sales).

65. According to information provided by BST[80], BST's world sales in 2001 were EUR 15.5 million and BST's EEA sales of industrial thread were EUR [10-15.5] million.

66. BST's total turnover in 2004 was EUR 12.24 million.

2.4.9. Barbour Threads Ltd[81](formerly known as "Barbour Campbell Threads Ltd").

67. At least since 1990 and therefore during the period of the infringement, Barbour Threads Ltd (hereinafter Barbour) has had legal personality. Until September 1999, Barbour Threads Ltd was wholly owned by Barbour Campbell Textiles Ltd, which in turn was wholly owned by a UK publicly quoted holding company – Hicking Pentecost plc[82]. In 1998, Hicking Pentecost plc had a worldwide turnover of EUR 195 million[83]. In September 1999, Coats acquired Hicking Pentecost plc. Barbour Threads Ltd still exists as a non-operating legal entity within the Coats group, but its business has now been absorbed into Coats.

68. According to information provided by Barbour[84], Barbour's world sales in 1998 were at least EUR 135 million and Barbour's EEA sales of industrial thread were EUR [0-50] million.

2.4.10. Perivale Gütermann Ltd[85]

69. At least since 1990 and therefore during the period of the infringement, Perivale Gütermann Ltd (hereinafter Perivale Gütermann) has had legal personality. Perivale Gütermann is the Gütermann's subsidiary in charge at least of the UK market.

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80 See BST's reply to the Commission's request for information (38337, p. 3366).
81 Barbour Threads Ltd c/o Coats, 1 The Square, Stockley Park, Uxbridge, UK-Middlesex UB11 1TD.
82 Hicking Pentecost plc c/o Coats, 1 The Square, Stockley Park, Uxbridge, UK-Middlesex UB11 1TD.
83 See Coats' reply for Barbour to the Commission's request for information (38337, p. 8752).
84 See Coats' e-mail dated 18 July 2003 (38337, p. 10492).
85 Bullsbrook Rd. UK- Hayes, Middlesex UB4 OJR.

70. According to information provided by Perivale Gütermann[86], Perivale Gütermann's world sales in 2001 were EUR 9 million and Perivale Gütermann's EEA sales of industrial thread were EUR [0-9] million.

2.4.11. Bieze-Stork B.V.[87]

71. At least since 1990 and therefore during the period of the infringement, Bieze Stork B.V. (hereinafter Bieze Stork) has had legal personality. In 1990, Bieze Stork was the subject of a management buyout by Mr André Le Noble by means of his holding company Bisto Holding B.V.[88] (hereinafter Bisto). In 2002, American and Efird Inc acquired control of Bieze Stork.

72. According to information provided by Bieze Stork[89], Bieze Stork's world sales in 2001 were EUR 7.1 million and Bieze Stork's EEA sales of industrial thread were EUR [0-7.1] million.

73. Bieze Stork's total turnover in 2004 was EUR 5.71 million.

2.4.12. Zwicky & Co AG[90]

74. At least since 1990 and therefore during the period of the infringement, Zwicky & Co AG (hereinafter Zwicky) has had legal personality. Until November 2000, Zwicky had no parent company. In November 2000, Zwicky was acquired by Gütermann. Since that date, Zwicky has no longer been active.

75. Zwicky was a manufacturer and a distributor of sewing thread, in particular speciality thread for the automotive, footwear and leather industries.

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86 See Perivale Gütermann's reply to the Commission's request for information. Exchange rate €/£ = 0.622 in 2001 (source: Eurostat).

87 Bieze Stork B.V., p.c. stamstraat 19a, postbus 22, NL- 7440 ZA Nijverdal.

88 Bisto Holding B.V. Hofkampstraat 100, 7607 NJ Almelo, NL.

89 See Bieze Stork's reply to the Commission's request for information (38337, pp. 522/10468 and p. 561).

90 Zwicky & Co AG, Neugut, CH-8304 Wallisen.

76. According to information provided by Zwicky[91], Zwicky's world sales in 1999 were EUR 4.5 million and Zwicky's EEA sales of industrial thread were EUR [0-4.5] million.

2.4.13. Ackermann Nähgarne GmbH & Co[92]

77. At least since 1990 and therefore during the period of the infringement, Ackermann Nähgarne GmbH & Co (hereinafter Ackermann Nähgarne) has had legal personality. Ackermann Nähgarne was acquired by Amann on 1 January 1994. It still has legal personality, but it is under Amann's control in particular as regards its sales policy. Since 1994, Ackermann Nähgarne has had no sales structure and no customers.

3. PROCEDURE

3.1. Opening of the case

78. An ex-officio procedure was opened after the Commission received a letter from Entaco (The English Needle & Tackle Company) on 29 August 2000. Entaco, a manufacturer of sewing needles headquartered in the United Kingdom, accused Coats and Prym GmbH, a leader in the hard haberdashery market in Europe, of anticompetitive behaviour regarding the market for haberdashery products (needles, pins, tape measures, elastics, scissors, fasteners, etc.).

3.2. Inspections

79. On 30 October 2001, the European Commission adopted decisions pursuant to Article 14(3) of Council Regulation No 17 of 6 February 1962, requiring Coats, Prym, Entaco and Fachverband Verbindungs- und Befestigungstechnik[93] "to submit to investigations into their possible participation in anticompetitive agreements and/or practices and/or

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91 See Zwicky's reply to the Commission's request for information (38337, pp. 9357-9358).

92 Ackermann Nähgarne GmbH, Fabrikstrasse 11, D-86199 Augsburg.

93 Professional association of suppliers of fasteners.

decisions contrary to Article 81 of the EC Treaty in the sector of hard and soft haberdashery, thread and textiles, by which the producers and the distributors directly or through Fachverband Verbindungs- und Besfestigungstechnik fix prices for the relevant products, conclude price agreements providing for percentage increases for each undertaking, exchange sensitive information, enter into market sharing agreements and conclude exclusive distribution agreements the object allegedly being to prevent market entry initiatives".

80. On 7 and 8 November 2001, inspections were carried out at the premises of Coats plc (United Kingdom), Prym (Germany), Entaco Ltd (United Kingdom) and Fachverband Verbindungs- und Befestigungstechnik (Germany).

81. At Coats' premises, the inspectors found evidence of a cartel formed by thread manufacturers with a view to exchanging sensitive information, fixing prices and allocating customers for the industrial thread market in the Nordic countries[94] and in Benelux[95] and for the automotive thread market in the EEA[96]. A Coats internal e-mail was also found where a Coats' employee complains that Oxley "still continues to undercut Coats' pricing for […]"[97].

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94 See (38036, p.3603): "the rule in Scandinavia has always been that we don't cut each others' prices. The general rules are agreed every year in a "club meeting" also with Gütermann, BST and Bieze Stork".

95 See e-mail written on 18 May 1999 by Mr. […] of Gütermann AG to Mr. […] of Coats, enclosing an invitation to a meeting in Prague on 7 September, with a "Scandinavian" meeting in the morning and a "Benelux" meeting in the afternoon (38036, p. 4145).
See Coats' internal e-mail written on 4 August 1999 by Mr. […] to Mr. […], referring to Mr. […]'s invitation: "the meeting is organised by Amann and Gütermann. The idea is to discuss about prices once a year. […] I have participated once in a meeting concerning the Baltic area and that meeting was useful and helps us to maintain the rather high price structure especially in Estonia." (38036, p. 4145).
See Coats' internal e-mail written on 30 June 2000 by Mr. […] : "The rule in Scandinavia has always been that we do not cut each other's prices. The general rules are agreed every year in a club meeting also with Gütermann, BST and Bieze-Stork." (38036, p. 3603)

96 See Coats' internal e-mail dated 9 June 1999 from Mr. […] to Mr. […]. This e-mail constitutes evidence that Coats, Oxley Threads, Barbour Threads, Cousin Filterie and Amann met on 8 June 1999 and discussed prices for filaments for European automotive customers. In particular, participants discussed prices offered to […] and agreed to establish minimum target prices for all European customers and countries for core products (38036, p. 4147).

97 See 38036, p. 4028 and p.4029

3.3. Applications for leniency and replies to the Commission's requests for information

82. By letter dated 26 November 2001 which was received by the Commission on 27 November 2001, Coats (and its subsidiaries) filed an application under the Commission Notice on the non-imposition or reduction of fines in cartel cases[98], providing evidence of cartels relating to automotive thread sold in Europe and to industrial thread sold in Benelux, the Nordic countries and the United Kingdom. Coats sent the Commission documents to attest that it had instituted an antitrust compliance policy in Europe on 14 November 2001.

83. On the basis of the documents taken during the inspections and provided by Coats with its leniency application, the Commission sent requests for information under Article 11 of Regulation No 17 in March and August 2003. These requests were addressed to Ackermann Nähgarne, Amann, American & Efird, Barbour, Bieze Stork, BST, Coats UK, Coats, Cousin, Donisthorpe, DMC, Gütermann, Oxley Threads, Perivale Gütermann and Zwicky. The letters required detailed information about the companies, the EEA thread markets and the contacts the companies had had with other thread suppliers since 1990. Requests for information were also sent to the International Federation of Sewing Thread Manufacturers and to Johnson Controls, an automotive thread customer.

84. Replies to the Commission's requests for information were received between April and October 2003.

85. In its reply to the request for information dated 17 April 2003 and received on 18 April 2003 by the Commission, Oxley Threads applied for a reduction in fines. In its letters dated 17 April 2003 and 2 May 2003, Oxley Threads provided some information relating to contacts

98 OJ C 207, 18.7.1996, p. 4.

between UK thread suppliers, as well as some information relating to contacts between automotive thread suppliers[99].

86. In its reply to the request for information dated 17 April 2003 received by the Commission on 22 April 2003, Bieze Stork expressed its intention to cooperate with the Commission and provided some information relating to contacts between thread suppliers for Benelux industrial customers[100]. However, Bieze Stork failed to provide all the information in its possession and even denied infringements for which the Commission had evidence of Bieze Stork's participation[101].

87. In its reply to the Commission's request for information, Amann[102] admitted that list prices in Scandinavia and Benelux were discussed during meetings, that the objective was to increase list prices and that there were also discussions about suppliers who had undercut their competitors.

88. On 18 March 2004 the Commission sent a Statement of Objections to the following addressees:

a) on account of their participation or the participation of their subsidiary in the cartel agreement and concerted practices regarding the market in thread for industrial customers located in Benelux and the Nordic

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99 See 38337, p. 8746.

100 Bieze Stork confirmed that meetings between thread suppliers selling in Benelux had been held since 1990, that price lists were exchanged and that it was agreed twice (for the years 1998 and 2001) that the list prices should be increased (38337, pp. 526-527/10472).

101 In its letter dated 17 April 2003, Bieze Stork requested a meeting with the Commission "to fully disclose any knowledge Bieze Stork had about these meetings" (38337, p. 514). However, during the meeting held on 21 May 2003 with the Commission, Bieze Stork did not provide any new information. Neither did it do so in its letter dated 14 July 2003 (38337, pp. 10457-10462). In this letter, Bieze Stork even denied that it had knowledge of any anticompetitive behaviour affecting regions outside Benelux, whereas in its letter dated 17 April 2003, Bieze Stork had admitted to having attended one or two meetings concerning the Scandinavian market. Furthermore, the Commission has evidence of Bieze Stork's participation in agreements on price increases for the Nordic countries. In its letter of 14 July 2003, Bieze Stork did not confirm the 3.5% increase in its prices in the Netherlands and in Belgium in 2001 and stated that "so far, we have no evidence to confirm this estimation given by the European Commission during the meeting on 21 May 2003", even though that 3.5% price increase could easily be checked on its price lists.

102 See Amann's reply to the Commission's request for information (38337, p. 8283).

countries, to Ackermann Nähgarne GmbH & Co, Amann und Söhne GmbH & Co KG, Barbour Threads Ltd, Belgian Sewing Thread N.V., Bieze Stork B.V., Bisto Holding B.V., Coats Ltd, Flovest N.V., Gütermann AG, Hicking Pentecost plc and Zwicky & Co AG.

b) on account of their participation or the participation of their subsidiary in the cartel agreement and concerted practices regarding the market in thread for industrial customers located in the United Kingdom, to American & Efird Inc, American & Efird Ltd, Barbour Threads Ltd, Coats UK Ltd, Coats Ltd, Dollfus, Mieg et Cie SA, Donisthorpe & Company Ltd, Gütermann AG, Hicking Pentecost plc, Oxley Threads Ltd and Perivale Gütermann Ltd.

c) on account of their participation or the participation of their subsidiary in the cartel agreement and concerted practices regarding the market in thread for automotive customers located in the EEA, to Amann und Söhne GmbH & Co KG, Barbour Threads Ltd, Coats Ltd, Cousin Filterie SA, Gütermann AG, Hicking Pentecost plc and Oxley Threads Ltd.

89. Access to the file was provided to the parties in electronic form. A CD Rom containing a copy, excluding business secrets and other confidential information, of all the documents relating to the thread business in the Commission's file COMP/38036[103] and all the documents in the Commission's file COMP/38337 was sent to the parties on 7 April 2004. The deadline to reply was 27 May but an extension of the period to reply was granted to several addressees.

90. Replies to the Statement of Objections were received between 18 May and 21 June 2004. Some addressees made a joined reply to the Statement of Objections. Coats Ltd replied on behalf of Coats Ltd, Coats UK Ltd, Barbour Threads Ltd and Hicking Pentecost Plc. Amann und Söhne

[103] The file COMP/38036 contains the documents received before the inspection, documents copied during the inspection and documents received just after the inspection.

GmbH replied on behalf of Amann, Ackermann Nähgarne GmbH, Cousin Filterie SA and Donisthorpe & Company Ltd. Gütermann AG replied on behalf of Gütermann AG, Perivale Gütermann Ltd and Zwicky & Co. AG.

91. As it will be described in section 4, most[104] of the parties to which this Decision is addressed admitted the facts presented in the Statement of Objections but some of them questioned the importance of their participation or the impact of the agreements on the markets concerned.

92. A Hearing took place on 19 and 20 July 2004.

93. Access to the non-confidential version of the responses to the Statement of Objections, as well as comments of parties on the Hearing, was granted to the parties by letter sent on 24 September 2004[105]. The parties were given the opportunity comments within a fixed deadline.

94. After having given the undertakings the opportunity to make known their view on the objections raised by the Commission, the Commission decided to close the proceedings against American & Efird Inc and American & Efird Ltd since it did not have evidence of American & Efird's participation in the cartel in the United Kingdom. Similarly, the Commission decided to close proceedings against Gütermann as regards the cartel for automotive thread.

4. DESCRIPTION OF THE EVENTS

95. This section provides a description of the facts in relation to each of the three cartels, namely the cartel agreement for industrial thread sold in

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104 As will be described later in the text, Coats, Gütermann and BST admitted the facts presented in the Statement of Objections but sometimes questioned the duration or importance of their participation or the impact of the agreements. Amann acknowledged the facts but considered the evidences on rebates as insufficient. Bieze Stork acknowledged having participated in the meetings and that it agreed to increase its list prices twice during the meetings but denied having personally comitted the other infringements.

105 BST's comments on the Hearing was also made accessible. Oxley's written reply to questions asked during the Hearing was made accessible on 7.10.2004.

Benelux and the Nordic countries, the cartel agreement for industrial thread sold in the United Kingdom and the cartel agreement for automotive thread sold in the EEA.

4.1. Cartel concerning industrial thread sold in Benelux[106] and in the Nordic countries[107]

4.1.1. Objectives, participants and organisation of the cartel

96. The agreement and concerted practices between Ackermann Nähgarne GmbH & Co[108], Amann und Söhne GmbH & Co KG, Barbour Threads Ltd[109], Belgian Sewing Thread N.V., Bieze Storck B.V., Coats Viyella plc[110], Gütermann AG and Zwicky & Co AG had as their primary objective the maintenance of high prices on the market for industrial thread sold in Benelux and in the Nordic countries.

97. The meetings were held at least once a year and were split into two halves: a session (generally the morning session, but the order sometimes changed) during which the Nordic markets were discussed and a session (generally the afternoon) during which the Benelux markets were discussed. From 1990 to 2001, the undertakings attending the meetings were Coats, Amann, Gütermann, Bieze Stork, BST, Zwicky until it was acquired by Gütermann, Ackermann Nähgarne until it was acquired by Amman, Barbour until it was acquired by Coats. Bieze Stork and BST attended the Benelux session from the beginning of the cartel until 2001, and the Nordic session only from 1998 and 1997 respectively until 2001.

98. The Benelux and the Nordic countries appear to be two different markets. However, as mentioned above, the cartels on these two markets will be examined together for the purpose of this Decision. Indeed, the

106 Belgium, Luxembourg and the Netherlands.
107 Denmark, Finland, Norway and Sweden.
108 Until purchased by Amann in 1994.
109 Until purchased by Coats in September 1999.
110 Known as Coats plc from May 2001 until November 2003 and Coats Ltd after November 2003.

Benelux and Nordic markets were discussed on the same day, the participants were exactly the same and the decisions taken were similar.

99. As the vast majority of customers negotiate rebates on list prices[111] and obtain "special prices", the participants in the cartels had mainly two types of contacts. At least once a year, they attended meetings mainly to agree on list prices and on maximum rebates. They also regularly had bilateral day-to-day contacts mainly to agree on net prices[112] to specific customers with a view to avoiding undercutting each other.

100. The meetings will be detailed below in the next section.

101. In order to maintain high prices, the participants in the agreement committed a number of infringements.

Exchange of price lists and discussion of these price lists

102. Current price lists were exchanged either before or during the meetings and discussed during the meetings. One member of the group was in charge of collecting the price lists and circulating them. This role was played by Bieze Stork for a certain period of time[113].

103. The fact that price lists were exchanged and discussed during the meetings is admitted by all suppliers[114]. BST has provided the Commission with the price lists it received from its competitors during these meetings. Coats, BST, Bieze Stork, Gütermann and Amman have all acknowledged in their replies that price lists were exchanged and discussed.

Agreement on future price lists, including agreement on price list increases as well as on the dates from which each supplier was to announce and implement the price list increases

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111 According to Mr. […] of Coats (see 38337, p. 10222), customers usually buy at a discount of somewhere between 20 and 60% off the prices as stated on price lists.

112 List price less rebate.

113 See annex 14 of BST's reply to the Commission's request for information (38337, pp. 6426-7437).

114 Coats/Barbour, BST, Bieze Stork, Gütermann/Zwicky, Aman/Ackermann.

104. The main purpose of the meetings was to agree on future price lists. When an increase in prices was decided on, participants also agreed on the date from which this increase would be announced and implemented.

105. All suppliers have admitted that participants of the meetings agreed on future price lists, which included price list increases and their date of implementation.

106. Coats admitted to having agreed on future price lists with its competitors and on the dates from which any increases would take effect, for both the Nordic[115] and the Benelux[116]markets. This is also confirmed by the notes taken during the meetings by BST, Barbour and Coats[117].

107. Bieze Stork[118] also conceded that list prices were agreed twice, for 1998 and 2001, for Belgium and the Netherlands.

108. Amann/Ackermann[119] admitted, in their response to the Commission's 2003 request for information, that participants in the meetings discussed price lists and tried to increase them. In its reply to the Statement of

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115 Concerning the meetings for the Nordic countries, Mr. […] from Coats stated: "List prices for industrial thread in Denmark, Sweden, Norway and Finland were discussed and future prices agreed at the meetings, as were the dates from which any increases were to take effect. It was understood between participants that they would keep to any price increases agreed" (38337, p. 10304).

116 Concerning the meetings for Benelux, Mr. […] from Coats stated: "Discussions at the meetings concerned list prices and the question of whether those prices should be increased (although the list prices of the companies represented at the meetings were never quite the same, they were at more or less the same level). […] Each representative announced his company's intentions in relation to any price list increases for the next year around the table at the meetings" (38337, pp. 10311-10313).

117 For instance, notes provided by BST on a BST price list show that, in 1991, participants decided to fix the list price for spun polyester at 10% below the list price for poly-poly, instead of 27% for BST when the decision was reached. According to other notes provided by BST, during the meeting held on 8 October 1996, Coats said that "in 1995, a 3% increase was allowed" (38337, p.6499). According to Barbour's notes on the meeting held on 8 September 1998, Bieze Stork reported that "they had implemented a 10% increase in Sweden on their list as previously agreed" (38337, pp. 8058-5059). As shown by Coats' internal e-mail, participants in the meeting held on 19 September 2000 agreed to increase prices in Belgium and the Netherlands by 3.5% between January and March and that BST would be the first to implement the increase (38337, p. 10232-10234).

118 According to Bieze Stork's reply to the Statement of Objections, it "only" agreed twice (for the years 1998 and 2001) that list prices should be increased. Even though Bieze Stork admits only having agreed twice to increase list prices, the meeting history below shows that, while general price increases might have been rather rare from 1995 onwards (mainly in 1998 and 2001), price increases for certain brands and suppliers with a view to coordinating prices were frequent, as evidenced by the statements of the other parties..

119 See Amann's reply to the Commission's request for information (38337, pp. 8282-8283).

Objections[120], Amann/Ackermann confirmed their participation in various meetings until 2001, during which the competitors reached a common understanding on list price increases.

109. In its reply of May 2003 to the Commission's request for information, Gütermann first denied that future price lists were agreed during these meetings. However, in its reply to the Statement of Objections, Gütermann contradicted its earlier response and admitted that between 1990 and 2001 "competitors exchanged current price lists either before or during these meetings. Based on the exchanged price lists, discussion arose around future list prices and in part also around special prices(…) The decision of each company regarding increases in list prices and in part also special prices and their implementation were revealed. At the following meeting, each company reported on the implementation of the previously discussed increases in list prices and special prices". Gütermann further explained that the actual net prices for industrial thread sold in Benelux and in the Nordic countries had moved away from the list prices, so that "the purpose of the meetings was to close the gap between the list prices and the actual net prices and, by way of an increase in the list prices, to raise the net prices (which were not exchanged among the participants) for certain products indirectly[121]".

110. BST, in its reply to the Statement of Objections, admitted that between April 1991 and September 2001 it attended periodic meetings aimed at "exchanging information (price lists and discounts) and making agreements about price increases and/or recommended prices"[122].

111. Prices were discussed by countries and by brands rather than by end uses[123]. Each brand corresponds to a certain fibre type/thread

120 Amann/Ackermann/ Cousin/ Donisthorpe's reply to the Statement of Objections, p.7-8.
121 Gütermann's reply to the Statement of Objections, p.3.
122 BST's reply to the Statement of Objection, par. 31.
123 See statement by Mr. […] of Coats (38337, p. 10222) and answer 4.2.1.e in Coats' reply to the Commission's request for information (38337, pp. 8222-8227/9513).

construction[124] and it was therefore possible to determine which brands were in competition with each other[125]. Coats has indicated the main brands which were discussed[126]. The price increases would concern one, several or all brands. They would concern the whole area (Benelux and/or the Nordic countries) or only certain countries. They could differ from one supplier to another.

Exchange of information on rebates, agreement on maximum rebates and rebate decreases, and/or fixing of minimum prices

112. Rebates were discussed and agreed during the meetings. Jo Leenders of Coats admitted that suppliers agreed on maximum rebates until the mid-1990s[127]. Barbour's notes[128] also show that participants in the meeting in Prague on 8 September 1998 agreed on a maximum rebate of 50% in Norway. Coats, Amann and Gütermann also agreed to "exchange information on turnovers at different discount band levels". Furthermore, Coats and Bieze Stork confirmed cutting rebates and bonuses for Belgium. On 19 September 2000, participants discussed reducing rebates in Sweden[129]. Suppliers also agreed on rebates during the meeting in Vienna on 8 October 1996 ("discounts between 15 and 25% for small customers"), during the meeting in Zurich on 9 September 1997[130] and during the meeting on 7 September 1999[131]. A minimum price for corespun 120 cones 5000 mtr was fixed in Sweden during the meeting on 19 September 2000[132].

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124 See the section of this Decision entitled "The product markets".

125 For instance, the Epic brand produced by Coats is a polyester-wrapped thread with a polyester filament core. It is in competition with Amann's Saba and with Gütermann A. Epic can be used for several end uses such as sewing apparel, but also for sewing leather articles.

126 See answer 4.2.1.e in Coats' reply to the Commission's request for information (38337, pp. 8222-8227/9513).

127 See Mr. […]' statement (38337, p. 10311).

128 38337, pp.8058-8059.

129 See 38337, p.5682 and pp.10232-10234.

130 See Annex 14 of BST's reply to the Commission's request for information.

131 See minutes of the meeting on 7 September 1999 in annex 14 of BST's reply to the Commission's request for information about Belgium (38337, pp. 6442-6444).

132 See 38337, p.5682 and pp.10232-10234.

113. In its reply to the Statement of Objections, Coats confirmed that, during the meetings, suppliers exchanged information and concluded agreements on rebates and discounts[133]. The evidence submitted by Coats include Mr. [*official of Coats*] statement[134], minutes taken by Barbour at the meeting of 8 September 1998[135] and an e-mail dated 10 October 2000, presenting the results of the meeting of 19 September 2000[136].

114. Similarly, BST acknowledged that "discounts were discussed at the meetings concerned and that Amann and Coats wanted to conclude agreements on them[137]."

115. Amann regards the evidence in the Statement of Objections as insufficient to establish agreement on rebates granted either generally or to individual customers[138]. According to Amann, Coats' statement is made up of speculative assumptions by Mr. [*official of Coats*]. It claims that Barbour's notes, according to which "*it was accepted in Prague that actual market prices are list less 50% and more*" simply take account of a feature of the Norwegian market, where the rebates granted were at least 50% and more. If rebates had been fixed, Barbour's notes, according to which "*it was accepted in Prague that actual market prices are list less 50% and more*", should have read that "it was accepted that actual market prices are list less 50% and less". The hand-written minutes of the Zürich meeting would not reveal anything related to rebates either. The minutes of the meetings of Budapest would not

133 See Coats' reply to the Statement of Objections, p.11, who confirms that it has always made it clear that rebates were discussed.

134 38337, p. 10311.

135 38337, pp. 8058-8059

136 In this e-mail dated 10 October 2000, enclosed at Annex 3 to Saks' statement, it is noted that at a meeting on 19 September 2000 rebate reductions and special price increases were agreed in respect of Finland and Sweden.

137 BST's reply to the Statement of Objections, par. 42. See also par. 31 of the reply "BST does not deny that it was present at periodic meetings with competitors or that Coats and Amann, by organising such contacts, intended to exchange information (price lists and discounts) and make agreements about price increases and/or recommended prices".

138 Amann's reply to the Statement of Objections, p.11-15.

indicate that rebates have been discussed for Finland. According to Amman, only "special prices" to customers would have been discussed and agreed on.

116. In addition to Coats and BST statements that rebates were discussed and agreed, the Commission considers that the exchange of information on rebates, the agreement on maximum rebates and rebate decreases and the fixing of minimum prices are clearly evidenced by many supporting documents. The minutes of the Prague meeting[139], according to which "it was accepted that actual prices are list less 50% and more" clearly means that the participants have agreed to fix maximum rebates at 50% and cannot refer to a simple factual feature of the Norwegian market. "Or more" refers to the prices, and not to the 50%, with the effect of fixing minimum prices at list prices minus 50%. The minutes of the Zürich meeting[140] refers to rebates between 15 and 20- 25% for 1995 and 1996 for small clients. The minutes of the Vienna meeting[141] refers to "discounts between 15 and 25% for small customers". The minutes of the Prague meeting[142] indicate that Coats, Amann and Gütermann agreed to exchange information on turnovers at discount band levels. The meeting in Budapest refers to "an increase by 3.5% of special prices or rebates down" in Sweden[143]. It is true that paragraphs 104 and 126 of the Statement of Objections inadvertently referred to Finland instead of Sweden. However, the references to the relevant document in the footnote (e-mail dated 10 October 2000, enclosed at annex 3 to Mr. […]' statement) were sufficiently clear to allow the parties to reasonably deduce from the Statement of Objections that it concerned Sweden.

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139 See Barbour's notes in annex 8 of Coats' reply to the Commission's request for information (38337, pp. 8058-8059)

140 See Annex 14 of BST's reply to the Statement of Objections

141 See BST's reply to the Commission's request for information (38337, p. 6499)

142 See Barbour's notes in annex 8 of Coats' reply to the Commission's request for information (38337, pp. 8058-8059)

143 See e-mail from Mr. […] of Coats including minutes of the meeting (38337, pp. 10232-10234) as well as Mr. […]' minutes of the meeting in annex 13 of BST's reply to the Commission's request for information.

117. In its reply to the Statement of Objections[144], Bieze Stork also claimed that it did not exchange information on rebates, nor did it agree on maximum rebates and rebate decreases and that the evidence used by the Commission in this respect does not relate to Bieze Stork. It explained that it did not apply a rebate system, except for some customers in the Netherlands.

118. However, the Commission considers that Bieze Stork attended the meetings during which rebates were agreed and discussed. The minutes of the meeting in Prague on 8 September 1998 are particularly clear on the fact that "Coats and Bieze Stork confirmed reducing rebates and bonus arrangements[145]".

Exchange of information and agreement on "special prices" to customers

119. Special prices to customers, called "specials", were also discussed during meetings. General increases were intermittently decided. During the meeting in Vienna on 8 October 1996, Gütermann indicated that it had successfully increased specials in 1996[146] and during the meeting in Prague on 8 September 1998, Coats proposed a 3% increase on specials in the Netherlands and in Belgium[147].

120. In their replies to the Statement of Objections, Gütermann, Amann and Coats have all confirmed that they agreed on "special prices" to customers. Gütermann explained that "special prices and special price increases were to some extent discussed along with the regular discussions regarding list prices and list price increases"[148]. Amann acknowledged that "there have been exchanges of information and agreements on "special prices" concluded by representatives of Amann

144 Bieze Stork's reply to the Statement of Objections, p.14.

145 See Barbour's notes in annex 8 of Coats' reply to the Commission's request for information (38337, pp.8058-8059).

146 See annex 14 of BST's reply to the Commission's request for information (38337, p. 6499).

147 See notes by Mr. […] from Barbour in annex 8 of Coats' reply to the Commission's request for information (38337, pp. 8058-8059).

148 See Gütermann's reply to the Statement of Objections, p.4 of the English translation

(…) but not customer specific nor systematic[149]", whereas Coats also made clear that it "has provided information and documents which have been relied on establishing the existence and scope of the co-operation in respect of rebates and specials"[150].

121. Only Bieze Stork denied that it exchanged information or agreed on "special prices"[151]. It is however unquestionable that Bieze Stork participated in the meetings where special prices were discussed and agreed[152].

Exchange of information on the implementation of price list increases, rebate reductions and increases in special prices to customers

122. During meetings, participants used to indicate whether or not they "had been successful" in implementing an increase in list prices or special prices or a reduction in rebates[153]. If they had not been successful, they had to explain why. This enabled the participants to monitor the implementation of decisions agreed during previous meetings. The implementation of price increases was also sometimes checked through bilateral contacts as evidenced in the e-mail from Coats dated October 2000: "I received from Amann the information that they increase the list prices of industrial threads in your markets (No, Se, Dk, Finland) by 5% from 1rst January next year. Their target is finally to achieve average 3.5%. The specials will be increased by 3.5% and in Norway no increase for continuous filament. Gütermann is going to follow Amann's price

149 See Amann's reply to the Statement of Objections, p.67.

150 See Coats' reply to the Statement of Objections, p.11.

151 See Bieze Stork's reply to the Statement of Objections, p.15.

152 For the meeting in Vienna on 8 October 1996, see answer 4.1 in Bieze Stork's reply to the Commission's request for information (38337, pp. 526/10472), minutes in annex 14 of BST's reply to the Commission's request for information, annex 18 of Gütermann's reply to the Commission's request for information (38337, p.9328) as well as BST's reply (38337, p.6499). For the meeting in Prague on 8 September 1998, see Coats' reply to the Commission's request for information (38337, pp. 8058-8059), as well as answer 4.1 (38337, p.526) and Mr. […]'s travel expenses (38337, p.744) in Bieze Stork's reply.

153 See for example BST's notes on the meetings on 8 October 1996 (38337, p. 6499) and the meeting on 9 September 1997 in annex 14 of BST's reply to the Commission's request for information (38337, pp. 6442-6444); see also Barbour's notes on the meeting on 8 September 1998 in annex 8 of Coats' reply to the Commission's request for information (38337, pp. 8058-8059).

increases"[154]. This is also confirmed by Amann in its reply to the Statement of Objections[155], which confirmed that on certain occasions the competitors sought to find out whether the prices increases agreed upon during the meetings had been followed by the others. This is reflected by an e-mail sent by Mr. [*official of Amann*] to his colleague at Coats, Mr. […]. Upon the question posed by Mr. [*official of Amann*] whether Coats had increased -as agreed- by 3,5% as of January 2001, Mr. [*official of Coats*]responded that "prices are generally increased, but not at this customer (i.e. […]) as until now you may have not changed the payment term[156]".

123. Only Bieze Stork, in its reply to the Statement of Objections, denied having participated in the exchange of information on the implementation of price list increases, rebate reductions and increases in special prices to customers. Bieze Stork's arguments cannot be accepted since the minutes of the meetings of 8 October 1996[157], 9 September 1997[158] and 8 September 1998[159] clearly indicate that the participants (including Bieze Stork) used to monitor the implementation of decisions agreed during previous meetings. Moreover, mention should also be made of BST's notes on the meeting of 8 October 1996, which related to the implementation of previous commitments. Referring to Bieze Stork, the notes contain the remark: "*B-S: in '95 ok 96 niet*". Bieze Stork was only able to comment that "assuming that "B-S" means "Bieze Stork", Bieze Stork does not remember what these handwritten words refer to". The minutes, however, are very clear as 'OK' is generally understood as an affirmative statement and 'niet' is Dutch for negative.

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154 E-mail from Coats to Coats dated October 2000 (38337, pp. 10289-10290).

155 Amann's reply to the Statement of Objections, p8.

156 38337, p. 10265.

157 See answer 4.1 in Bieze Stork's reply to the Commission's request for information (38337, pp. 526/10472), minutes in annex 14 of BST's reply to the Commission's request for information, annex 18 of Gütermann's reply to the Commission's request for information (38337, p.9328) as well as BST's reply (38337, p.6499)

158 See Coat's reply to the Commission's request for information (3833738337, p.9519), annex 14 of BST's reply, annex 4.1 and Mr. […]'s travel expenses in Bieze Stork's reply (38337, p.526 and 743).

159 See Coats' reply to the Commission's request for information (38337, pp. 8058-8059), as well as answer 4.1 (38337, p.526) and Mr. […]'s travel expenses (38337, p.744) in Bieze Stork's reply.

Exchange of information and agreement on prices to individual customers in order to avoid undercutting the incumbent supplier's prices and with a view to sharing customers

124. In addition to the agreements on future price lists, discounts and special prices, there was a general agreement between the participants in the cartel not to undercut the incumbent supplier's price with a view to allocating customers[160]. To apply this agreement, participants in the cartel used to contact each other to exchange information and agree on the prices they were going to offer to their customers.

125. This has been confirmed by almost all suppliers in their replies to the Statement of Objections. Gütermann confirmed that there was "a basic understanding which arose out of the meetings, namely not to undercut each others prices. In order to avoid undercutting another supplier's prices, some competitors regularly exchanged price information"[161]. Amann explained that "this philosophy was not to undercut prices made by competitors" and that "it has led to exchanges of sensitive information, in particular on prices which are caught by Art. 81". Only Bieze Stork stated that "it did not participate in any general agreement not to undercut each other's prices with a view to allocating customers. Undercutting prices is one of Bieze Stork's approaches to maintain customers so it is certainly not in its interest to agree with other suppliers not to undercut". It might be true that Bieze Stork did not follow the general agreement and indeed did undercut prices. However, it cannot be denied that Bieze Stork participated in meetings where all the other suppliers admit that there was a common agreement not to undercut an incumbent supplier's price.

Complaints to suppliers who had undercut and threats of retaliation

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160 See (38036 p.3603): "the rule in Scandinavia has always been that we don't cut each others' prices. The general rules are agreed every year in a "club meeting" also with Gütermann, BST and Bieze Stork".

161 Gütermann's reply to the SO, p.7.

126. A supplier would call a competitor to complain about the prices that competitor had offered to a customer and would, if necessary, threaten to retaliate. Such complaints could also take place during meetings, as indicated by Amann[162]. This happened during the meeting held on 16 January 2001[163].

127. This was confirmed by Gütermann in its reply to the Statement of Objections which further explained that "Coats was the driving force behind putting the 'rule' in place, by means of bilateral contacts, that competitors should not undercut each others prices. If Coats felt that its prices had been deliberately undercut by a competitor, it would lodge massive complaints with that competitor and apply significant pressure. Because of the considerable market power it wielded in the industrial thread markets in Benelux and the Nordic countries, complaints made by Coats took a threatening character". However, Gütermann was not able to submit evidence of this pressure.

Agreement to contact suppliers who were not part of the agreement to persuade them to join

128. As shown by the notes taken during the meeting on 8 September 1998[164], participants tried to persuade the suppliers that did not participate in the agreement to join, in particular Forbitex, DMC and American & Efird.

129. This was confirmed by Coats, Gütermann, Amann and BST who acknowledged in their replies to the Statement of Objections, who acknowledged that someone in the group would contact other competitors "to make them aware of certain prices in Europe[165]" and to persuade them to join in the future[166].

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162 See Amann's reply to the Commission's request for information (38337, pp. 8282-8283).

163 See annex 4 of the statement by Mr. […] of Coats (38337, p.10236).

164 See Barbour's notes on the meeting on 8 September 1998 in annex 8 of Coats' reply to the Commission's request for information (38337, pp. 8058-8059).

165 See Amann's reply to the SO, p.16.

166 See Gütermann's reply to the SO, p.4; BST's reply, par.44.

4.1.2. The meetings

4.1.2.1. Organisation of the meetings

130. From 1990 until 2001, when the Commission carried out inspections, meetings were held at least once a year. They were attended by representatives of European companies which sold industrial threads in the Nordic countries and in Benelux[167]. The undertakings represented were Coats, Amann, Gütermann, Bieze Stork[168], BST[169], Zwicky, Ackermann Nähgarne until it was acquired by Amann, and Barbour until it was acquired by Coats. DMC was also invited, but did not attend. The meetings were successively chaired by the following people: Mr […]of Coats from 1990 until 1997 Mr […] of Gütermann and Mr […]of Zwicky. The day was split into two halves: a session during which the Nordic markets were discussed and another session during which the Benelux markets were discussed.

4.1.2.2. Chronology of the meetings

Meetings in the early 1990s

131. These meetings took place at:

- Hilton Hotel Glattbrugg, Zurich on 16 January 1990[170],
- Plazza Hotel, Vienna on 14 and 15 June 1990[171],
- Hilton Hotel Glattbrugg, Zurich on 27 and 28 November 1990[172],
- Mövenpick Airport Hotel Meyrin, Geneva on 20 and 21 June 1991[173],

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167 See statement by Mr. […] (38337, pp. 10221-10224).

168 According to Bieze Stork, Bieze Stork attended the meetings for the Benelux each year, but attended only two or three the meeting for Scandinavia (38337, pp. 528/10473).

169 BST's participation before 9 September 1997 was limited to the session on Benelux. See BST's reply to the Statement of Objections, paragraph 46.

170 See Zwicky's reply to the Commission's request for information (38337, p. 9369).

171 See Zwicky's reply to the Commission's request for information (38337, p. 9369).

172 See Zwicky's reply to the Commission's request for information (38337, p. 9369).

– Hilton Plazza Hotel, Vienna on 13 and 14 February 1992[174],

– Swisshotel International Oerlikon, Zurich on 5 and 6 November 1992[175],

– Hilton Hotel Glattbrugg, Zurich on 7 and 8 October 1993[176],

– Hilton Hotel Glattbrugg, Zurich on 11 and 12 October 1994[177],

– Hilton Hotel Glattbrugg, Zurich on 10 October 1995[178],

– in Zurich on 21 June 1996[179].

132. Participants[180] were:

– Coats (Mr […]and Mr […]),

– Gütermann (Mr […][181], export manager),

– Ackermann Nähgarne (Mr […][182] and Mr […]) until Ackermann Nähgarne was taken over by Amann in January 1994[183],

– Amann (Mr […][184], Mr […][185], Mr […][186] and Mr […], Sales Director Europe[187]),

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173 See list of attendees in annex 14 of BST's reply to the Commission's request for information (38337, p. 6522).

174 See Zwicky's reply to the Commission's request for information (38337, p. 9369).

175 See Zwicky's reply to the Commission's request for information (38337, p. 9369) and BST's reply to the Commission's request for information (38337, p.6423).

176 See Zwicky's reply to the Commission's request for information (38337, p. 9369) and annex 13 (38337, p. 6423) and 14 of BST's reply to the Commission's request for information.

177 See Zwicky's reply to the Commission's request for information (38337, p. 9369) and annex 14 of BST's reply to the Commission's request for information.

178 See Zwicky's reply to the Commission's request for information (38337, p. 9369) and annex 13 (38337, p. 6424) and 14 of BST's reply to the Commission's request for information.

179 See answer 4.2.2 in Coats' reply to the Commission's request for information (38337, p. 9519).

180 See statement by Mr. […] about Scandinavia, confirmed by lists of attendees at the meetings (38036, p.6522, p.6704, pp. 6719-6721, p.6842) and by other pieces of evidence (see footnotes to the section entitled "Meetings in the early 1990s").

181 See Mr. […]'s travel expenses (38337, pp. 9334 and p.9339).

182 See annex 14 of BST's reply to the Commission's request for information (38337, p. 6522, p. 6704, pp. 6719-6721, p. 6842).

183 See answer 4.1 in Amann's reply to the Commission's request for information (38337, p. 8282).

184 See annex 14 of BST's reply to the Commission's request for information (38337, p. 6522, p. 6704).

– Bieze Stork (Mr […], Director),

– BST (Mr […][188]and Mr […][189]),

– Barbour (Mr […]or Mr […]),

– Zwicky (Mr […][190]).

DMC was invited but did not attend the meetings.

133. During the meetings, price lists were exchanged[191]. Bieze Stork was in charge of sending the invitations and the agendas and of circulating the price lists[192]. Notes on a BST price list for 1991 confirm that agreements on future prices were reached during the meetings[193], such as the decision to fix the list price for spun polyester at 10% below the list price for poly-poly (instead of 27% for BST when the decision was reached). Mr […] of Coats also stated that participants also agreed on maximum rebates they would offer to their customers[194]. The existence of these early meetings, their purpose and the list of participants has not been contested by any of the parties[195].

Meeting at the Crowne Plaza Hotel in Vienna on 8 October 1996[196]

185 Sales Director.

186 See annex 14 of BST's reply to the Commission's request for information (38337, pp. 6719-6721, p. 6842).

187 See answer 4.1 in Amann's reply to the Commission's request for information (38337, p. 8282).

188 See annex 13 in BST's reply to the request for information (38337, p. 6424): Mr. […] attended meetings on 21 June 1991, 6 November 1992, 7 October 1993 and 10 October 1995. Mr. […] also attended meetings after 1995 (see other paragraphs).

189 See annex 14 of BST's reply to the Commission's request for information.

190 See Zwicky's reply to the Commission's request for information (38337, p. 9422).

191 See annex 14 of BST's reply to the Commission's request for information.

192 See annex 14 of BST's reply to the Commission's request for information; and Bieze Stork reply to the SO, p.10.

193 See BST's reply to the Commission's request for information, "voorstel prijslijst 01.07.91" (38337, p. 6524).

194 See statement by Mr. […] (38337, pp. 10311-10313).

195 In their replies to the Statement of Objections, none of the parties have contested the fact that the infringement started in January 1990.

196 See answer 4.1 in Bieze Stork's reply to the Commission's request for information (38337, pp. 526/10472) and minutes in annex 14 of BST's reply to the Commission's request for information.

134. Participants include Zwicky, BST, Bieze Stork, Coats, Amann, Gütermann (Mr. […] [197]) and Barbour.

135. According to notes which were sent by BST[198], participants exchanged their latest price lists, as well as information on the implementation of increases in list prices and special prices in 1995 and 1996. In particular, Coats indicated that "a 3% increase was allowed" in 1995 and Gütermann indicated that it had successfully increased the "specials" in 1996.

Meeting at the Hilton Hotel at Zurich airport on 9 September 1997[199]

136. The meeting was chaired by Mr […] from Coats[200]. Attendees[201] included Coats (Mr […], Mr […], Manager for the Nordic Region, and Mr […], General Manager for Benelux), Gütermann (Mr […][202]), Amann (Mr […][203], Mr […][204]), Bieze Stork (Mr […][205]), BST (Mr […] and Mr […][206]), Barbour (Mr […][207]) and Zwicky (Mr […][208]).

137. According to notes which were sent by BST[209], participants exchanged information on price lists and discounts in 1995 and 1996. Participants indicated whether they had been successful in cases where they had tried to increase prices (e.g. Gütermann with specials in the Netherlands). For the Dutch market, Börner and Forbitex were said to have created problems.

197 See annex 18 of Gütermann's reply to the Commission's request for information (38337, p. 9328).
198 See BST's reply to the Commission's request for information (38337, p. 6499).
199 See answer 4.2.2 in Coats' reply to the Commission's request for information (38337, p. 9519).
200 See statement by Mr. […] about Scandinavia (38337, pp. 10304-10305).
201 See annex 14 of BST's reply to the Commission's request for information.
202 See annex 18 of Gütermann's reply to the Commission's request for information (38337, p. 9322).
203 See answer 4.1 (38337, pp. 8282-8283) and Mr. […]'s travel expenses in Amann's reply to the Commission's request for information (38337, p. 8673).
204 See annex 14 of BST's reply to the Commission's request for information.
205 See answer 4.1 (38337, pp. 526/10472) and Mr. […]'s travel expenses in annex 14(a) (38337, p. 743) in Bieze Stork's reply to the Commission's request for information.
206 See annex 13 of BST's reply to the request for information (38337, p. 6424).
207 See annex 14 of BST's reply to the Commission's request for information.
208 See annex 2 of Zwicky's reply to the Commission's request for information (38337, p. 9369).
209 See annex 14 of BST's reply to the Commission's request for information.

Meeting at the Maximilian Hotel in Prague on 8 September 1998[210]

138. The meeting was chaired by Mr […] from Gütermann, who succeeded Mr […] from Coats. Participants[211] were Coats (Mr […], Mr […], Mr […]), Gütermann (Mr […][212]), Amann (Mr […][213]), Bieze Stork (Mr […][214]), BST (Mr […][215]), Zwicky (Mr […][216]) and Barbour (Mr […]).

139. According to Barbour's notes[217], the main points were the following:

a) concerning Norway: Coats and Bieze Stork reported that they had implemented their 3% increase in early 1998 successfully; Gütermann indicated that it would circulate its new September price list, which was +3-4%; Amann would also circulate its 1998 list; furthermore, it was agreed that actual market prices would be list prices less 50% and more;

b) concerning Sweden: Amann reported that their January list had been implemented around May/June 1998; BST said that they had increased their prices to their distributor in February 1998 by 6%; Bieze Stork reported that they had implemented a 10% increase on their list as previously agreed (it was explained that Bieze Stork's list reflected market prices and was therefore about 50% below others, it was agreed that this list was a net price below which Bieze Stork's agent must not sell); Gütermann reported that they had not implemented an April increase as previously proposed (their last

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210 See statement by Mr. […] (38337, pp. 10304-10305) and notes by Mr. […] from Barbour in annex 8 of Coats' reply to the Commission's request for information (38337, pp. 8058-8059).

211 See notes by Mr. […] from Barbour in annex 8 of Coats' reply to the Commission's request for information (38337, pp. 8058-8059).

212 See annex 18 of Gütermann's reply to the Commission's request for information (38337, p. 9310).

213 See answer 4.1 (38337, pp. 8282-8283) and Mr. […]'s travel expenses in Amann's reply to the Commission's request for information (38337, p. 8679).

214 See answer 4.1 (38337, p.526/10472) and Mr. […]'s travel expenses in annex 14(a) (38337, p. 744) in Bieze Stork's reply to the Commission's request for information.

215 See annex 13 of BST's reply to the request for information (38337, p. 6424) and Mr. […]' travel expenses (38337, p. 5676).

216 See annex 2 of Zwicky's reply to the Commission's request for information (38337, p. 9369) and Mr. […]'s travel expenses (38337, p. 9389).

217 See notes by Mr. […] from Barbour in annex 8 of Coats' reply to the Commission's request for information (38337, pp. 8058-8059).

increase was in September 1997); Coats expressed their intention to increase their list price by 2-3% in February 1999 and to implement this increase during the first quarter; lastly, Coats, Amann and Gütermann decided to exchange information on turnovers at different discount band levels;

c) concerning Finland: Coats confirmed that it had implemented an increase of 3% on their list prices from early 1998 and that Finlayson had followed; Coats reported that Finlayson were no longer an issue; participants agreed that it would be possible to increase list prices by 3% early 1999;

d) concerning Denmark, Amann, reported as the market leader in heavier accounts, proposed no price increases and this was agreed by Gütermann. DMC was reported to remain a major obstacle to achieving price increases;

e) concerning the Netherlands, Coats reported that they had tried to increase prices by 2-3% but had not been successful; Coats proposed an increase of 3% in early 1999 on specials and no increase on list prices. The participants in the meeting agreed to go for this aiming for full implementation by 1 April 1999. Furthermore, participants agreed to make contact with competitors who had not participated in the cartel: it was agreed that Mr […] of Coats would contact Forbitex to set up a meeting to assess the possibility of cooperation (Forbitex had confirmed their strategy to be 10% below market price level); it was agreed that BST would establish contact with Danfield and that Amann should provide BST with low price information, which BST would use to influence Danfield. Amann reported that prices in the quilting industry had been severely cut by people like Heinke and Liberty and had reached a level of DEM [0.5-1] per 1 000 metres for MO CF Polyester;

f) concerning Belgium: Bieze Stork reported success in implementing the previously agreed 5% increase but in Spun Polyester only (BST reported prices of BEF [50-70] for M 120 Spun Polyester, 5 000 metres, Colours from Boerner, A&E and wholesalers); after Coats was told that their suggested price for M60 colours on their Heavy Threads list looked out of line, Coats said that they would check and inform the meeting through Mr [*official of Gütermann*]; Coats and Bieze Stork confirmed reducing rebates and bonus arrangements; Barbour distributed a list of prices as a proposal for accounts in Belgium[218]and lastly, participants agreed to increase specials by 3% in early 1999 and to implement the increase by 1 April 1999. Concerning the competitors not present at the meeting, participants agreed to consider their sizes to gauge their influence (e.g. for Holland the size of Boerner, DMC, A&E and Forbitex) and to draw up their competitive profiles in each market; participants also agreed that Mr […] of Gütermann would ask Coats to talk to both American &Efird and DMC (DMC and A&E were reported as remaining the main obstacles to price increases).

Meeting at the Maximilian Hotel in Prague on 7 September 1999[219]

140. Participants[220] were Coats (Mr […], Managing Director for the Nordic countries, and Mr […], General Manager Benelux), Gütermann (Mr […][221], Export Manager for Industrial Sewing Thread, and Mr […]),

218 See annex 14 of BST's reply to the Commission's request for information (38337, p. 7025).

219 See 38036, pp. 4145-4146 and statements by Mr. […] (38337, pp. 10221-10224) and Mr. […] (38337, pp. 10311-10314) as well as Mr. […]' minutes in annex 13 of BST's reply to the Commission's request for information (38337, pp. 6422-6425).

220 See statements by Mr. […] (38337, pp. 10221-10224) and Mr. […] (38337, pp. 10311-10314).

221 See annex 18 of Gütermann's reply to the Commission's request for information (38337, p. 9293).

Amann (Mr […], Sales Director Europe, and Mr […], Sales Director[222]), Bieze Stork (Mr […], Director[223]) and BST (Mr […] and Mr […][224]).

141. Participants at the meeting for the Nordic countries were said to have brought their companies' official price lists to the meeting. "There was a discussion between attendees as to what percentage of price list increases should be implemented and from what date"[225].

Meeting at the Mercure Hotel in Budapest on 19 September 2000[226]

142. The meeting was chaired by Mr […] of Gütermann, who succeeded Mr […] of Coats[227]. Attendees include Zwicky (Mr […][228]), Gütermann (Mr […][229] and Mr […][230]), Coats (Mr […]), Amann (Mr […] and Mr […][231]), Bieze Stork (Mr […][232]) and BST (Mr […][233]).

143. Participants agreed on:

a) a price increase of 3.5% in Denmark and Sweden and a general price increase between January and March 2001 of 3.5% in Holland and Belgium (BST would be the first to implement the increase; the

222 See answer 4.1 (38337, pp. 8282-8283), Mr. […]'s and Mr. […]'s travel expenses in Amann's reply to the Commission's request for information. However, Mr. […] appears to have been in Prague on 6 September 1999 rather than on 7 September 1999.

223 See answer 4.1 (38337, pp. 526/10472) and Mr. […]'s travel expenses in annex 14(a) (38337, p. 745) in Bieze Stork's reply to the Commission's request for information.

224 See Mr. […]' travel expenses (38337, p. 5678) and Mr. […]' travel expenses (38337, p. 5764).

225 See statement by Mr. […] (38337, pp. 10221-10224).

226 See e-mail from Mr. […] of Coats including minutes of the meeting in annex 3 of the statement by Mr. […] from Coats (38337, pp. 10232-10234), as well as Mr. […]' minutes of the meeting in annex 13 of BST's reply to the Commission's request for information.

227 See answer 4.1 in Amann's reply to the Commission's request for information (38337, pp. 8282-8283).

228 See Zwicky's reply to the Commission's request for information (38337, pp. 9369 and 9397).

229 See annex 18 of Gütermann's reply to the Commission's request for information (38337, p. 9282).

230 See 38337, pp. 9230 and 9242.

231 See answer 4.1 (38337, pp. 8282-8283), as well as Mr. […]'s and Mr. […]'s travel expenses, in Amann's reply to the Commission's request for information (38337, pp. 8651-8717).

232 See answer 4.1 (38337, pp. 526/10472) and Mr. […]'s travel expenses in annex 14(a) (38337, p. 746) in Bieze Stork's reply to the Commission's request for information.

233 See Mr. […]'s minutes of the meeting in annex 13 of BST's reply to the Commission's request for information and Mr. […]' travel expenses (38337, p. 5682).

participants thought that they had strong arguments for this increase[234]);

b) rebate reductions in Sweden;

c) adjustments to price lists (BST was to adjust its list prices by 2.5% in Denmark, Gütermann's list prices were to be adjusted to the level of Amann's and Coats' in Finland);

d) fixing of a minimum price for corespun 120 cones 5000 mtr in Sweden.

144. For Benelux, DMC was described as "non-aggressive" [235].

Meeting at the Eichenhof Hotel in Rödermark, near Frankfurt, on 16 January 2001[236]

145. Participants were Gütermann (Mr […][237], Chairman of the meeting[238], and Mr […][239]), Coats, Amann (Mr […][240]), Bieze Stork (Mr […]) and BST (Mr […][241]).

146. Price lists were exchanged before or during the meeting[242]. For the Nordic region, Gütermann recommended list price increases and there were considerable discussions about list prices of particular brands[243]. Fred Saks of Coats resolved a bilateral issue with Amann concerning the fact that the two companies' respective agents in Denmark had been undercutting each other and driving prices down. However, according to

234 See annex 3 of statement by Mr. […] from Coats (38337, pp. 10232-10234).
235 See annex 3 of statement by Mr. […] from Coats (38337, pp. 10232-10234).
236 See statement by Mr. […] from Coats (38337, pp. 10221-10224) and annex 4 of the statement (38337, p. 10236).
237 See annex 2 of Zwicky's reply to the Commission's request for information (38337, p. 9369). In January 2001, after Gütermann had acquired Zwicky, Mr. […] was in charge of international sales of industrial thread in Gütermann's Vorstand (see 38337, p. 8995).
238 See Coats' reply to the Commission's request for information.
239 See Gütermann's reply to the Commission's request for information (38337, pp. 9230 and 9241).
240 According to Amann, Mr. […] did not attend this meeting. However, his travel expenses show that he was in Rödermark on 16 January 2001 (38337, pp. 8651-8717).
241 This meeting is not indicated by BST in annex 13. However, Mr […]'s diary show that he attended this meeting (38337, p. 5672).
242 See letter by Mr […] and table "price list availability control" in annex 14 of BST's reply to the Commission's request for information (38337, p.6434).
243 See answer 4.2.2.g in Coats' reply to the Commission's request for information (38337, p. 9521).

Coats, very little was agreed at the meeting and very little was implemented.

Meeting at the Swisshotel, Messeplatz, in Basel on 18 September 2001[244]

147. Participants were Coats (Mr […]), Gütermann (Mr […][245] and Mr […][246]), Bieze Stork (Mr […][247]) and BST (Mr […][248]).

148. Participants exchanged information on prices and markets, as well as their views on prices for the following year. The option of organising a "quick in-between meeting" was considered. According to Coats, the participants suggested that meetings should take place twice a year rather than annually. Problems with speciality thread were reported. A meeting was planned on 17 September 2002 in Prague.

4.1.3. Bilateral contacts

149. In addition to the meetings, competitors used to contact each other to exchange information and to agree on prices they would apply to specific customers.

150. According to Mr […], Coats' Sales Director for Scandinavia, "prior to offering products to competitors' customers, it was recognised practice in many cases to telephone that competitor and establish what price it was charging that particular customer. I frequently received telephone calls and e-mails from almost all our competitors asking for information on prices Coats was charging specific customers or prices for specific products. I would similarly request this type of information from competitors. The rationale of such information exchange was to ensure that the incumbent supplier's prices were not undercut. In practice the

244 See statement by Mr […] from Coats (38337, pp. 10221-10224) and notes in annex 14 of BST's reply to the Commission's request for information.

245 See annex 2 of Zwicky's reply to the Commission's request for information (38337, pp. 9368-9369).

246 See Gütermann's reply to the Commission's request for information (38337, pp. 9230, 9240).

247 See answer 4.1 (38337, pp. 526/10472) and Mr […]'s travel expenses in annex 14(a) (38337, p. 746) in Bieze Stork's reply to the Commission's request for information.

248 See Mr […]'s diary (38337, p. 5672) and travel expenses (38337, p. 5685).

rule was frequently broken. We also tended to discuss amongst ourselves instances which came to light of competitors "breaking the rules" and undercutting others' prices or approaching new customers at prices lower than those of the incumbent supplier, contrary to the "club" principle. If a competitor believed that Coats had deliberately undercut them in dealing with their customers, I would normally receive a complaint from them, often accompanied by a threat of retaliation"[249].

151. Numerous e-mails provided by Coats in support of its leniency application prove that at least Coats, Amann and Gütermann exchanged information on general increases in list prices[250] for industrial thread in Norway, Sweden, Denmark and Finland and on prices applied to specific customers in order to avoid undercutting the incumbent supplier's prices[251, 252]. The e-mails date from June 2000 until May 2001, but as suggested by some e-mails, exchanges of information must also have taken place also before 2000.

152. Amann and Gütermann have also both confirmed in their replies to the Statement of Objections that there were bilateral contacts between some participants.

153. According to Mr […] of Coats[253], bilateral contacts for Benelux were not so frequent as for the Nordic countries. Mr […]believes he may have made only two or three calls to ask for information on prices for a specific customer.

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249 See statement by Mr […] from Coats (38337, pp. 10221-10224).

250 E-mail from Coats to Coats dated October 2000: "I received from Amann the information that they increase the list prices of industrial threads in your markets (No, Se, Dk, Finland) by 5% from 1rst January next year. Their target is finally to achieve average 3.5%. The specials will be increased by 3.5% and in Norway no increase for continuous filament. Gütermann is going to follow Amann's price increases".

251 E-mail from Amann to Amann after a request by Coats relating to customer […] in Norway: " we want to come back on the offer we have given in January 5… We have to withdraw the prices. Please contact the customer in order to raise the prices by 10%".

252 From Coats to Amann: "could you please send me your prices for […]?" Coats: "I will inform Amann to withdraw their offer in order not to disturb".

253 See answer 4.2.3.g in Coats' reply to the Commission's request for information (38337, p. 9524).

4.1.4. Implementation of the agreements

4.1.4.1. Implementation of the agreed list price increases and of the net prices to customers

154. Coats alleged that it had not implemented the agreed list price increases[254]. In particular, Coats stated that its price lists in Benelux remained the same between 1995 and 2000 with the exception of one unilateral increase in 2000.

155. However, even though price lists in Benelux remained the same between 1995 and 1999, they might have fallen if the competitors had not colluded. As underlined in section 2.3.1.1, thread prices have generally tended to fall since 1996.

156. Furthermore, minutes of the meetings show that at least some of the agreed increases were actually implemented. In particular, during the meeting in Prague on 8 September 1998[255], Coats and Bieze Stork reported that they had successfully implemented their 3% increase in Norway in early 1998[256], Amann reported that their January price list in Sweden had been implemented around May/June 1998 and Bieze Stork reported that they had implemented a 10% increase on their Swedish list as previously agreed, Coats confirmed that it had implemented a 3% increase in Finland and Bieze Stork reported success in implementing the previously agreed 5% increase in Belgium.

157. Price lists also show that at least some of the agreed increases were actually implemented. In particular, Bieze Stork[257] increased its price lists by 3.5% in the Netherlands and Belgium in 2001 as agreed during the meeting in Budapest on 19 September 2000. Belgian Sewing

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254 See answer 4.2.3.b in Coats' reply to the Commission's request for information (38337, pp. 9522-9523).

255 See "Meeting in Prague on 8 September 1998" in section 4.1.2.2.

256 See notes by Mr. […] of Barbour in annex 8 of Coats' reply to the Commission's request for information (38337, pp. 8058-8059).

257 From January 2001.

Thread[258] and Coats[259] also increased their price lists by 3.5% in the Netherlands in 2001. Gütermann increased its price lists by 3.5% in the Netherlands, in Denmark and in Sweden[260]. Amann increased its price list by 3-5% in the Netherlands[261] and in Belgium[262].

158. In their replies to the Statement of Objections, many suppliers argued that list price increases had no real effect because they would not automatically translate into increases in actual prices charged to customers.

159. Amann[263] explained that list prices have more of a political importance than a competitive one. Only very small clients pay the prices contained in the lists. As the official price lists issued by each competitor are based on large profit margins, customers regularly negotiate rebates, but no clear or fixed amount of rebates is granted. Further, it submitted a comparison of list prices and prices actually paid in the Nordic and Benelux countries which it claims demonstrates that prices actually went down for certain products and certain countries, and that list prices have no bearing on the prices actually paid.

160. Gütermann[264] similarly argues that the list price increase did not mean that the actual net prices achieved in the relevant market also rose. Customers are almost never charged the list prices. The net price charged is adjusted in each case based on the negotiations rather than the list prices. Therefore, the list prices are essentially "fictitious" prices. Gütermann claimed that its actual average prices fell in most of the countries, despite the list price increase.

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258 From 1 January 2001. See BST's reply to the Commission's request for information (38337, pp.5324-5333).

259 See price lists in Coats' reply to the Commission's request for information (38337, pp. 7817-7827).

260 See answer 3.7.4 in Gütermann's reply to the Commission's request for information (38337 p.8781, p.9186, p.9187)

261 List prices of all articles increased by 3% to 5% from January 2001 (38337, p. 8281).

262 Saba's and Rasant's list prices increased by 5% from January 2001 (38337, p. 8281). Prices of other articles remained unchanged.

263 See Amann's reply to the SO, p. 7-11.

264 See Gütermann's reply to the SO, p.8-11

161. BST[265] claimed that it had never communicated its genuine price lists to its competitors at the meetings concerned. Instead, it communicated "faked price lists", which had nothing to do with its real list prices and the prices which it effectively applied. In this way, "it was able to give its competitors the impression that it would stick to the price increases desired and agreed (…). BST never actually applied the "agreed" price increases. On the contrary, it charged its customers prices which were significantly lower than those discussed". Besides, as regards the 3.5% increase in The Netherlands and Germany decided at the meeting in Budapest in September 2000, BST did not deny that it raised its list prices by an average of 3.5% at the start of 2001, but claimed that the price increase was carried out in response to a Febeltex (the Belgian textile association) letter of October 2000.

162. Bieze Stork[266] also explained that "price lists are not relevant. If they are relevant, it is merely as a starting point to negotiate individual prices".

163. The Commission takes the view that the argument that list price increases had no real effect because the list prices were almost never applied and that list price increases did not automatically translate into increases in actual prices charged to customers cannot be accepted.

164. List prices are applied to small customers, since they generally have less negotiating power. Therefore, increases in list prices translate into increases in net prices for some small customers.

165. Furthermore, individual prices for bigger customers are calculated by applying a rebate to the list prices, with the consequence that an increase in list prices translates into an increase in net prices. It is true that the actual prices charged to customers very often differ from listed prices, but it is incorrect to state that an increase in list prices would have no effect at all on actual prices. Since the list prices are the basis for

265 See BST's reply to the SO, par. 33-42.
266 See Bieze Stork's reply to the SO, p.6.

calculating the actual prices, by applying a rebate or as "starting point to negotiate", increasing list prices automatically had an influence on the level of the actual prices. Even if there was no general fixed amount of rebates, the list prices had a target function and served as a starting point for discussion, as well as an indicator from which a percentage discount could be deducted. Consequently, they necessarily had at least a potential and even a likely influence on actual prices.

166. Moreover, it is difficult to understand why the suppliers would have met on a regular basis to agree on list price increases during at least 11 years if these list price increases had "no effect" at all on the actual prices.

167. As explained by Gütermann itself, "the purpose of the meetings was to close the gap between list prices and the actual prices and, by way of an increase in the list prices, to raise the net prices (…) for certain products indirectly"[267].

168. Sometimes, suppliers even increased their price lists by a higher percentage than that agreed with their competitors, with a view to implementing the agreed increases in net prices to customers. Amann stated that Saba's and Rasant's price lists in Denmark were increased by 5% from January 2001[268] (instead of the 3.5% agreed during the meeting on 19 September 2000). However, an e-mail from Mr […] of Amann to Mr […]of Coats shows that Amann increased its prices to customers […] in Denmark by 3.5% on 1 January 2001[269]. Furthermore, Mr […] of Coats stated in an internal e-mail[270]: "I received from Amann the information that they increase the list prices of industrial threads in your markets [Norway, Sweden, Denmark] by 5% from 1rst of January 2001. If there will be strong resistance from the customers, the increase might be in certain cases delayed until end March. As we all know how

267 See Gütermann's reply to the SO, p.5.
268 See 38337, p.8261.
269 See Coats' application for leniency (38337, p. 10266).
270 See 38337, p. 10289.

difficult it is to get all customers to approve the suggested increases, their target is finally to achieve average 3.5%. The specials will be increased by 3.5% and in Norway no increase for continuous filaments. Gütermann is going to follow Amann's prices increases. They will explain the increase due to the additional transportation costs, increased raw material costs and increased (25%) packaging costs".

169. The argument that the net prices fell during the period in question can also not be accepted. In analysing the tables submitted by the parties, no such general rule can be stated as regards the evolution of prices. In general, prices in the Nordic and Benelux countries remained the same during that period. However, prices might have fallen if the competitors had not agreed on list price increases, since the worldwide tendency was towards a fall of prices in the thread sector. Depending on the product or country, some prices have increased whereas others decreased or remained the same.

170. As regards the more specific argument of BST, according to which it communicated "faked price lists" specially produced for the purpose, it did not produce any proof that the price lists handed over to competitors were faked and specially drafted for the meetings with competitors. BST states it charged its customers prices which were significantly lower than those discussed. This is not surprising since every supplier granted rebates to their customers. Moreover, the fact that Febeltex sent a letter in October 2000 to its members recommending a price increase of 5% is not at all contradictory to an earlier agreement between the members of the cartel concerned, in Budapest in September 2000. The minutes of that Benelux meeting clearly indicate "it was agreed for a general price increase next year between January and March of 3.5%". The letter of Febeltex is subsequent to the Budapest meeting. Besides, BST acknowledged that it raised its list prices by an average of 3.5% at the start of 2001 –and not by 5%, as requested by Febeltex. Consequently, BST has not been able to demonstrate that the admitted increase of 3.5%

in its list prices was not an implementation of the agreement reached at the Budapest meeting.

171. To conclude, at least some of the agreed increases in list prices were implemented and monitored through regular meetings and bilateral contacts. At each meeting, i.e. at least once a year, participants used to indicate whether or not they had been able to implement the price increases they had decided on[271]. If they had not succeeded in implementing the agreed increase, they had to explain why. These list price increases had an effect, either direct or indirect, on the net prices applied to customers.

4.1.4.2. Implementation of the agreed rebates and special prices to customers

172. Minutes of the meetings clearly indicate that at least some of the agreements on rebates and special prices were actually implemented. For instance, during the meeting in Vienna in 1996 participants informed the others of the rebates applied in the preceding year and Gütermann stated that it had successfully increased "specials" in 1996[272]. During the 1998 Prague meeting, Coats and Bieze Stork confirmed that they had dropped rebates and bonus arrangements in the Belgian market[273].

4.1.4.3. Implementation of the "rule" not to undercut the incumbent supplier's prices

173. In their replies to the Statement of Objections, some parties have argued that, notwithstanding the rule that competitors should not undercut each other's prices, all participants regularly undercut each other's prices in the time period under investigation by the Commission[274]. Amann

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271 See for example BST's notes on the meetings on 8 October 1996 (38337, p. 6499) and the meeting on 9 September 1997 in annex 14 of BST's reply to the Commission's request for information (38337, pp. 6442-6444); see also Barbour's notes on the meeting on 8 September 1998 in annex 8 of Coats' reply to the Commission's request for information (38337, pp. 8058-8059).

272 See 38337, p.6499 and section 4.1.2.2. above.

273 See 38337, p.8058-8059 and section 4.1.2.2. above.

274 See Gütermann's reply to the SO p. 10-11; Amann's reply to the SO, p.17-41.

submitted several examples where competitors undercut its prices with specific customers in Scandinavia and Benelux.

174. Sporadic examples where competitors, contrary to the initial agreement, undercut each other's prices do not prove that the agreement had no effect. All suppliers (except Bieze Stork) have confirmed that there was a general agreement between the participants in the cartel not to undercut the incumbent supplier's price with a view to allocating customers. Suppliers who thought that they had been undercut by a competitor would complain and threaten to retaliate, either during the meeting or through bilateral contacts. Coats admitted that they had received and made occasional complaints about undercutting. In this respect, such a rule agreed by all participants necessarily had a direct or indirect influence on the way competitors conducted their business and how they operated on the market. However, it is true that, despite the general agreement, competitors seem to have undercut each other's prices on several occasions, as evidenced by the examples provided by the parties.

4.2. Cartel concerning industrial thread sold in the United Kingdom

4.2.1. Objectives, participants and organisation of the cartel

175. The agreements and concerted practices between Barbour Threads Ltd, Coats UK Ltd, Donisthorpe & Company Ltd, Perivale Gütermann Ltd and Oxley Threads Ltd had as their primary objective the maintenance of high prices on the market for industrial thread sold in the United Kingdom (UK) and/or the exchange of information on prices to individual customers in order to avoid undercutting incumbent suppliers' prices.

176. To pursue that objective, Barbour Threads Ltd, Coats UK Ltd, Donisthorpe & Company Ltd and Oxley Threads Ltd used to meet at least from 1990 until 1996 to agree on percentages increases of list and net price, the timing of those increases and the sequence of

announcements which would be made by the suppliers[275]. These meetings used to take place after the meetings of the UK Thread Manufacturers Association (UKTMA). No notes were taken or documents exchanged.

177. Throughout the period 1990-2000, there were also intermittent communications between the principal UK thread manufacturers, namely Barbour, Coats, Donisthorpe, Perivale Gütermann and Oxley Threads, about prices to individual customers in order to avoid undercutting incumbent suppliers' prices[276]. In particular, some UK thread suppliers agreed to coordinate their answers to […]'s invitation to tender in 1999[277].

178. Around April 1999, the three main UK manufacturers, namely Coats UK, Oxley Threads and Donisthorpe, met to discuss whether to cease offering consignment stocks to their customers. They met again in October 2001 to increase prices, to remove certain discounts and to try to reinstate the UKTMA[278].

179. Through these meetings and communications, Coats UK, Donisthorpe and Oxley Threads:

a) agreed on concerted increases in list prices and net prices to customers,

b) agreed to remove settlement discounts and to refuse to apply cash terms under certain conditions,

c) agreed to cease to offer consignment stocks to their customers,

d) agreed not to undercut the incumbent supplier's price with a view to allocating customers,

e) agreed to coordinate their offer to […],

275 See answer 4.2.4.1 in Coats' reply to the Commission' request for information (38337, pp. 9524-9525).
276 See Oxley's answer to the Commission's request for information (38337, pp. 888/8737).
277 See statement by Mr. […] of Coats UK Ltd (38337, p.10326-10329).
278 See Donisthorpe's reply 4.1 to the Commission's request for information (38337, p. 3252).

f) complained about undercutting.

180. Barbour Threads:

a) agreed on concerted increases in list prices and net prices to customers,

b) agreed not to undercut the incumbent supplier's price with a view to allocating customers.

181. Perivale Gütermann agreed not to undercut the incumbent supplier's price with a view to allocating customers.

4.2.2. Meetings between members of the UKTMA

182. At least from December 1989[279] until October 1998[280], the UK Thread Manufacturers' Association (UKTMA) met regularly once a year and occasionally twice a year[281]. Meetings were usually held at the offices of solicitors […] in Manchester[282], who were acting for the UKTMA.

183. From 1991 until 1998, the members of the UKTMA and their usual representatives at the meetings were[283]:

– American & Efird Ltd: Mr […] (Sales Director) and Mr […],

– Barbour Threads Ltd: Mr […] (Sales Director from May 1995),

– Coats UK Ltd: Mr […] until May 1995, Mr […], Mr […], Mr […], Mr […],

279 See minutes of the UKTMA meeting in appendix 2 of Perivale Gütermann's reply to the Commission request for information.

280 See Oxley's reply to the Commission's request for information (38337, p. 2112).

281 See statement by Mr. […], responsible for Coats' activities in the UK and Morocco since February 1998, in Coats' application for leniency (38337, pp. 10326-10329).

282 See Coats' answer 4.2.4.1 to the Commission's request for information (38337, p. 9524) and minutes of the meetings provided by Oxley (38337, pp. 2111-2567).

283 See list of the members of the UKTMA in May 1998 (38337, p. 1472) and minutes of the meetings provided by Oxley (38337, pp. 2111-2567), as well as Coats' answer 4.2.4.1 to the Commission's request for information (38337, p. 9524).

– Donisthorpe & Company Ltd: Mr […] (Managing Director until June 1996), Mr […] (Managing Director) and Mr […] (Sales Director),

– Oxley Threads Ltd: Mr […], Director, Mr […] and Mr […],

– Perivale Gütermann Ltd: Mr […], Director, and Mr […].

184. Until December 1995, meetings were chaired by Mr […] of Donisthorpe[284]. Later on, the chairmanship was taken over by Mr […] of Gütermann and in July 1997 by Mr […] of Oxley Threads[285].

185. Prior to the meetings, participants would indicate their UK list prices and their average net prices for each type of thread to Mr […], who was a retired export manager of Tootal; Mr […] would then aggregate the data coming from the different suppliers and distribute to participants lists of average list prices and average net prices applied by the members of the UKTMA for each type of thread and for every month of the previous year[286]. Before 1993, the UKTMA even used to distribute lists of maximum and minimum prices applied by the UKTMA members for each type of thread in the United Kingdom. The Commission has such a list for 1991[287]. The UKTMA said that it had put an end to this practice after being asked by the Office of Fair Trading to do so[288]. However, for […]'s invitation to tender in 1999, Donisthorpe sent Coats and Oxley Threads a "discussion document"[289], indicating the lowest UKTMA prices for certain types of thread.

186. The UKTMA also used to aggregate and distribute statistics about the UK industrial thread sales (in value and in weight)[290] and market shares

284 See minutes of the UKTMA Meeting in December 1995 enclosed with Donisthorpe's answer to the Commission's request for information (38337, pp. 3281-3297).
285 See Oxley's reply to the Commission's request for information (38337, p. 1218).
286 See Oxley's reply to the Commission's request for information (38337, p. 1705).
287 See Oxley's reply to the Commission's request for information (38337, pp. 2101-2110).
288 See letter from the Office of Fair Trading dated April 1994 (38337, pp. 1445).
289 See Coats' application for leniency (38337, p. 10343).
290 See Oxley's reply to the Commission's request for information (38337, pp. 1719-1751, for example).

of the different suppliers. Such figures were produced at least until 20 April 1998[291].

187. During one of these meetings, Mr […] of Oxley Threads stated: "unless there is discipline within the industry (thread industry), it will suffer from low prices"[292].

188. Coats[293] explained that there were also separate discussions on price increases. "After the main agenda, the lawyer present[294] would leave and the chairman would usually raise the issue of prices. There was usually discussion of the percentage of listed and net price increases, the timing of those increases and the sequence of announcements which would be made by suppliers. No notes were taken or documents exchanged". According to Coats, from 1997 onwards, there were no discussions about price increases "because sales volumes had declined and each supplier was chasing whatever sales it could".

189. This has been confirmed by Oxley in its reply to the Statement of Objections which stated that "after the meetings, when the UKTMA's solicitor had left, the discussion would turn to list prices[295]".

190. Similarly, Donisthorpe confirmed during the Hearing that list prices for industrial Thread in the United Kingdom were discussed between Donisthorpe, Oxley and Coats[296].

191. On the contrary, American Efird Ltd[297] and Perivale Gütermann[298] have denied participating in such discussions. Perivale, however, explained

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291 See Oxley's reply to the Commission's request for information (38337, pp. 1711 and 1717).

292 See paragraph 5 of the minutes of the UKTMA meeting on 23 October 1998, enclosed in Donisthorpe's answer to the Commission's request for information (38337, pp. 3281-3297).

293 See Mr. […]'s statement for Coats' application for leniency (38337, pp. 10326-10329) and answer 4.2.4.1 in Coats' reply to the Commission's request for information (38337, p. 9524).

294 Acting for the UKTMA.

295 See Oxley's reply to the Statement of Objections, paragraph 40.

296 In the question session of the Hearing, on 20 July 2004, the Commission asked Amann (Donisthorpe) to confirm that list prices were discussed after the UKTMA meetings.

297 See American Efird Ltd's reply to the Statement of Objections, 4-5.

298 See Gütermann's reply to the Statement of Objections, p.27.

that it "cannot exclude the possibility that individual discussions regarding price list may have taken place, however it did not participate in any such discussions and do not have any knowledge of such discussions".

192. Considering the fact that no minutes were taken or documents exchanged during these "post-UKTMA" meetings, it can only be established that at least Barbour Threads Ltd, Coats UK Ltd, Donisthorpe Ltd and Oxley Threads Ltd participated in such meetings.

193. Oxley Threads[299] also admitted that annual meetings were held between Oxley Threads, Coats, Donisthorpe and occasionally other members of the UKTMA each September or thereabouts until 1996. These annual meetings occurred in addition to both the UKTMA meetings and the meetings which occurred immediately after the formal close of UKTMA meetings. "The attendees would consider whether there was a justification for requesting price rises due to any increase in e.g. the cost of raw materials, and if so a percentage increase would be agreed, either by reference to particular products, or, on occasion, across the board. As a result of decisions taken during such meetings, letters notifying price increases would be sent to customers during the following 3-4 months. These letters covered the whole range of threads for all standard products (i.e. non-speciality) contained within the standard price list".

194. As a result of the decisions taken during such meetings, Oxley Threads admitted that it had increased its price lists[300]:

– on 3 December 1990,

– by 4% from 1 January 1993,

– by 2% from 1 January 1994,

299 See Oxley's reply to the Commission's request for information (38337, p. 885).

300 See Oxley's reply to the Commission's request for information (38337, pp. 1041-1046).

– by 3% on white and 5% on colours from 1 November 1994,

– by 10% on cotton and 8% on all other items from 1 September 1995.

195. Since October 1996, Oxley's list prices have remained the same.

196. With regard to the translation of list price increases into net price increases, Oxley Threads states that any increase in the consumer's individual negotiated prices remained subject to the individual customer's agreement[301] and Coats alleges that price increases were difficult to implement in large and medium accounts because the customer would threaten to switch[302]. However, Coats admits that agreed price increases were generally implemented for smaller accounts[303].

197. To sum up, at least some UKTMA members, namely Barbour Threads Ltd, Coats UK Ltd, Donisthorpe Ltd and Oxley Threads Ltd agreed on the United Kingdom list and net prices for industrial thread at least from October 1990[304] until September 1996[305]. As a result of these agreements, these UKTMA members increased price lists and negotiated net price increases with their individual customers.

4.2.3. Bilateral contacts about prices to individual customers

198. Oxley Threads admits that from 1990 until 2000, there was a general understanding between the members of the UKTMA that no member would undercut the incumbent supplier in relation to prices for threads in the United Kingdom[306]. Coats[307] also states that, at least from 1995 until

301 See Oxley's reply to the Commission's request for information (38337, pp. 885/8737).

302 See Coats' reply to the Commission's request for information (38337, p. 9525).

303 See Coats' reply to the Commission's request for information (38337, p. 9525).

304 Oxley admits that it wrote a letter to its customers in October 1990 to notify price increases, as a result of decisions taken during meetings with competitors (38337, pp. 885/8737).

305 Oxley admits that its price list, which was valid from 1 September 1995 until September 1996, had been increased in accordance with a decision made with its competitors (38337, pp. 885/8737).

306 See Oxley's answer to the Commission's request for information (38337, pp. 888/8737).

2000, there were intermittent communications between the principal UK thread manufacturers about prices to individual customers. Coats gave evidence of such contacts (see paragraph below). Contacts may have been fewer from 2000, after the dispute due to […]'s invitation to tender (see section 4.2.5 of this Decision). However, they did not stop, since in April 2002, Coats UK received a call from Mr […] of Oxley Threads to enquire about Coats UK price levels to Oxley's customer […][308]. Furthermore, since the Commission's inspection in November 2001, Oxley Threads admits to having had around ten telephone calls with competitors other than Coats to check price levels offered to customers[309].

199. The suppliers involved were Coats UK Ltd, Donisthorpe & Co Ltd, Oxley Threads Ltd, Perivale Gütermann Ltd and Barbour Threads Ltd. Mr […][310], manager for Coats' activities in the United Kingdom since 1998, admits to having had communications with Donisthorpe (Mr […]) and Oxley Threads (Mr […]) about prices to individual customers. Oxley Threads admits to having had contacts with Coats until Coats was inspected by the European Commission in November 2001, with Barbour until purchased by Coats in September 1999, with Donisthorpe and with Perivale Gütermann. Oxley Threads has provided the Commission with a list of its main contacts at Coats, Donisthorpe, Perivale Gütermann and Barbour[311]. Coats has provided the Commission with documents[312] sent by Donisthorpe to Coats in August and September 1999 to complain about Coats undercutting its prices to its customer […].

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307 Mr […] states that such contacts took place intermittently between 1995 and 2000 and that they had been taking place several years before he became involved with the UK market (38337, pp. 10326-10329).

308 See appendix 14 of Coats' reply to the Commission's request for information (38337, pp. 9656-9657).

309 See Oxley's answer to the Commission's request for information (38337, pp. 888/8737).

310 See Mr […]'s statement for Coats' application for leniency (38337, pp. 10326-10329).

311 See Oxley's answer to the Commission's request for information (38337, pp. 889-890/8737).

312 See annex 1 of statement by Mr […] (38337, pp. 10331-10336).

200. In its reply to the Statement of Objections, Oxley admitted that it made contact with competitors regarding prices to individuals but states that Oxley's "main purpose was to obtain information about Coats' prices to enable it to make its own pricing decision". Nevertheless, Oxley conceded that "inevitably, however, the effect would be to determine whether Coats was abiding by the arrangements"[313].

201. Similarly, Perivale Gütermann[314] acknowledged that "there was a general understanding among the UKTMA members that, if possible, they would not undercut each others prices. This understanding was mainly propagated and enforced by Coats in the marketplace. As soon as a UKTMA member undercut Coats' price, Coats would lodge complaints with that member and demand that the price be withdrawn. Otherwise, Coats would threaten to alienate the competitor's customers by offering them lower prices (…) As a result of that understanding, a number of bilateral contacts took place between the competitors on the market for industrial thread in the United Kingdom. Perivale cannot exclude the possibility that one or more of its sales personnel, without the consent of management, may have taken part in such bilateral contacts"[315].

202. Therefore, all the suppliers involved in the bilateral contacts, namely Coats UK Ltd, Donisthorpe & Co Ltd, Oxley Threads Ltd, Perivale Gütermann Ltd and Barbour Threads Ltd, confirmed that there was a general understanding between them that no one would undercut the incumbent supplier in relation to prices for threads in the United Kingdom and that they made contact with competitors regarding prices. Gütermann's submission that "one or more of its sales personnel, without consent of management, may have taken part in such bilateral

313 See Oxley's reply to the Statement of Objections, par.54-60.

314 See Gütermann's reply to the Statement of Objections, p29.

315 Similarly, Oxley had stated that it "was always aware that, in particular in relation to Coats if it undercut Coats'prices it would face a concerted campaign of aggressive undercutting by Coats. Given Coats' dominance in the industrial apparel market (…) Oxley was always fearful that Coats is a 'thorn in their side' and could, if provoked, seek to destroy the company".(38337, p.11087).

contacts" does not affect its responsibility since Perivale Gütermann is responsible for the actions of its personnel acting on the undertakings behalf[316].

4.2.4. Meetings to discuss consignment stocks (around April 1999)

203. Donisthorpe[317], Coats (Mr […], Mr […], Mr […], Mr […]), Donisthorpe (Mr […], Mr […]) and Oxley Threads (Mr […], Mr […]) acknowledged that they met at Leicester City Football Club in April 1999 or thereabouts to discuss ceasing to offer consignment stocks[318] to customers. This matter was discussed again at a supplementary meeting during which each company negotiated a withdrawal of consignment stock at some companies.

4.2.5. […]'s invitation to tender (October 1999)

204. In mid-October 1999, […] sent out a very detailed invitation to tender for the supply of all the thread requirements of their apparel suppliers (United Kingdom and overseas).

205. According to Coats[319], Mr […] of Oxley Threads and Mr […] of Donisthorpe met on 19 October 1999 to discuss how they should respond to […] Notes on the meeting were sent by Donisthorpe to Coats and Coats gave a copy of them to the Commission[320]. Point 22 of the note shows that participants in the meeting agreed on prices: they

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316 The Court of Justice has established that when an undertaking has been guilty of an infringement, it is not necessary for there to have been action by, or even knowledge on the part of, the partners or principal managers of the undertaking concerned; action by a person who is authorised to act on behalf of the undertaking suffices (Judgment of the Court in Joined cases C-100-103/80 *SA Musique Diffusion française v Commission of the European Communities* [1983] ECR 1825, paragraph 97; Judgment of the Court of First Instance in Case T-9/99 *HFB Holding für Fernwärmetechnik Beteiligungsgesellschaft mbH & Co. KG and Others v Commission*, , [2002] II-1487, paragraph 275).

317 See Donisthorpe's reply 4.1 to the Commission's request for information (38336, p. 3252).

318 Consignment stock is any stock that the supplier has placed in the customer's warehouse without charge. The stock remains the property of the supplier until it is actually used. The customer is not obliged to pay for the merchandise until they remove it from the consignment stock. The customer can usually return consignment stock which is unused.

319 See Coats' application for leniency (38337, pp. 10326-10329).

320 See Coats' application for leniency (38337, pp. 10338-10343) and appendix 13 of Coats' reply to the Commission's request for information (38337, pp. 9652-9653).

decided to quote within 2% of the UKTMA's average (the last available UKTMA figures dated from around 1997-98), not to offer rebates or discounts and to exchange current price levels the following week. Along with the minutes of the meeting, Donisthorpe sent Oxley Threads and Coats an overview of their pricing to large customers[321] and a "discussion document"[322], indicating highest, lowest and UKTMA average prices and leaving three blank columns for Coats', Oxley's and Donisthorpe's suggested prices. The discussion document also includes rules such as "poly/poly and poly/cotton same levels", "quote same across all countries on corespun", "agree any nominal differentials regarding % volume quotations", "settlements time/terms as UK across all markets", "no mention of rebates".

206. According to Oxley Threads[323], there were two separate meetings concerning the […] tender. The participants were Coats UK (Mr […] and possibly Mr […]), Donisthorpe (Mr […]) and Oxley Threads (Mr […], Mr […]). Oxley Threads was not able to give the date and the location of the two meetings. "The initial meeting considered how to respond to […]'s plan to require its apparel contractors to impose a unilateral price for all their contractors regardless of colours/volumes ordered. There was a discussion of how to respond in terms of pricing structure and price points, with an agreement being reached to try and bid within a closely proximate range of prices"(…) "A second meeting was called by Coats. Second-tier contracting to Coats was discussed at the meeting. There was no discussion of the prices at which Oxley threads would supply such products to Coats or what Donisthorpe would charge. Coats did not indicate at which prices it would bid".

207. Donisthorpe admits that they met with Coats (Mr […]) and Oxley Threads (Mr […] and Mr […]) at Oxley's premises on 20 October

321 See Coats' application for leniency (38337, p. 10342).
322 See Coats' application for leniency (38337, p. 10343).
323 See Oxley's answer to the Commission's request for information (38337, pp. 884-885/8737).

1999[324]. According to Donisthorpe, Coats and Oxley Threads felt that they had to submit similar levels of prices to […] as the prices they had submitted to […]. Donisthorpe admits that Coats, Oxley Threads and Donisthorpe agreed to offer a similar level in response to the […] invitation to tender but, according to Donisthorpe, it was also agreed that rebates for volume would be the decision of each thread company in discussion with […] / individual clients[325]. However, Donisthorpe's statement is invalidated by the notes of the meeting of 20 October 1999, which indicate that participants in the meeting of 19 October agreed not to offer any rebate or discount[326].

208. According to Coats, Coats UK decided to quote aggressively […]. A reason why the agreement failed might be the threat represented by American & Efird, which was seen by Coats as "very dangerous"[327].

4.2.6. Meeting on 22 October 2001

209. Coats also explained[328] that, because of the dispute due to the […] tender process, contacts between Coats UK, Donisthorpe and Oxley Threads stopped until October 2001. However, Oxley Threads (Mr […], Mr […], Mr […]), Donisthorpe (Mr […]) and Coats UK (Mr […], Mr […]) met again on 22 October 2001[329] to discuss price increases for 2002 and agreed to:

a) remove settlement discounts (discounts for prompt payments) as of 1 January 2002 (price increases in addition to that would be optional) for 100% own customer accounts;

b) refuse to apply cash terms for a customer wholly supplied by a competitor and to quote 7.5% above the incumbent supplier's price;

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324 See answer 4.1 in Donisthorpe's reply to the Commission's request for information (38337, p. 3252).
325 See 38337, p. 3253.
326 See 38337, p. 10338-10343.
327 See Coats' reply to the Commission's request for information.
328 See statement by Mr. […] (38337, pp. 10326-10329).
329 See minutes of the meeting in annex 4 of statement by Mr. […] (38337, pp. 10350-10351).

c) increase prices by 4% on shared accounts with a total potential value of £50 000 from 1 March 2002;

d) remove existing terms where the account had not been purchased during 2001.

210. Oxley Threads[330] recalls this meeting and confirms that it took place at Oxley's premises on 22 October 2001. According to Oxley Threads, the main purpose of the meeting was to try to get the other parties to reinstate the UKTMA.

211. Donisthorpe also admits that a meeting was held on 22 October 2001 between Coats, Oxley Threads and Donisthorpe. According to Donisthorpe, attendees "discussed the tendency in the industry to reduce cash discount terms" and that, "due to interest rates, attendees should try to cease such discount terms for existing clients and offer net terms to new clients"[331].

212. Coats argued that no action was taken to implement what was agreed during the meeting on 22 October 2001.

213. According to Coats, Mr […] of Oxley Threads contacted Coats again in July 2002 "to ascertain if Coats could see a price increase being implemented in Europe within the next three years"[332].

4.3. Cartel concerning thread for automotive customers

4.3.1. Objectives, participants and organisation of the cartel

214. The agreements and concerted practices between the main EEA suppliers of automotive thread had as their primary objective the maintenance of high prices on the EEA market for automotive thread.

330 See Oxley's reply to the Commission's request for information (38337, pp. 885/8737).
331 See Donisthorpe's reply to the Commission's request for information (38337, p. 3253).
332 See appendix 14 of Coats' reply to the Commission's request for information (38337, pp. 9655-9657).

215. To pursue this objective, participants in the agreements:

a) fixed target prices for core products sold to European automotive customers: two target prices were fixed: one for existing customers and the other for new customers;

b) exchanged information on prices to individual customers and agreed on minimum target prices for those customers;

c) avoided undercutting to the advantage of the incumbent supplier.

216. Participants in these agreements were:

– Amann und Söhne GmbH & Co KG,

– Cousin Filterie SA,

– Coats Viyella plc[333],

– Barbour Threads Ltd until it was purchased by Coats Viyella plc in September 1999,

– Oxley Threads Ltd,

217. According to Amann, the main participants in these agreements (Amann, Cousin, Barbour and Oxley Threads) represented [70-90]% of the European thread market for automotive customers in 1999. Furthermore, Coats' market shares should be added to this market share of [70-90]% to assess the global market share of the participants in these agreements in the thread market for European automotive customers. Only the supplier American and Efird was apparently a threat to the participants.

218. The cartel was not strictly organised. The small number of players, due to the purchase of Cousin by Amann between 1996 and 2002, the purchase of Barbour by Coats in September 1999 and the purchase of

[333] Known as Coats plc from May 2001 until October 2003

Zwicky by Gütermann in November 2000, made it possible to have small irregular meetings supplemented by frequent bilateral contacts.

219. The first meeting of which the Commission is aware took place in May or June 1998. The main meetings took place between April 1999 and May 2000, when Amann and Cousin tried to obtain a guarantee from Coats, Barbour and Oxley Threads that they would not undercut Cousin's offer to […]. Participants ended by fixing minimum target prices for all customers. The last meeting of which the Commission has evidence took place in June 2001, five months before the inspection at Coats' premises.

220. Documentary evidence includes:

a) an internal e-mail seized during the inspection: this made the Commission aware that the main suppliers of thread to EEA automotive customers had met on 8 June 1999 to discuss prices[334];

b) statement by Mr […], Director at Barbour, for Coats' leniency application[335]in which Mr […] gave further details about the history of the cartel;

c) Oxley's reply to the Commission's request for information in which Oxley Threads admits that it participated in one or two meetings with Amann, Cousin and Barbour in 1999 or 2000, at which target prices for European automotive customers were discussed and admits that participants discussed a target price for Cousin's thread to be supplied to […], which Oxley Threads and Barbour would not undercut[336];

d) Amann and Cousin admit to having participated in meetings with Oxley Threads, Barbour, Coats and Gütermann/Zwicky from 1999 until 2001 to discuss the demands of automotive customers for better

334 See documents taken during the inspection (38036, p. 4147).
335 See Coats' application for leniency (38337, pp. 10352-10354).
336 See Oxley's reply to the Commission's request for information, p.862-896.

quality and lower prices. Amann and Cousin admit that measures to maintain the price level were occasionally discussed, but not abided by. Cousin also admits that competitors agreed to charge for any production approval processes, except the first one, and to charge for any service not directly in connection with the product (e.g. application of personalised labels or bar codes)[337]. Mr [*official of Cousin*] states that he decided on his offers to supply without considering these discussions.

221. In their replies to the Statement of Objections, all suppliers have confirmed their participation in the agreements with a view to fixing target prices, exchanging information on prices and avoiding undercutting to the advantage of the incumbent supplier.

4.3.2. The cartel history

Meeting in May or June 1998

222. Participants were Oxley Threads (Mr […], Mr […], Mr […]), Amann (Mr […], Mr […]) and Barbour (Mr […]). Point 8 of the minutes of the meeting made it clear that the policy agreed with Amann would equally apply to Cousin.

223. According to Coats/Barbour[338], the principal topic of the meeting was the fact that, since it had been drawn into two- or three-year supply agreements, Amann's prices had fallen sharply. It was agreed that deals would only be for 12 months maximum and care would be taken in quoting "special" or low prices to certain accounts. Furthermore, participants exchanged information on prices quoted for some customers such as […], […], […] and […].

337 See answer 4 in Cousin's reply to the Commission's request for information (38337, pp. 382-383).

338 See answer 4.3.a (38337, p. 9528) and annex 15 of Coats' reply to the Commission's request for information (38337, pp. 8190-8191).

224. According to Mr […], Managing Director at Barbour and at Coats/Barbour after the purchase of Barbour by Coats in September 1999, Barbour was approached by Amann to discuss the supply of thread to the automotive industry with a view to "improving" prices around March/April 1999[339].

Meeting at Schipol Airport on 15 April 1999

225. Participants were Amann (Mr […], Mr […]) and Barbour (Mr […], Mr […], Mr […]).

226. According to Mr [*official of Barbour*]'s statement and to the notes on the meeting[340], Amann expressed its concern that prices in the automotive sector were deteriorating. Amann wanted to organise a meeting with Barbour and Cousin. Amann said that Amann, Cousin and Barbour had 80% of the European automotive market. Amann indicated its price for […][341] to Barbour.

Meeting in Paris on 8 June 1999[342]

227. Participants were Amann (Mr […], Mr […]), Cousin (Mr […]), Coats (Mr […]), Barbour (Mr […]) and Oxley Threads (Mr […]).

228. According to an internal e-mail from Coats dated 9 June 1999 seized during the inspection at Coats' premises[343], the meeting had been organised to discuss the supply of filament threads to European automotive customers. Participants exchanged information on their prices to […] and agreed on a minimum target price for this customer. In general, participants agreed to fix target prices for core products for all European customers and countries. They decided to proceed in the

339 See statement by Mr […] of Coats (38337, pp. 10352-10354).
340 See statement by Mr […] of Coats (38337, pp. 10352-10354).
341 See answer 4.3 in Coats' reply to the Commission's request for information: Coats indicated that Amann's price was DEM [10-20] for a 3000 metre vicone of M40 lubricated CF nylon, which is equivalent to DEM Mr […] per kilo (38337, p. 9529).
342 See e-mail from [40-50] (38037, p. 4147) and statement by Mr […] of Coats (38337, pp. 10352-10354).
343 See 38036, p. 4147.

following way: once the list of core products was agreed on[344], minimum prices would be set for each of them at the next meeting. With a view to fixing these minimum prices, participants were asked to supply Mr […] of Oxley Threads with their highest and lowest European prices for certain core products. Mr […] compiled a table with the highest and lowest prices for each product without attributing a particular price to a particular customer or supplier[345].

229. According to Mr […] of Coats/Barbour[346], Cousin called Barbour "to probe Barbour's intentions vis-à-vis […], while Cousin was trying to push through a price increase".

230. Amann also confirmed that participants in the Paris meeting "reached a common understanding to agree on highest and lowest European prices for certain core products (…) to contribute to the prevention of a further deterioration of the prices, in particular vis-à-vis powerful clients such as […][347]". It further explained that "in 1999 […] bought from Cousin at […] FF per kg for core products. Mr [*official of Cousin*] suggested to other participants of the Paris meeting that he would try to raise his company's prices by […]% per kg. In Cousin's view the participants reached a consensus that the other competitors would not undercut his price offers vis-à-vis […]".

231. Similarly, Oxley confirmed that it was party to agreements reached by competitors regarding the supply of automotive thread throughout the EEA[348].

Meeting at Zürich Airport on 9 July 1999

232. The participants were the same as in Paris on 8 June 1999.

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344 Mr […] was designated to circulate his views on what core products should be. See document (38337, p. 10358) taken during the inspection.

345 See statement by Mr […] of Coats (38337, pp. 10352-10354).

346 See statement by Mr […] of Coats (38337, pp. 10352-10354).

347 See Amann's reply to the Statement of Objections, p.45.

348 See Oxley's reply to the Statement of Objections, par.73.

233. Coats stated[349] that "Mr […]'s table was discussed. The products listed were CF nylon bonded for airbags (M20, M30), CF nylon or polyester for seat trim (M13, M20, M30, M40) and CF nylon for seat belts (M13, M20). The consensus was that there should be a minimum target price for existing automotive thread customers of EUR [10-20] per kg and EUR [10-20] per kg for new customers. Concerning […], Mr [*official of Cousin*]said that he would try to increase his price by [10-20%], from [95-105] FF per kg to [110-120] FF. Cousin subsequently called Mr […] of Barbour to say that he had implemented that increase".

234. In its reply to the Statement of Objections, Amann stated that Mr [*official of Barbour*]'s statement is misleading in so far as he claims that Mr [*official of Cousin*] would have called him "*to say that he had implemented that increase*"[350]. Amann explained that "Mr [*official of Cousin*] called Mr [*official of Barbour*] in order to report on the move he had made vis-à-vis […]. At that time, Mr [*official of Cousin*] had indeed announced to […], Belgium, that he would have to raise prices by the (agreed) percentage of [10-20%]. However, this proposal was not accepted by […]. Contrary to the "agreement" reached at the Paris meeting Coats subsequently undercut Cousin's prices vis-à-vis […]. As a result of this, Cousin was compelled to cancel the price increase at least partially. Instead of the desired […]FF per kilo Cousin Filterie finally agreed to supply on the basis of […]FF per kilo". As explained in the Statement of Objections, and as acknowledged by Cousin in its reply, Cousin's price was therefore indeed raised, even though not as much as initially agreed –the price was raised by [0-10%] instead of [10-20%], and the price increase indeed implemented

235. According to Coats/Barbour[351], "the target prices agreed on during the Zurich meeting were not adhered to or at least not by Coats/Barbour". In

349 See answer 4.3 in Coats' reply to the Commission's request for information (38337, pp. 9528-9530).
350 See Amann's reply to the Statement of Objections, p.46.
351 See statement by Mr […] for Coats' application for leniency (38337, pp. 10352-10354).

particular, Coats/Barbour's offer to […] in January 2000 was well below EUR [10-20] for Nylon Bonded M 30/3[352]and Coats/Barbour's offer to […] in March 2000 was slightly below EUR [10-20] for Aptan Unbonded and Nylon soft, with a three-year agreement to reduce the price by 3% each year[353]. However, Coats/Barbour's offer to […] in January 2000 was above EUR [10-20] for Nylon Bonded M 40/3[354] and Coats/Barbour's offer to […] in March 2000 was above EUR [10-20] for Bonded Nylon and Aptan Bonded[355]. Coats/Barbour won the deal with […].

236. Mr […] from Barbour also stated that, around February or March 2000, he had received calls from Mr […] of Oxley Threads to seek agreement on price levels for automotive thread[356]. He also submitted that Mr […] (CEO, Coats) and Mr […] were called by Mr […] of Amann, who complained of undercutting. According to Coats, Coats replied that they were forced to match American & Efird's prices. A meeting was scheduled on 15 May 2000 to discuss these issues.

Meeting on 15 May 2000 at Coats' premises in Stockley Park[357]

237. Participants[358] were Amann/Cousin (Mr […]), Oxley Threads (Mr […]) and Coats (Mr […], Mr […]).

238. Prices offered by Coats to […] and […] were discussed. According to Coats, Amann and Oxley Threads complained about the level of Coats/Barbour's prices to […] and […] and sought Coats' commitment on minimum prices, but "Coats was not prepared to make any commitment on European pricing".

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352 See Coats' application for leniency (38337, p. 10363).
353 See Coats' application for leniency (38036, pp. 5771-5775/ 38337, p. 10353 and p.10364).
354 See Coats' application for leniency (38337, p. 10363).
355 See Coats' application for leniency (38036, pp. 5771-5775/ 38337, p. 10364).
356 See statement by Mr […] for Coats' application for leniency (38337, pp. 10352-10354).
357 See statement by Mr […] for Coats' application for leniency (38337, pp. 10352-10354).
358 See Coats' visitor management register provided by Coats in its application for leniency (38337, p.10367).

239. Another meeting took place at the International Federation of Sewing Thread Manufacturers[359] in Brussels on 13 June 2001[360]. Participants were Amann (Mr […]), Cousin (Mr […]), Gütermann (Mr […][361]), Oxley Threads (Mr […], Mr […]) and Coats (Mr […], Mr […]). However, the Commission has no evidence that prices were discussed during this meeting.

4.3.3. Implementation of the agreement

240. Participants actually exchanged information on prices to individual customers[362], agreed on minimum target prices for all European customers[363] and exerted pressure on other participants through telephone calls[364] and meetings[365] with a view to implementing the agreement. This is evidenced by numerous documents in the file and acknowledged by the parties in their replies to the Statement of Objections.

241. Nevertheless, suppliers of automotive thread deny that these minimum prices were implemented. Amann and Cousin allege that measures to maintain the price level were not abided by. Coats/Barbour and Oxley Threads state that the decisions to apply minimum target prices in general and for particular customers were not implemented or at least not by themselves.

242. However, it is clear that following the meetings with its competitors in 1999, Cousin successfully implemented an increase in its prices to its customer […]. Similarly, Coats/Barbour's offer to […] in January 2000

359 Fédération Internationale de la Filterie

360 See statement by Mr […] for Coats' application for leniency (38337, pp. 10352-10354).

361 See Mr […]'s diary (38337, p. 9350).

362 See meetings in May or June 1998 and on 15 April 1999 and 8 June 1999.

363 See meetings on 8 June 1999 and 9 July 1999.

364 See Cousin's call to Barbour to probe Barbour's intentions vis-à-vis […] in mid-1999 and Amann's call to Coats at the beginning of the year 2000 to complain of undercutting.

365 During meetings in 1999, Cousin tried to obtain a guarantee from Coats, Barbour and Oxley Threads that they would not undercut Cousin's offer to […]; during the meeting on 15 May 2000, Amann and Oxley complained about the level of Coats/Barbour's prices to […]and […].

was above EUR [10-20] for Nylon Bonded M 40/3[366] and Coats/Barbour's offer to […] in March 2000 was above EUR [10-20] for Bonded Nylon and Aptan Bonded. That is to say both offers were above the minimum prices agreed on during the Zurich meeting.

[366] See Coats' application for leniency (38337, p. 10363).

Part II – Legal assessment

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

5.1. Relationship between the Treaty and the EEA Agreement

243. The arrangements relating to industrial thread sold in Benelux and the Nordic countries were applied in Belgium, the Netherlands, Luxembourg, Denmark, Sweden, Finland and Norway from January 1990 to September 2001.

244. The arrangements relating to industrial thread sold in the United Kingdom were applied from October 1990 to October 2001.

245. The arrangements relating to automotive thread were applied throughout the territory of the EEA, i.e. in all Member States at that time plus Norway, Liechtenstein and Iceland, from June 1998 to 15 May 2000.

246. The EEA Agreement, which contains provisions on competition analogous to the Treaty, came into force on 1 January 1994. This Decision therefore includes the application as from that date of those rules (primarily Article 53 of the EEA Agreement) to the arrangements to which objection is taken.

247. Insofar as the arrangements affected competition in the common market and trade between Member States, Article 81 of the Treaty is applicable. The operation of the cartel in EFTA States which are part of the EEA and its effects on trade between the Community and Contracting Parties to the EEA Agreement or between Contracting Parties to the EEA Agreement falls under Article 53 of the EEA Agreement.

5.2. Jurisdiction

248. Since each of the three cartels had an appreciable effect on competition within the Community and on trade between Member States and Contracting Parties to the EEA Agreement[367], the Commission of the European Communities is competent in this case to apply both Article 81 of the EC Treaty and Article 53 of the EEA Agreement on the basis of Article 56 of the EEA Agreement.

5.3. Application of the competition rules

5.3.1. Article 81 of the Treaty and Article 53 of the EEA Agreement

249. Article 81 of the Treaty prohibits as incompatible with the common market all agreements between undertakings, decisions by associations of undertakings or 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.

250. Article 53 of the EEA Agreement contains a similar prohibition. However, the reference in Article 81 to trade "between Member States" is replaced by a reference to trade "between Contracting Parties" and the reference to competition "within the common market" is replaced by a reference to competition "within the territory covered by the [EEA Agreement]".

5.3.2. Undertakings

251. The companies concerned by these proceedings are undertakings within the meaning of Article 81 of the Treaty and 53 of the EEA Agreement.

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[367] See below the section "Effect on trade between EC Member States and Contracting Parties to the EEA Agreement".

5.3.3. Agreements, decisions and concerted practices

252. Article 81 of the Treaty prohibits as incompatible with the common market all agreements between undertakings, decisions by associations of undertakings or 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.

253. An *agreement* can be said to exist when the parties adhere to a common plan that 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. The concept of *agreement* in Article 81 of the Treaty would apply to the inchoate understandings and partial and conditional agreements in the bargaining process which lead up to the definitive agreement. In its judgment in Joined Cases T-305/94 etc. *Limburgse Vinyl Maatschappij N.V. and others v Commission* (*PVC II*)[368], the Court of First Instance stated that "it is well established in the case law that for there to be an agreement within the meaning of Article [81(1)] of the Treaty it is sufficient for the undertakings to have expressed their joint intention to behave on the market in a certain way"[369].

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

369 The case-law of the Court of Justice and the Court of First Instance in relation to the interpretation of Article 81 of the Treaty applies equally to Article 53 of the EEA Agreement. See recitals No 4 and 15 as well as Article 6 of the EEA Agreement, Article 3(2) of the EEA Surveillance and Court Agreement,

254. In this case, the undertakings subject to the proceedings agreed to exchange information on prices, to coordinate their prices and to avoid undercutting each other with a view to maintaining high prices on the relevant market. The existence of such agreements has been demonstrated in section 4 of this Decision by the participation of the undertakings in regular meetings at which prices were discussed and agreed and by the bilateral contacts these undertakings had to learn about their competitors' prices and, where necessary, to complain about undercutting and threaten to retaliate. Such agreements determined the lines of their mutual action or abstention from action in the market.

255. Article 81 of the Treaty and Article 53 of the EEA Agreement draw a distinction between the concept of "*concerted practice*" and that of "*agreements between undertakings*" or of "*decisions by associations of undertakings*"; the object is to bring within the prohibition of thoses Articles a form of coordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical cooperation between them for the risks of competition[370].

256. The criteria of coordination and cooperation laid down by the case-law of the Court, far from requiring the elaboration of an actual plan, must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition, according to which each economic operator must determine independently the commercial policy which it intends to adopt in the common market. Although that requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it strictly precludes any direct or indirect contact between such operators the object or effect of which is either to influence the

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as well as Case E-1/94 of 16.12.1994, recitals 32-35. References in this text to Article 81 therefore apply also to Article 53.

370 Case 48/69 *Imperial Chemical Industries v Commission* [1972] ECR 619, at paragraph 64.

conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market[371].

257. In this case, thread suppliers had direct contacts, including multilateral and bilateral contacts, which allowed them to coordinate their prices, including their prices to individual customers, and to implement the general agreement not to undercut each other in order to maintain high prices. Even though the parties did not explicitly subscribe to a common plan defining their action in the market, they knowingly adopted or adhered to collusive devices which facilitated the coordination of their commercial behaviour[372]. This conduct may therefore fall under Article 81 of the Treaty as a "*concerted practice*".

258. Although in terms of Article 81 of the Treaty the concept of a concerted practice requires not only concertation but also conduct on the market resulting from the concertation and having a causal connection with it, it may be presumed, subject to proof to the contrary, that undertakings taking part in such concertation and remaining active in the market will take account of the information exchanged with competitors in determining their own conduct on the market, all the more so when the concertation occurs on a regular basis and over a long period[373]. In this case, even though a supplier intermittently decided to "break the rules" and to undercut its competitor, it was likely to use the knowledge it had about its competitor's price to decide upon the price it was going to offer.

259. It is not necessary, particularly in the case of a complex infringement of long duration, for the Commission to characterise the conduct as exclusively one or other of these forms of illegal behaviour. The

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371 Joined Cases 40-48/73 etc. *Suiker Unie and others v Commission* [1975] ECR 1663.

372 See also the judgment of the Court of First Instance in Case T-7/89 *Hercules v Commission* [1991] ECR II-1711, at paragraph 256.

373 See also judgment of the Court of Justice in Case C-199/92 P *Hüls v Commission* [1999] ECR I-4287, at paragraphs 158-166.

concepts of agreement and concerted practice are fluid and may overlap. Indeed, it may not even be possible to realistically make such a distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while when considered in isolation some of its manifestations could accurately be described as one rather than the other. It would however be artificial analytically to subdivide what is clearly a continuing common enterprise having one and the same overall objective into several different 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 present type[374].

260. In its *PVC II* judgment, the Court of First Instance confirmed 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"[375].

261. An agreement for the purposes of Article 81 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 agreed on the basis of the same mechanisms and in pursuance of the same common purpose. As the Court of Justice, upholding the judgment of the Court of First Instance, pointed out in Case C-49/92P *Commission v Anic Partecipazioni SpA*[376],

374 See again the judgment of the Court of First Instance in Case T-7/89 *Hercules v Commission*, at paragraph 264.

375 See Joined Cases T-305/94 etc. *Limburgse Vinyl Maatschappij and Others v Commission* (PVC II) [1999] ECR II 931, paragraph 696.

376 See [1999] ECR I-4125, at paragraph 81.

it follows from the express terms of Article 81(1) 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.

262. In this case, the cartel arrangements include agreements, such as the general agreement to avoid undercutting each other and to maintain high prices, and concerted practices, such as regular calls to inform each other of the price offered to a specific customer.

263. On the basis of the above considerations, the Commission considers that the infringements in this case present all the characteristics of agreements and/or concerted practices within the meaning of Article 81 of the Treaty.

5.3.4. Three single and continuous infringements

5.3.4.1. Three infringements

264. In this case, three infringements must be differentiated:

a) a cartel relating to industrial thread sold in Benelux and the Nordic countries between Ackermann Nähgarne GmbH & Co, Amann & Söhne GmbH & Co KG, Barbour Threads Ltd, Belgian Sewing Thread N.V., Bieze Stork B.V., Coats Viyella plc[377], Gütermann AG and Zwicky & Co AG;

b) a cartel in the United Kingdom relating to industrial thread between Barbour Threads Ltd, Coats UK Ltd, Donisthorpe & Co Ltd, Oxley Threads Ltd and Perivale Gütermann Ltd;

c) an EEA wide cartel relating to automotive thread between Amann und Söhne GmbH & Co KG, Barbour Threads Ltd, Coats Viyella plc[378], Cousin Filterie SA and Oxley Threads Ltd.

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377 Known as Coats plc from May 2001 until November 2003

378 Known as Coats plc from May 2001 until November 2003

265. These three cartels must be differentiated for the following reasons:

a) first, participants in the agreements were not the same. Even though some participants, such as Coats, Amann and Gütermann, took part in two or three of the cartels, most undertakings took part in only one cartel, as they were not active on the markets involved in the other cartels;

b) second, there is no evidence of any overall coordination between the three collusive arrangements. The scheme of the cartel for automotive thread was different from the schemes of the two cartels for industrial thread: whereas suppliers of industrial thread met once or twice a year to discuss list prices and "special" prices, suppliers of automotive thread began to meet on an irregular basis to discuss their prices to some customers and ended by fixing minimum prices for core products. Even though some elements of the scheme of the two cartels for industrial thread are the same[379], decisions were different. For instance, suppliers in Benelux and in the Nordic countries decided to increase the price lists by approximately 3-3.5% in 1998 and 2001, whereas at least Coats and Oxley Threads have not changed their UK price list since 1996.

266. Furthermore, the markets involved in the three cartels are different. As established in section 2 of this Decision, either the product markets (industrial versus automotive thread) are different or the geographic markets (Benelux, Nordic countries[380], the United Kingdom) are different. As Coats puts it, there were separate meetings and no need for coordination between the different regions, because "thread markets

379 Such as agreements on list prices and agreement not to undercut the incumbent supplier.

380 As already explained in the present Decision, even though the Benelux and the Nordic countries appear to be two different markets, they have been considered together because of the structure and functioning of the cartel, its organisation and its participants.

were essentially national and each producer had different managers responsible for different countries or regions"[381].

267. Even though this case relates to three different infringements, the Commission has decided, on grounds of efficiency and concision, to present the case in a single Statement of Objections and in a single Decision, as the product markets are the same or are closely related[382] and as some undertakings are involved in two or three of the cartels.

5.3.4.2. Each infringement constitutes a single and continuous infringement

268. A complex cartel may properly be viewed as a single continuing infringement for the time frame in which it existed. The agreement may well have varied from time to time, or its mechanisms may have been adapted or strengthened to take account of new developments. The validity of this assessment is not 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 a violation of Article 81(1) of the Treaty.

269. The three groups of agreements and concerted practices found to exist form three overall schemes which laid down the lines of the parties' action in the market and restricted their individual commercial conduct with the aim of pursuing, within the framework of each of the three infringements, an identical anticompetitive object and a single economic aim. Those objects and aims were:

a) to distort the normal movement of prices for industrial thread to distort the normal movement of prices for industrial thread in the Benelux and Nordic markets;

381 See Coats' reply to the Commission's request for information (38337, p. 9511).

382 For two cartels, the product market is industrial thread and for the third cartel, the product market is automotive thread.

b) to distort the normal movement of prices for industrial thread in the market of the United Kingdom;

c) to distort the normal movement of prices for automotive thread in the EEA-wide market.

270. It would be artificial to further divide these three, in themselves, continuous lines of conduct, each characterised by a single purpose, by treating each of them as consisting of several separate infringements. Each of the three infringements constituted a distinct, single infringement which progressively was to manifest itself in both agreements and concerted practices.

271. Although a cartel is a joint enterprise, each participant in the agreement may play its own particular role. One or more may exercise a dominant role as ringleader(s). Internal conflicts and rivalries, or cheating may even occur, but will not prevent the arrangement from constituting an agreement/concerted practice for the purposes of Article 81 of the Treaty where there is a single common and continuing objective.

272. The mere fact that each participant in a cartel may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants but which share the same unlawful purpose and the same anticompetitive effect. An undertaking which takes part in the common unlawful enterprise through 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 risk[383].

273. In fact, as the Court of Justice stated in its judgment in *Commission v Anic Partecipazioni*[384], the agreements and concerted practices referred to in Article 81(1) of the Treaty necessarily result from collaboration by several undertakings, who are all coperpetrators 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 that infringement of that Article may result not only from an isolated act but also from a series of acts or from a 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 Article 81 of the Treaty[385].

274. For the period from January 1990 to September 2001, the collusive agreement on the market for industrial thread sold in Benelux and the Nordic countries constitutes a single and continuous infringement:

a) the continuity of the infringement is established by the existence during the whole period of an overall scheme, namely the objective to maintain high prices. To pursue this objective and to maintain the continuity of their agreement, from 1990 until 2001, undertakings used to participate in annual or even biannual meetings involving price discussions and used to make regular bilateral contacts;

b) Although the infringement relates to two areas which are not geographically adjacent, it nevertheless constitutes a single

383 See the judgment of the Court of Justice in Case C-49/92 P *Commission v Anic Partecipazioni*, at paragraph 83.

384 Case C-49/92 P.

385 See the judgment of the Court of Justice in Case C-49/92 P *Commission v Anic Partecipazioni*, paragraphs 78-81, 83-85 and 203.

infringement. Even though Benelux and the Nordic countries may constitute two different geographic markets, suppliers decided to organise meetings for the two areas on the same day, the undertakings represented were the same and decisions were often similar[386].

275. For the period from October 1990 to September 1996, the collusive agreement on the market of the United Kingdom for industrial thread constituted a single and continuous infringement. The continuity of the infringement is established by the existence of an overall scheme, namely the objective to maintain high prices. To pursue this objective and to maintain the continuity of their agreement, the UKTMA members which are addressees of this Decision used to participate in annual meetings to agree on list prices increases and to make regular contacts with their competitors to avoid undercutting each other.

276. From October 1996, elements of the UK cartel for industrial thread have been too heterogeneous and fragmented over time to demonstrate that the collusive agreement has been continuous. Indeed, some elements of the agreement continued, such as occasional contacts between competitors to avoid undercutting each other, as well as two meetings: one meeting in April 1999 to discuss consignment stocks and another meeting on 22 October 2001 to try to reinstate the UKTMA and to discuss prices. However, these elements are not sufficient to allow the Commission to consider that there has been a single and continuous after October 1996.

277. For the period from 1998 to 2000, the collusive agreement on the EEA market for automotive thread constituted a single and continuous infringement. These agreements and concerted practices form part of an overall scheme which laid down the lines of the suppliers' action in the market and restricted their individual commercial conduct with the aim

386 For instance, participants in the meeting on 19 September 2000 decided to increase prices in 2001 by 3.5% in Denmark, Sweden, Belgium and the Netherlands.

of pursuing an identical anticompetitive object and a single economic aim, namely to distort the normal movement of prices in the EEA market for automotive thread.

5.3.5. Restriction of competition

278. The anticompetitive behaviour in this had the object and effect of restricting competition in the Community and in the EEA.

279. Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement expressly mention as restrictive of competition agreements which:

a) directly or indirectly fix selling prices or any other trading conditions,

b) limit or control production,

c) share markets or sources of supply.

280. In the network of agreements and concerted practices relating to the market for industrial thread sold in Benelux and the Nordic countries from January 1990 to September 2001, the following elements can be identified as relevant in order to find an infringement of Article 81 of the Treaty:

a) exchanging sensitive commercial information, such as price lists, rebates, special and net prices to individual customers,

b) agreeing on price list increases and on the dates from which each supplier would announce and implement the increase,

c) defining maximum rebates to customers and agreeing on rebate reductions,

d) agreeing on increases in “special prices to customers”,

e) participating in regular meetings in order to agree on those restrictions, to exchange information on the implementation of these agreements and to modify these agreements as required,

f) agreeing not to undercut the incumbent supplier's price with a view to sharing customers,

g) having contacts, in order to agree on net prices to individual customers and to implement the agreement forbidding undercutting.

281. In the network of agreements and concerted practices relating to the market of the United Kingdom for industrial thread from October 1990 to September 1996, the following elements can be identified as relevant in order to find an infringement of Article 81 of the Treaty:

a) agreeing on increases in list prices and in net prices to customers,

b) agreeing not to undercut the incumbent supplier's price with a view to allocating customers.

282. In the complex of agreements and concerted practices relating to the EEA market for automotive thread from June 1998 to May 2000, the following elements can be identified as relevant in order to find an infringement of Article 81 of the Treaty:

a) fixing target prices for core products sold to European automotive customers,

b) exchanging information on prices to individual customers and agreeing on minimum target prices for these customers,

c) agreeing not to undercut the incumbent supplier's price with a view to allocating customers,

283. These kinds of agreements and concerted practices have as their object the restriction of competition within the meaning of Article 81 of the Treaty. Price being the main instrument of competition, the various collusive agreements and mechanisms adopted by the producers in the three agreements were all ultimately aimed at an inflation of the price to

their benefit and above the level which would be determined by conditions of free competition.

284. It is settled case-law that for the purpose of application of Article 81 of the Treaty and Article 53 of the EEA Agreement 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 anticompetitive effects where the anticompetitive object of the conduct in question is proved[387].

285. The Court of First Instance in the *European Night Services* established that in assessing an agreement under Article 81(1) of the Treaty, account should be taken of the actual conditions in which it functions, in particular the economic context in which the undertakings operate, the products or services covered by the agreement and the actual structure of the market concerned, unless it is an agreement containing obvious restrictions of competition such as price-fixing, market-sharing or the control of outlets[388].

286. In this case, the anti-competitive object of the conduct was obvious in the way meant by the Court of First Instance, and thus it is not necessary to show actual anti-competitive effects. The Commission nonetheless considers that, on the basis of the elements put forward in section 4 of this Decision, the three agreements also had a restrictive effect on competition:

a) Effect on competition of the cartel for industrial thread sold in Benelux and the Nordic countries: section 4.1.4 of this Decision demonstrates that the agreements have been implemented. Participants in the cartel actually implemented at least some of the increases they

387 Case T-62/98 *Volkswagen AG v Commission* [2000] ECR II-2707, paragraph 178.

388 Judgment of the Court of First Instance in Joined Cases T-374/94, T-375/94, T-384/94 and T-388/94 *European Night Services Ltd (ENS) and Others v Commission* [1998] ECR II-3141, paragraph 136.

had agreed on for list and net prices. At least some of the agreements on rebates and special prices to consumers have also been implemented. As regards the rule not to undercut the incumbent suppliers' prices, it necessarily had a direct or indirect influence on the way competitors operated on the market, even though it is true that despite the general agreement, competitors seem to have undercut each other's prices on several occasions. However, the fact that some cartel members may have disregarded to some extent the commitments made towards the other cartel participants does not imply that they did not implement the cartel agreement. As the Court of First Instance stated in *Cascades*[389], "an undertaking which, despite colluding with its competitors follows more or less independent policy on the market may simply be trying to exploit the cartel for its own benefit".

b) Effect on competition of the cartel for industrial thread sold in the United Kingdom: section 4.2.2 of this Decision demonstrates that, as a result of collusive agreements in force from October 1990 until September 1996, some UKTMA members increased price lists and negotiated net price increases with their customers in a coordinated manner. Even though Coats alleges difficulties in implementing the agreed increases for large and medium accounts, there is no doubt that such agreements had an effect on competition and on prices. First, as admitted by Coats, these increases were generally implemented for small accounts. Second, neither Coats nor Oxley Threads stated that they *always* failed to implement increases for large and medium accounts. In its reply to the Statement of Objections, Oxley admitted that as a result of the agreements reached at the meetings it increased its list prices. These list price increases applied for around 10% of its customers, which were list price customers. Large accounts would negotiate pricing arrangements and Oxley acknowledges that

389 Judgment of the Court of First Instance in Case T-308/94 *Cascades* [1998] ECR II-295, paragraph 230.

"Sometimes these negotiations would commence with the current list price as a starting point". Therefore, an increase in list prices necessarily had an impact on the net prices. As regard the agreement not to undercut each others' prices, Oxley stated that the general understanding regarding the undercutting of prices was "not always implemented" which means that the agreement was indeed implemented at times even though some cartel members may sometimes have disregarded the commitments made to the other cartel participants. The agreement had the effect of restricting competition to the benefit of the incumbent supplier, which could then more easily implement the increases which had been agreed with its competitors;

c) Effect on competition of the cartel for automotive thread: as seen in section 4.3.3 of this Decision, participants in the cartel for automotive thread exchanged information on prices to individual customers and agreed on minimum target prices for all European customers. In their reply to the Statement of Objections, all suppliers have confirmed their participation in agreements concerning price fixing, exchange of information on prices and agreement not to undercut each other's prices. Despite the fact that participants in the cartel deny that they implemented the agreed minimum prices, it is clear that at least some of the agreements have been implemented. For instance, following the meetings with its competitors in 1999, Cousin successfully implemented an increase in its prices to its customer […]. Similarly, Coats/Barbour's offer to […] in January 2000 was above EUR [10-20] for Nylon Bonded M 40/3[390] and Coats/Barbour's offer to […] in March 2000 was above EUR [10-20] for Bonded Nylon and Aptan Bonded, that is to say above the minimum prices agreed on during the Zurich meeting. The fact that some cartel members may have disregarded to some extent the commitments made towards the other cartel participants does not imply that they did not implement the

[390] See Coats' application for leniency (38337, p. 10363).

cartel agreement. Whilst the competition-restricting object of the arrangements is sufficient to support the conclusion that Article 81 of the Treaty and Article 53(1) of the EEA Agreement apply, the Commission considers in this case that the three agreements also had a restrictive effect on competition.

5.3.6. Effect on trade between Member States and Contracting Parties to the EEA Agreement

287. The continuing agreement between the producers had an appreciable effect on trade between Member States and between Contracting Parties to the EEA Agreement.

288. Article 81 of the Treaty is aimed at agreements which might harm the attainment of a single market between the Member States, either by partitioning national markets or by affecting the structure of competition within the common market. Similarly, Article 53 of the EEA Agreement is directed at agreements that undermine the achievement of a homogeneous European Economic Area.

289. According to the judgment of the Court of Justice in *Bagnasco*, "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 that it may have influence, direct or indirect, actual or potential, on the pattern of trade between Member States"[391]. In any event, Article 81(1) of the Treaty does not require that agreements referred to in that provision have actually affected trade between Member States, it requires that it be established that the agreements are capable of having this effect[392].

290. As demonstrated in section 2.3.1.4 on "Interstate trade in industrial thread" and section 2.3.2.3 on "Interstate trade in automotive thread",

391 Joined Cases C-215/96 and C-216/96 *Bagnasco* [1999] ECR I-135, paragraphs 47 and 48.

392 Case 19/77, *Miller International Schallplaten*, [1978] ECR 131, 150-151; case 322/81, Michelin, [1983] ECR-3461, paragraph 104.

the volume of trade in industrial thread and automotive thread between the Contracting Parties to the EEA Agreement is substantial.

291. The application of Article 81 of the Treaty and Article 53 of the EEA Agreement to a cartel is not, however, limited to that part of the members' sales which actually involve the transfer of goods from one State to another. Nor is it necessary, in order for these provisions to apply, to show that the individual conduct of each participant, as opposed to the cartel as a whole, affected trade between Member States[393].

292. As far as the aspects of this case which relate to automotive thread are concerned, the cartel arrangements cover virtually all trade throughout the Community and the EEA. The existence of a price-fixing mechanism must have resulted, or was likely to result, in the automatic diversion of trade patterns from the course they would otherwise have followed[394].

293. As far as the aspects of this case which relate to industrial thread are concerned, the cartel arrangements cover either several Contracting Parties to the EEA Agreement (Benelux and the Nordic countries) or only one country[395] (the United Kingdom). The existence of a price-fixing mechanism for several countries must have resulted, or was likely to result, in the automatic diversion of trade patterns from the course they would otherwise have followed. The existence of a price-fixing mechanism for a single country must also have resulted, or was also likely to result, in the automatic diversion of trade patterns from the course they would otherwise have followed, because suppressing or reducing opportunities for customers to find lower prices or alternative suppliers in foreign countries (e.g. in the United Kingdom) hampers interstate trade.

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393 See the judgment of the Court of First Instance in Case T-13/89 *Imperial Chemical Industries v Commission* [1992] ECR II-1021, at paragraphs 304 and 305.

394 See the judgment of the Court of Justice in Joined Cases 209 to 215 and 218/78 *Van Landewyck and others v Commission* [1980] ECR 3125, at paragraph 170.

395 Compare Case C-309/99 *Wouters*, [2002] ECR I1-577, paragraph 95.

294. Insofar as the activities of the cartel related to sales in countries that are not Members States or Contracting Parties to the EEA Agreement, they lie outside the scope of this Decision.

5.3.7. Provisions of the competition rules applicable to Finland, Iceland, Liechtenstein, Norway and Sweden

5.3.7.1. Provisions of the competition rules applicable to the arrangements in Finland, Norway and Sweden of the cartel for industrial thread sold in Benelux and the Nordic countries

295. The EEA Agreement entered into force on 1 January 1994. For the period prior to that date, the only applicable provision for this proceedings is Article 81 of the Treaty. Insofar as the cartel arrangements for industrial thread sold in Benelux and the Nordic countries covered Finland, Norway and Sweden (then EFTA Member States), they were not caught by that provision.

296. In the period 1 January to 31 December 1994, the provisions of the EEA Agreement applied to the EFTA Member States which had joined the EEA. The cartel arrangements for industrial thread sold in Benelux and the Nordic countries thus constituted a breach of Article 53 of the EEA Agreement as well as of Article 81 of the Treaty, and the Commission has the competence to apply both provisions. The restriction of competition in Finland, Norway and Sweden during this one-year period is caught by Article 53 of the EEA Agreement.

297. After the accession of Finland and Sweden to the Community on 1 January 1995, Article 81 of the Treaty became applicable to the cartel insofar as it affected Finland and Sweden. The cartel arrangements in Norway remained in breach of Article 53 of the EEA Agreement.

298. In practice, it follows from the above that insofar as the cartel for industrial thread sold in Benelux and the Nordic countries applied to Finland, Norway and Sweden, it constituted a breach of the EEA and/or

Community competition rules from 1 January 1994. Insofar as the cartel for industrial thread applied to Belgium, Denmark, Luxembourg and the Netherlands, the cartel constituted a breach of the Community competition rules from January 1990, the earliest date from which the Commission is aware of.

5.3.7.2. Provisions of the competition rules applicable to the arrangements in Iceland, Liechtenstein and Norway of the cartel for automotive thread

299. It also follows from the above that insofar as the cartel for automotive thread applied to Norway, Liechtenstein and Iceland, it constituted a breach of the EEA competition rules from the time when the cartel first operated in 1998 until 2000. Insofar as the cartel for automotive thread applied to Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom, it constituted a breach of the Community competition rules from the time when the cartel first operated in 1998 until 2000.

5.3.8. Individual exemption under Article 81(3) of the Treaty and Article 53(3) of the EEA Agreement

300. The parties have not raised any arguments to suggest that the conditions of Article 81(3) would be fulfilled in this case, and therefore the Commission considers that this is not the case. The parties' agreements functioned to their own exclusive advantage and none of the benefits of the arrangements accrued to the customers or the ultimate consumers. Consequently, the agreements at stake do not meet the cumulative conditions for an individual exemption under Article 81(3) of the Treaty and Article 53(3) of the EEA Agreement.

6. ADDRESSEES OF THIS DECISION

6.1. Addressees in respect of the collusive agreements relating to industrial thread sold in Benelux and the Nordic countries

301. Coats Viyella plc[396], Amann & Söhne GmbH & Co KG, Gütermann AG, Bieze Stork BV, Belgian Sewing Thread N.V., Zwicky & Co AG until it was purchased by Gütermann in November 2000, Barbour Threads Ltd until it was purchased by Coats in 1999 and Ackermann Nähgarne GmbH & Co until it was purchased by Amann in 1994 participated in the cartel for industrial thread sold in Benelux and in the Nordic countries.

302. Since 1990, Coats Viyella plc[397], Amann & Söhne GmbH & Co KG and Gütermann AG have been legal entities. As a consequence, they bear responsibility for their participation in the cartel for industrial thread sold in Benelux and the Nordic countries from 1990 until 2001, when the Commission carried out inspections, and are addressees of this Decision.

303. Since 1990, Zwicky & Co AG has been a legal entity. Until November 2000, Zwicky had no parent company. In November 2000, Zwicky was acquired by Gütermann AG and ceased its activities in the thread business and in the cartel for industrial thread sold in Benelux and the Nordic countries. As a consequence, Zwicky & Co AG bears responsibility for its participation in the cartel for industrial thread sold in Benelux and the Nordic countries from 1990 until October 2000 and is an addressee of this Decision.

304. Since 1990, Barbour Threads Ltd has been a legal entity. Until September 1999, Barbour Threads Ltd was wholly owned by Barbour

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396 Known as Coats plc (legal successor of Coats Viyalla plc) from May 2001 until November 2003; as Coats Ltd (legal successor of Coats plc) after November 2003, and as Coats Holdings Ltd (legal successor of Coats Ltd) after July 2004..

397 Known as Coats plc from May 2001 until November 2003, Coats Ltd after November 2003, and Coats Holdings Ltd after July 2004.

Campbell Textiles Ltd, which in turn was wholly owned by Hicking Pentecost plc. As Barbour Threads Ltd was a wholly owned subsidiary of Hicking Pentecost plc, it can be assumed that it exercised influence on Barbour's market strategy. Indeed, according to established case-law, it may be presumed that a wholly-owned subsidiary, in principle, necessarily follows the policy laid down by the parent company and thus does not enjoy an autonomous position[398]. Therefore, Barbour Threads Ltd and Hicking Pentecost plc are jointly and severally liable for Barbour Threads Ltd's participation in the cartel for industrial thread sold in Benelux and the Nordic countries until it was purchased by Coats in September 1999 and both are addressees of this Decision. Since September 1999, Barbour Threads Ltd has been a non-operating legal entity and has no longer participated in the operation of the cartel.

305. Barbour Threads Ltd, Coats Ltd, Coats UK Ltd and Hicking Pentecost plc have submitted a joint reply to the Statement of Objections and have not contested any issue as regards liability for each of the three cartels.

306. Since 1990, Belgian Sewing Thread N.V. has been a legal entity. Until March 1996, BST had no parent company. As a consequence, only BST bears responsibility for its participation in the cartel for industrial thread sold in Benelux and the Nordic countries from 1991 until March 1996, and is an addressee of this Decision. From April 1996, BST has been entirely controlled by Flovest N.V[399], either directly or through Vannesco N.V[400]. However, Flovest submitted evidence that lead Commission to conclude that it did not effectively exercise decisive influence over the commercial policy of its subsidiary.

307. From 1990, Bieze Stork B.V. has been a legal entity. From 1990 until 2002, Bieze Stork was wholly owned by the holding company Bisto

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398 See Case 107/82, *AEG-Telefunken v Commission*, , [1983[ECR 3151, paragraph 50, Case C-286/98 P *Stora Kopparbergs Bergslags AB v Commission*, [2000] ECR I-9925, paragraph 29

399 Flovest n.v., Burg. B. Dannelstraat 191 C, B-8500 Kortrijk.

400 Vannesco n.v., Louisalaan 522, 2 verdiep, B-1050 Brussel.

Holding B.V., pursuant to a management buyout by Mr. […] in 1990. Mr. […] admitted that, through his personal holding company Bisto Holding B.V, he had full control over Bieze Stork and therefore exercised decisive influence over the commercial policy of Bieze Stork[401].

308. In its reply to the Statement of Objections[402], Bisto contradicts its earlier response and states that its role was restricted to that of holding shares in the capital of Bieze Stork and that Bisto Holding had no influence on Bieze Stork's commercial policy. It is, however, not contested that Mr […] was the manager of Bisto from 1989 *and* managing director of Bieze Stork[403], representing Bieze Stork in the meetings described in this Decision. The Commission notes that Bieze Stork B.V. has been entirely controlled by Bisto Holding B.V.. Consequently, it can presume that the infringements committed by the subsidiary are attributable to the parent company. A wholly-owned subsidiary necessarily follows a policy laid down by the parent company[404]. Bisto's arguments are not sufficient to rebut this presumption. Bisto Holding cannot pretend that it did not exercise decisive influence when Bisto's manager and sole owner of Bisto Holding represented Bieze Stork in the collusive agreement.

309. Consequently, Bisto had full knowledge of Bieze Stork's participation in the cartel for industrial thread sold in Benelux, since Mr […], manager of Bisto, represented Bieze Stork in the collusive agreements. Therefore, Bieze Stork B.V. and Bisto Holding B.V. are jointly and severally liable for Bieze Stork's participation in the cartel for industrial thread sold in

401 See Bieze Stork's reply to the Commission's request for information (38337, pp. 520/10465).

402 See Bisto's reply to the Statement of Objections, p.2.

403 See Dun & Bradstreet reports on Bieze Stork and Bisto.

404 Joined cases T-305/94, T-306/94, T-307/94 T-313/04 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 T-335/94 *PVCII* [1999] ECR II-931, paragraph 961, where the Court held, that «Montedison […] held all the capital of Montedipe annd Montepolimeri, with the result that those companies must be regarded as necessarily following a policy laid down by the bodies which under its constitution determine the policy of the parent company", also paragraphs 984 and 985 and Case 107/82, *AEG-Telefunken v Commission*, [1983[ECR 3151, paragraph 50, Case C-286/98 P *Stora Kopparbergs Bergslags AB v Commission*, [2000] ECR I-9925, paragraph 29. T-31/99 *ABB Asea Brown Boveri Ltd v Commission*, [2002] ECR I-1881, paragraphs 35-37.

Benelux and the Nordic countries from 1990. Both undertakings are addressees of this Decision.

310. Since 1990, Ackermann Nähgarne GmbH & Co has been a legal entity. Therefore, Ackermann Nähgarne GmbH & Co is liable for its participation in the cartel for industrial thread sold in Benelux and the Nordic countries until 1 January 1994 and is an addressee of this Decision. Since 1994, Ackermann Nähgarne GmbH & Co has remained a legal entity, but has no longer had customers and has not participated in the cartel.

6.2. Addressees in respect of the collusive agreements relating to industrial thread sold in the United Kingdom

311. From October 1990 until September 1996, Coats UK Ltd, Donisthorpe & Co Ltd, Oxley Threads Ltd, Perivale Gütermann Ltd and Barbour Threads Ltd participated in the cartel for industrial thread sold in the United Kingdom.

312. Since 1990, Oxley Threads Ltd has been a legal entity and has had no parent company. As a consequence of its participation in the cartel for industrial thread sold in the United Kingdom, it bears responsibility for its infringements and is an addressee of this Decision.

313. Since 1990, Coats UK Ltd has been a legal entity and has been wholly owned by Coats. As Coats UK Ltd was a wholly owned subsidiary of Coats, it can be assumed that Coats exercised influence on Coats UK Ltd's market strategy[405]. Furthermore, Coats admits that its subsidiaries were managed by its own employees[406]. Therefore, Coats UK and Coats are jointly and severally liable for Coats UK's participation in the cartel for industrial thread sold in the United Kingdom and both are addressees of this Decision.

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405 Case 107/82, *AEG-Telefunken v Commission*, [1983[ECR 3151, paragraph 50, Case C-286/98 P *Stora Kopparbergs Bergslags AB v Commission*, [2000] ECR I-9925, paragraph 29.

406 See answer 3.1.3 in Coats' reply to the Commission's request for information (38337, p. 9494).

314. Since 1990, Barbour Threads Ltd has been a legal entity. Until September 1999, Barbour Threads Ltd was wholly owned by Barbour Campbell Textiles Ltd, which in turn was wholly owned by Hicking Pentecost plc. As Barbour Threads Ltd was a wholly owned subsidiary of Hicking Pentecost plc, it can be assumed that it exercised influence on Barbour's market strategy. Therefore, Barbour Threads Ltd and Hicking Pentecost plc are jointly and severally liable for Barbour Threads Ltd's participation in the cartel for industrial thread sold in the United Kingdom and both are addressees of this Decision.

315. Barbour Threads Ltd, Coats Ltd, Coats UK Ltd and Hicking Pentecost plc have submitted a joint reply to the Statement of Objections and have not contested any issue as regards liability for each of the three cartels.

316. Since 1990, Donisthorpe & Co Ltd has been a legal entity. Until 8 January 2001[407] Donisthope was a wholly owned subsidiary of DMC via a UK holding company, Double Arch Ltd. According to Donisthorpe, the parent company had the power to control Donisthorpe by virtue of the company's Articles of Association. The Chairman of the Board of Directors[408] was appointed by the parent company and had weighted voting rights. Although the establishment of prices was the prerogative of the UK sales director, the capacity of DMC to exercise decisive influence on Donisthorpe's market strategy and the exercise of that influence may be presumed. Therefore, DMC and Donisthorpe are jointly and severally liable for Donisthorpe's participation in the cartel for industrial thread sold in the United Kingdom and both are addressees of this Decision.

317. In its reply to the Statement of Objections, DMC simply states that it does not contest the truth of the facts and has no comments or further information to submit.

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407 Since 9 January 2001, Donisthorpe has been a wholly owned subsidiary of Amann.

408 Mr […] from 1991 until 2000. See Donisthorpe's reply to the Commission's request for information (38337, p. 3242).

318. Since 1990, Perivale Gütermann Ltd has been a legal entity and has been wholly owned by Gütermann AG. As Perivale Gütermann Ltd has been a wholly owned subsidiary of Gütermann AG, it can be assumed that it exercised influence on Privale's market strategy. Furthermore, Dr […], as Gütermann's representative, chaired Perivale Gütermann's Board of Directors between June 1990 and July 2002[409]. This has not been contested by Gütermann AG or Perivale Gütermann Ltd in their joint reply to the Statement of Objections. Therefore, Perivale Gütermann Ltd and Gütermann AG are jointly and severally liable for Perivale Gütermann Ltd's participation in the cartel for industrial thread sold in the United Kingdom and both are addressees of the present Decision.

6.3. Addressees in respect of the collusive agreements relating to automotive thread sold in the EEA

319. From 1998, Amann und Söhne GmbH & Co KG, Coats Viyella plc[410], Oxley Threads Ltd, Barbour Threads Ltd until it was purchased by Coats in September 1999 and Cousin Filterie SA participated in the cartel for automotive thread sold in the EEA.

320. Since 1998, Coats Viyella plc[411], Amann & Söhne GmbH & Co KG, Oxley Threads Ltd and Gütermann AG have been legal entities. From 1998 until 2003, they had no parent company. As a consequence of their participation in the EEA cartel for automotive thread, they bear responsibility for their respective infringements and are addressees of this Decision.

321. Since 1998, Barbour Threads Ltd has been a legal entity. Until September 1999, Barbour Threads Ltd was wholly owned by Barbour Campbell Textiles Ltd, which in turn was wholly owned by Hicking Pentecost plc. As Barbour Threads Ltd was a wholly owned subsidiary

409 See (38337 p.8840)
410 Known as Coats plc from May 2001 until November 2003
411 Known as Coats plc from May 2001 until November 2003

of Hicking Pentecost plc, it can be assumed that Hicking Pentecost plc exercised influence on Barbour's market strategy. Therefore, Barbour Threads Ltd and Hicking Pentecost plc are jointly and severally liable for Barbour Threads Ltd's participation in the cartel for automotive thread sold in the EEA and both are addressees of this Decision. Since September 1999, Barbour Threads Ltd has been a non-operating legal entity and has no longer participated in the cartel.

322. Barbour Threads Ltd, Coats Ltd, Coats UK Ltd and Hicking Pentecost plc have submitted a joint reply to the Statement of Objections and have not contested any issue as regards liability for each of the three cartels.

323. Since 1998, Cousin Filterie SA has been a legal entity. Between 30 September 1996 and 31 October 1998, Amann owned […]% of Cousin's shares and appointed […] out of the […] directors on Cousin's Board[412]. Between 31 October 1998 and 29 September 2001, Amann owned […]% of Cousin's shares and appointed […] out of the […] directors on Cousin's Board[413]. After 29 September 2001, Amann owned […]% of Cousin's shares and appointed […] out of the […] directors on Cousin's Board[414]. According to Cousin, Amann has never influenced Cousin's commercial policy. However, Cousin's participation in the cartel seems to have been initiated by Amann. Cousin did not participate in the meeting of May or June 1998, but point 8 of the minutes of the meeting made it clear that policy agreed with Amann (which at that time owned […]% of Cousin) would equally apply to Cousin[415]. During the meeting at Schipol Airport on 15 April 1999 (shortly after Amann had acquired […]% of Cousin), Amann proposed to organise a meeting with Barbour and Cousin[416]. Amann's objective was to raise Cousin's price to […] and, to that end, Amann was seeking support from Oxley Threads and

412 Mr […] and Mr […]. See Cousin's reply to the Commission request for information (38337, p. 386).
413 Mr […] and Mr […]. See Cousin's reply to the Commission request for information (38337, p. 386)..
414 Mr […] and Mr […]. See Cousin's reply to the Commission request for information (38337, p. 386).
415 See 38337, pp. 8190-8191.
416 See section 4.3.3: "The cartel history".

Coats[417]. Cousin subsequently participated in the meetings on 8 June 1998, 9 July 1999, 15 May 2000 and 13 June 2001. At the meeting on 15 May 2000 at Coats' premises, Amann and Cousin were represented by Mr […], who had been appointed by Amann to be on Cousin's Board of Directors since October 1996. Therefore, Amann knew of Cousin's participation in the cartel for automotive thread in the EEA and exercised decisive influence on that participation since the first meeting of the cartel in May or June 1998. This has not been contested by Amann or Cousin in their joint reply to the Statement of Objections. Therefore, Cousin Filterie SA and Amann & Söhne GmbH & Co KG are jointly and severally liable for Cousin's participation in the cartel for automotive thread sold in Benelux and the EEA since the meeting in May or June 1998. Both are addressees of this Decision.

7. DURATION OF THE INFRINGEMENTS

7.1. Duration of the infringements relating to industrial thread sold in the Nordic countries and Benelux

324. It is apparent from the facts described in section 4.1 of this Decision that the collusion between the suppliers of industrial thread sold in Benelux and the Nordic countries lasted at least from January 1990 until September 2001. The meetings and bilateral contacts between the thread suppliers took place at least from January 1990[418]. The last meeting of which the Commission is aware took place on 18 September 2001.

325. Amann und Söhne GmbH & Co KG, Coats Viyella plc[419] and Gütermann AG participated in the infringement at least from January 1990 until September 2001.

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417 See Oxley's letter dated 2 May 2003 (38337, p. 8742).

418 Although meetings may have taken place also in the 1980s (see the statement by Mr […] of Coats), the Commission will in the present case limit its assessment to the period from 1990 onwards.

419 Known as Coats plc from May 2001 until November 2003.

326. Bieze Stork BV participated in the infringement from January 1990 until September 2001[420]. Before 8 September 1998 it participated only in discussions concerning the Benelux countries[421]. .

327. Belgian Sewing Thread N.V. participated in the infringement from June 1991 until September 2001[422]. Before 9 September 1997 it participated only in discussions concerning the Benelux countries[423].

328. Zwicky & Co AG took part in the infringement at least from January 1990 until it was purchased by Gütermann in November 2000.

329. Barbour Threads Ltd participated in the agreement at least from January 1990 until it was purchased by Coats in September 1999.

330. Ackermann Nähgarne GmbH & Co participated in the infringement at least from January 1990 until it was purchased by Amann on 1 January 1994.

331. It should of course be noted that insofar as the cartel affected Finland, Norway and Sweden, it constituted an infringement of the Community and EEA competition rules only from 1 January 1994 when the EEA Agreement came into effect.

7.2. Duration of the infringements relating to industrial thread sold in the United Kingdom

332. It is apparent from the facts described in section 4.2 of this Decision that the collusion between the UK suppliers of industrial thread lasted at least from October 1990[424] until September 1996 and that Barbour Threads

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420 As explained above, the infringement on the Benelux and Nordic markets is treated together.

421 See Bieze Stork's reply to the Statement of Objections, p.10 and e-mail dated 19.08.2004 describing the Scandinavian meetings attended by Mr […].

422 As explained above, the infringement on the Benelux and Nordic markets is treated together.

423 See BST's reply to the Statement of Objections, section III-C.

424 Oxley admits that it wrote a letter to its customers in October 1990 to notify a price increase made in pursuance of a decision taken during a meeting with its competitors (38337, pp. 885/8737). As the letter is dated October 1990 (38337, p. 1041), members of the UKTMA agreed on prices at least since October 1990. Furthermore, Oxley admits that throughout the period 1990-2000, there was a general

Ltd, Coats UK Ltd, Donisthorpe Ltd, Perivale Gütermann Ltd and Oxley Threads Ltd participated in the collusion during the whole period.

7.3. Duration of the infringements relating to automotive thread sold in the EEA

333. It is apparent from the facts described in section 4.3 of the present Decision that the collusion between the EEA suppliers of automotive thread lasted at least from May/June 1998 until May 2000.

334. Amann und Söhne GmbH & Co KG, Cousin Filterie SA, and Oxley Threads Ltd participated in the collusion at least from May/June 1998 until May 2000. Even though Cousin was not present at the meeting in May or June 1998, the minutes made it clear that the policy agreed with Amann would equally apply to Cousin[425].

335. Coats Viyella plc[426] participated in the collusion from 8 June 1999 until May 2000.

336. Barbour Threads Ltd participated in the collusion at least from May/June 1998 until it was purchased by Coats Viyella plc[427] in September 1999.

8. REMEDIES

8.1. Article 7 of Regulation (EC) No 1/2003

337. Where the Commission finds an infringement of Article 81of the Treaty it may require the undertakings concerned to bring such infringement to an end in accordance with Article 7 of Regulation (EC) No 1/2003.

338. The Commission stated in its Statement of Objections that it was not possible to declare with absolute certainty that the infringements had ceased.

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understanding between the members of the UKTMA that each would not undercut the other in relation to prices for apparel threads in the UK (38337, pp. 888/8737).

425 See 38337, pp. 8190-8191., see above, section 6.3.

426 Known as Coats plc from May 2001 until November 2003.

427 Known as Coats plc from May 2001 until November 2003.

339. The undertakings claimed that they had ended their participation in the infringement. Notwithstanding these observations, and for the avoidance of doubt, it is necessary to require the addressee undertakings to bring the infringements to an end, if they have not already done so, and henceforth to refrain from any agreement, concerted practice or decision of an association which, in object or effect, is the same or similar.

8.2. Article 23(2) of Regulation (EC) No 1/2003 (Article 15(2) of Regulation No 17)

340. Article 23(2) of Regulation (EC) No 1/2003 states that the Commission may impose fines on undertakings and associations of undertakings where, either intentionally or negligently, they infringe Article 81 or Article 82 of the Treaty. Article 15(2) of Regulation No 17, which was applicable when the infringement was committed, stated that the fine could not exceed 10% of the turnover in the preceding business year of each of the undertakings participating in the infringement. Article 23(2) of Regulation (EC) No 1/2003 applies the same limitation.

341. In fixing the amount of any fine the Commission must have regard to all relevant circumstances and particularly the gravity and duration of the infringement, which are the two criteria explicitly referred to in Article 15(2) of Regulation No 17 and in Article 23 (3) of Regulation No 1/2003. This basic amount will be increased to take account of aggravating circumstances or reduced to take account of mitigating circumstances.

342. In assessing the gravity of the infringement, the Commission will take account of its nature, its actual impact on the market, where this can be measured, and the size of the relevant market. The role played by each undertaking party to the infringement will be assessed on an individual basis. In particular, the Commission will reflect in the fine imposed any aggravating or attenuating circumstances and will apply, as appropriate, the 1996 Leniency Notice.

8.2.1. Cartel concerning industrial thread sold in Benelux and in the Nordic countries

343. The basic amount is determined according to the gravity and duration of the infringement.

The gravity of the infringement

344. In its assessment of the gravity of the infringement, the Commission takes account of its nature, its actual impact on the market, and the size of the relevant geographic market.

The nature of the infringement

345. It follows from the facts described in Part I that the infringement essentially consists of the exchange of sensitive information on price lists and/or prices charged to individual customers, agreement on price increases and/or on target prices and avoidance of undercutting the incumbent supplier's prices with a view to allocating customers. Such practices are by their very nature the worst kind of violations of Article 81 of the Treaty and Article 53 of the EEA Agreement. By its very nature, the implementation of a cartel agreement of the type described above leads to an important distortion of competition, which is of exclusive benefit to producers participating in the cartel and is detrimental to customers and, ultimately, to the consumers.

346. The Commission therefore considers that this infringement constituted by its nature a very serious infringement of Article 81of the Treaty and Article 53 of the EEA Agreement.

The actual impact of the infringement

347. There is no need to quantify in detail the extent to which prices differed from those which might have been applied in the absence of the anti-competitive arrangements in question. Indeed, this cannot always be measured in a reliable manner, since a number of external factors may simultaneously have affected the price development of the products,

thereby making it extremely difficult to draw conclusions on the relative importance of all possible causal effects.

348. In their replies to the Statement of Objections, the members of the cartel argued that the agreements were not implemented and contested the fact that the cartel's arrangements had an impact on the market. Some have argued that some prices remained the same or even decreased during the relevant period.

349. As demonstrated under section 4.1.4, the Commission considers that the cartel's anti-competitive arrangements have been clearly implemented throughout the infringement period, since at least some of the agreed price increases were implemented and monitored through regular meetings and bilateral contacts. While some prices may have remained the same or decreased during the period, they may have fallen in a more significant way if the competitors had not agreed on price increases, since the worldwide tendency was towards a fall in prices in the thread sector.

350. Even the reported failures to achieve the price increases or respect the "rule" not to undercut each other's prices do not come close to rebutting in any convincing manner the Commission's view and to proving that the cartel agreement had no effect on the market. The net price increases were indeed generally not as high as the price list increases since customers negotiated rebates on price lists. Furthermore it is true that despite the general agreement, competitors seem to have undercut each other's prices on several occasions, as is shown by the examples provided by the parties. However, the fact that in spite of the cartel's efforts the results sought by the participants were not always achieved may illustrate the difficulties encountered by the parties in increasing prices in a specific market situation, but it does not in any way prove that the cartel had no effect on the market, or that prices were not kept at an artificial level.

351. In conclusion on this point, the Commission considers that the cartel agreements were implemented and did have an impact on the market concerned and for the product concerned, even if it is difficult to measure that effect in a precise manner.

The size of the relevant geographic market

352. The cartel arrangements cover several Contracting Parties to the EEA, namely Benelux and the Nordic countries.

The Commission's conclusion on the gravity of the infringement

353. Taking all these factors into account, the Commission considers that the undertakings concerned by this Decision have committed a very serious infringement of Article 81of the Treaty and 53of the EEA agreement.

Differential treatment

354. Within the category of very serious infringements, the scale of likely fines makes it possible to apply differential treatment to undertakings in order to take account of the effective economic capacity of the offenders to cause significant damage to competition, as well as to set the fine at a level which ensures that it has sufficient deterrent effect.

355. In the circumstances of this case, which involves several undertakings, it will be necessary in setting the basic amount of the fines to take account of the specific weight of the undertakings and therefore the real impact of the offending conduct of each undertaking on competition. For this purpose, the undertakings concerned can be divided into different categories, established according to their relative importance in the relevant market, subject to adjustment where appropriate to take account of other factors, such as in particular, the need to ensure effective deterrence[428]. This exercise is particularly necessary where, as in this

[428] The CFI has consistently accepted groupings when they are coherent and justified. See Judgment of 29 April 2004, Tokai Carbon v. Commission, T-236/01, par. 217.

case, there is an important disparity in the market size of the undertakings participating in the infringement.

356. As the basis for the comparison of the relative importance of the undertakings concerned, the Commission considers it appropriate in this case to take each undertaking's turnover in the market and product concerned by these proceedings in the last full year of the infringement[429].

[429] The market shares provided by the parties were not sufficiently precise to consider them as the basis for the comparison of the relative importance of the undertaking concerned.

Table: Sales of industrial thread in 2000 in Benelux and Nordic countries (million EUR)

Undertaking	**Sales of industrial thread in Benelux and Nordic countries in 2000 (EUR million)**
Coats	[10-20]
Amann	[10-20]
Gütermann	[2-4]
Barbour (1998)	[2-4]
BST	[4-8]
Bieze Stork	[2-4]
Zwicky (1999)	[0-1]

357. Coats and Amann's sales in Benelux and Nordic countries amounted to EUR [10-20] million respectively in 2000. They should therefore be placed in the first category. BST, with sales of EUR [4-8] million, should be placed in the second category. Gütermann, Barbour and Bieze Stork, with sales of between EUR [2-4] million, should be placed in the third category. Lastly, Zwicky, with sales of EUR [0-1] million should be placed in a fourth category.

358. On the basis of the foregoing, the appropriate starting amounts for the fines to be imposed, resulting from the criterion of the relative importance in the industrial thread market, are as follows:

– Coats: EUR 14 million

– Amann und Söhne GmbH: EUR 14 million

– Belgian sewing thread N.V.: EUR 5.2 million

– Gütermann AG: EUR 2.2 million

– Barbour Thread Ltd[430]: EUR 2.2 million

– Bieze Stork B.V.: EUR 2.2 million

– Zwicky[431]: EUR 0.1 million

The duration of the infringement

359. As explained in section 7.1, the undertakings concerned participated in the infringement during the following period:

– Amann und Söhne GmbH & Co KG, Coats and Gütermann AG participated in the infringement at least from January 1990 until September 2001, a period of 11 years and 9 months;

– Bieze Stork BV participated in the infringement from January 1990 until September 2001, a total period of 11 years and 9 months, its participation before 8 September 1998 was limited to Benelux countries and this will be taken into account when determining its individual fine;

– Belgian Sewing Thread N.V. participated in the infringement from June 1991 until September 2001, a total period of 10 years and 3 months, its participation before 9 September 1997 was limited to Benelux countries and this will be taken into account when determining its individual fine;

– Zwicky & Co AG participated in the infringement at least from January 1990 until purchased by Gütermann in November 2000, a period of 10 years and 10 months;

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430 Barbour was acquired by Coats in September 1999. From September 1999, Barbour has been a non-operating legal entity and has no longer participated in the cartel. Since Barbour still possesses legal personality, it can answer personally for the infringement, even if it has become the subsidiary of another company. As established by the Court, the Decision should be addressed "to the legal or natural person managing the undertaking in question when the infringement was committed, even if, when the Decision finding the infringement was adopted, another person had assumed responsibility for operating the undertaking" (Judgment of 16 November 2000, C-286/98, Stora/Commission, par.37).

431 Zwicky has sold its thread activity to Gütermann on 1 November 2000 and id no longer active in the thread business. From November 2000, Zwicky was not present in the cartel meetings. Since Zwicky still possesses the legal personality, it can answer personally for the infringement.

– Barbour Threads Ltd participated in the infringement at least from January 1990 until it was purchased by Coats in September 1999, a period of 9 years and 8 months.

360. All undertakings committed an infringement of long duration. The starting amounts of the fines should consequently be increased by 10% for each full year of infringement. They should be further increased by 5% for any remaining period of 6 months or more but less than a year. This leads to the following percentage increases to each undertaking's starting amount:

– Coats: 115%
– Amann und Söhne GmbH: 115%
– Belgian sewing thread N.V.: 100%
– Gütermann AG: 115%
– Barbour Thread Ltd: 95%
– Bieze Stork B.V.: 115%
– Zwicky: 105%

361. The basic amounts of the fines are therefore as follows:

– Coats: EUR 30.1 million
– Amann und Söhne GmbH: EUR 30.1 million
– Belgian sewing thread N.V.: EUR 10.4 million
– Gütermann AG: EUR 4.73 million
– Barbour Thread Ltd: EUR 4.29 million
– Bieze Stork B.V.: EUR 4.73 million
– Zwicky: EUR 0.205 million

Aggravating and attenuating circumstances

Aggravating circumstances

362. Some parties argue that Coats was the driving force behind the cartel.

363. In its reply to the Statement of Objections, Amann states that "Mr. Verstappen of Coats had acted as the Chairman of the Benelux and Nordic meetings. Coats used to be the market leader at all relevant times and it seems to be natural that the market leader had the largest interest in such meetings and that, given the fact that one of its key employees chaired the meetings, Coats was the driving force behind the meetings. This is also illustrated by the fact that the meetings stopped when it became obvious that Coats would not participate in them any longer. Such meetings were of no or at least limited sense without the market leader and the historical chair of the club"[432].

364. Gütermann also argues that "during the entire period from 1990 to 2001, Coats was the ringleader at meetings and with respect to bilateral contacts. This is evident not only from the strong position Coats held in the market for industrial thread in Benelux and the Nordic country but also from the conduct of Coats' representatives before and during the meetings. (…) The idea of having price list discussions on a regular basis come from Coats. (…) Coats was the driving force putting the rule in place, by means of bilateral contacts, that competitors should not undercut each others prices. If Coats felt that its prices had been deliberately undercut by a competitor, it would lodge massive complaints with that competitor and apply significant pressure. Gütermann understood Coats's complaints to be a clear threat of retaliation. The threatening nature arose from Coats' strong market position in and of itself[433]."

365. BST similarly states that "the contacts and meetings were organised by Coats, possibly in consultation with Amann (…). Coats, in particular, played a pioneer role in organising the meetings. For example, it largely decided the agenda for the meetings and issued most of the invitations for the international meetings (orally or in writing). Several meetings

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432 See Amann's reply to the Statement of Objections, p. 66.

433 See Gütermann's reply to the Statement of Objections, point 4 of the English version.

were also chaired by a representative from Coats. A clear illustration of the leading role played by Coats can also be found in the fact that it was agreed that a scheduled meeting would not take place if Coats' representative (Mr. […]) could not attend"[434].

366. Consequently, some parties state that Coats was the driving force of the cartel. However, they did not produce any evidence to the effect that Coats has compelled any other undertaking to take part in the cartel or that it acted as an instigator. The allegations made by Amann, Gütermann and BST are based on the fact that Coats is the market leader for industrial thread.

367. It is clear that Coats was the largest producer. This is already reflected in the specific weight attributed to it for the purpose of determining the basic amount of the fine. However the Commission has no grounds for concluding that Coats played a leading role in the cartel. As indicated by the minutes of the meetings, all the undertakings involved participated in most meetings of the cartel, and there is no evidence that a particular company persuaded the others to participate.

368. The Commission therefore considers that there are no aggravating circumstances in this case.

Attenuating circumstances

Non-implementation in practice of the arrangements

369. Almost all the parties have requested that the Commission take into account, as an attenuating factor, the fact that the cartel was not implemented. To show this they quoted sporadic examples of undercutting practices or stated that some price increases were not implemented. However, none of the undertakings showed that they systematically and clearly refrained from applying the cartel agreements. As already demonstrated, the Commission considers, on the contrary,

[434] See BST's reply to the Statement of Objections.

that the anti-competitive agreements were implemented. If it has been proved that an undertaking participated in agreements on prices with its competitors, the fact that the undertakings did not behave at all times on the market in the manner agreed with its competitors is not necessarily a matter which should be taken into account as an attenuating circumstance when determining the amount of the fine to be imposed. As stated earlier, 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 benefit [435]. It would be too easy for undertakings to reduce the risk of being required to pay a heavy fine by claiming that they had played only a limited role in implementing the infringement.

370. This attenuating circumstance is therefore not applicable to any of the participants in this infringement.

Limited participation in the meetings

371. Amann, Gütermann/Zwicky, BST and Bieze Stork stated in their reply that they always played a passive role or "follow-my-leader" role in the infringement. Gütermann/Zwicky, BST and Bieze Stork claimed that given their small size, they were not capable of exerting any decisive influence on the market and on their competitors.

372. The Commission notes that Gütermann and Amann participated in all the meetings concerning Benelux and the Nordic countries. Therefore, their limited participation in the cartel cannot be accepted. However, it has to be conceded that BST and Bieze Stork joined the discussions concerning the Nordic countries in 1997 and 1998 respectively. Since the participation of BST and Bieze Stork in the cartel meetings is significantly more limited in time than, using the language of the Court,

435 Case T-327/94 *SCA Holding v Commission* [1998] ECR II-1373, paragraph 142 and Case T-44/00 *Mannesmannröhren-Werke AG/Commission*, yet not published, Paragraph. 277.

of the `ordinary' members of the cartel, they should therefore benefit from a reduction of 15% of the basic amount of the fine.

Compliance programme

373. Coats and Gütermann draw attention to the fact that they have set up a compliance programme.

374. The Commission welcomes any initiatives to set up antitrust compliance programmes. Nevertheless, whilst it is important that an undertaking should take steps to prevent fresh infringements of competition law from being committed in the future by members of its staff, this does not alter the fact that an infringement has been committed[436].

375. The Commission therefore does not accept any claims that the adoption of a compliance programme should be taken into account as an attenuating circumstance.

Economic difficulties in the thread sector

376. It has been argued by the parties that the facts occurred in a very specific and economically unfavourable context. Western European production of sewing threads has fallen in ten years from 34 850 tonnes in 1992[437] to 18 240 tonnes in 2002. The European thread producers face a substantial decline in demand from European textile producers whereas Community imports from non-European thread (Turkey, India, Pakistan, China, etc) producers have considerably increased.

377. The Commission considers that, in attempting to cope with difficult market conditions, undertakings must use only means that are consistent with the competition rules. Price fixing is certainly not a legitimate means of combating difficult market conditions.

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436 See Case, T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, *Limburgse Vinyl Maatschappij NV and others v Commission*, ECR [1999] II-931, paragraph 1162.

437 KoSa Sewing Threads European Study 2002, KoSa GmbH & Co. KG, HB Luchtefeld, July 2002, p. 22 (the “KOSA Study”), see Annex 14 of BST’s reply to the Statement of Objections.

378. The Court of First instance has confirmed that the Commission is not required to regard as an attenuating circumstance the poor financial state of the sector[438]. It is not uncommon for cartels to come into being when a sector encounters problems. If the parties' reasoning were to be followed, the fine would have to be reduced in virtually all cases.

Application of the 10% turnover limit

379. The final amount may not in any case exceed 10% of the world-wide turnover of the undertakings, as laid down by Article 23(2) of Regulation (EC) No 1/2003 and Article 15(2) of Regulation No 17. The accounting year on the basis of which the world wide turnover is determined must, as far as possible, be the one preceding the year in which the Decision is adopted or, if figures are not available for that accounting year, the one immediately preceding it.

380. Amann's worldwide turnover in 2004, the last full year before the adoption of this Decision, was EUR 154 million, 10% of which is EUR 15 400 000. The fine imposed on Amann should therefore be limited to that amount.

381. BST's worldwide turnover in 2004, the last full year before the adoption of this Decision, was EUR 12.24 million, 10% of which is EUR 1 224 000. The fine imposed on BST should therefore be limited to that amount.

382. Bieze Stork's worldwide turnover in 2004, the last full year before the Adoption of the Decision, was EUR 5.71 million, 10% of which is EUR 571 000. The fine imposed on Bieze Stork should therefore be limited to that amount.

383. After it was acquired by Gütermann in November 2000, Zwicky's activities ceased, and it bacame a non-operating legal entity. Since it had

[438] Joined Cases T-236, 239, 244-246, 251, 252/01, *Tokai Carbon v Commission*, judgment of 29 April 2004, paragraph 345.

no turnover in the year preceding the adoption of the Decision due to the internal reorganisation of the thread activities by its new parent company, Gütermann, which led to Zwicky's existence being maintained while its business was transferred within the group, the Commission considers that the turnover to be considered for the purpose of applying the 10% ceiling is that of Gütermann. Consequently, the 10% ceiling is not reached.

384. After it was acquired by Coats in September 1999, Barbour's activities ceased, and it became a non-operating legal entity. Since it had no turnover in the year preceding the adoption of the Decision due to the internal reorganisation of the thread activities by its new parent company, Coats, which led to Barbour's existence being maintained while its business was transferred within the group, the Commission considers that the turnover to be considered for the purpose of applying the 10 ceiling is that of Coats. Consequently, the 10% ceiling is not reached.

Application of the 1996 Commission Notice on the non-imposition of fines in cartel cases

385. Certain of the addressees of this Decision have co-operated with the Commission, at different stages of the investigation and in relation to the different periods of the infringement under examination, in order to enjoy the favourable treatment referred to in the Commission Notice on the non-imposition or reduction of fines in cartel cases ("1996 Leniency Notice"). To meet the relevant undertakings' legitimate expectations as to immunity from fines or a reduction of fines in return for their co-operation, it is necessary to consider whether those parties meet the conditions set out in the 1996 Leniency Notice. In this case, it is the 1996 Leniency Notice which applies, as Coats approached the Commission before 14 February 2002, the date from which Commission Notice on immunity from fines and reduction of fines in cartel cases [439]

[439] OJ C 45 of 19 February 2002, p 3ff, especially recital 28.

("the 2002 Leniency Notice") replaced the 1996 Leniency Notice. Section B and C of the 1996 Leniency Notice are not applicable in this case since no undertaking meets the conditions set out in those sections. Indeed, Coats applied for leniency after the Commission made an inspection on November 2001 which provided evidence of the existence of the Benelux/Nordic and automotive cartels. At Coats' premises, indeed the inspectors found evidence of a cartel formed by thread manufacturers with a view to exchanging sensitive information, fixing prices and allocating customers for the industrial thread market in the Nordic countries[440] and in Benelux[441] and for the automotive thread market in the EEA[442]. The investigation on the premises of the parties to the cartels therefore provided sufficient grounds for initiating the procedure leading to a decision.

Coats and its subsidiaries

386. On 26 November 2001, Coats filed an application on behalf of Coats and its subsidiaries[443] under the 1996 Leniency Notice. In its reply to the Statement of Objections, Coats claimed "that it should benefit from a

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440 See (38036, p.3603): "the rule in Scandinavia has always been that we don't cut each others' prices. The general rules are agreed every year in a "club meeting" also with Gütermann, BST and Bieze Stork".

441 See e-mail written on 18 May 1999 by Mr […] of Gütermann AG to Mr […] of Coats, enclosing an invitation to a meeting in Prague on 7 September, with a "Scandinavian" meeting in the morning and a "Benelux" meeting in the afternoon (38036, p. 4145).
See Coats' internal e-mail written on 4 August 1999 by Mr […] to Mr […], referring to Mr [*official of Gütermann*]'s invitation: "the meeting is organised by Amann and Gütermann. The idea is to discuss about prices once a year. […] I have participated once in a meeting concerning the Baltic area and that meeting was useful and helps us to maintain the rather high price structure especially in Estonia." (38036, p. 4145).
See Coats' internal e-mail written on 30 June 2000 by Mr […] : "The rule in Scandinavia has always been that we do not cut each other's prices. The general rules are agreed every year in a club meeting also with Gütermann, BST and Bieze-Stork." (38036, p. 3603)

442 See Coats' internal e-mail dated 9 June 1999 from Mr […] to Mr […]. This e-mail constitutes evidence that Coats, Oxley Threads, Barbour Threads, Cousin Filterie and Amann met on 8 June 1999 and discussed prices for filaments for European automotive customers. In particular, participants discussed prices offered to […] and agreed to establish minimum target prices for all European customers and countries for core products (38036, p. 4147).

443 The leniency application included documents concerning Barbour's participation in cartels as an independent entity prior September 1999.

reduction of 50% in a fine under Section D of the 1996 Notice for the Benelux/Nordic and automotive cartels".

387. Coats was indeed the first to adduce decisive evidence of the infringements[444]. As listed in annex 5 of Coats' reply to the Statement of Objections, the information submitted by Coats was relied upon extensively throughout the Statement of Objections, as regards the product and geographic markets as well as the description of the events. For the cartel concerning industrial thread sold in Benelux and in the Nordic countries, the evidence originating from Coats was used to establish e.g. paragraphs 97, 102, 103, 104, 106, 108, 109, 110, 112, 113-138, 141, 143 of the Statement of Objections.

388. It put an end to its involvement in the illegal activity no later than the time at which it disclosed the cartel.

389. It has provided the Commission with all the relevant information and all the documents and evidence available to it regarding the cartel and has maintained continuous and complete cooperation throughout the investigation. It did not substantially contest the facts on which the Commission bases its allegations.

390. Taking all the above into consideration, the Commission grants Coats and its subsidiaries (under first and second indent of point D2 1996 Leniency Notice) a 50% reduction of the fine that would otherwise have been imposed, on account of the infringement affecting the thread market, if it had not cooperated with the Commission.

BST

391. In its reply to the Statement of Objections dated 9 June 2004, BST claimed that it should benefit from a reduction in a fine under Section D of the 1996 Leniency Notice.

444 See List of evidence originating from Coats, Annex 5 of Coats' reply to the Statement of Objections.

392. It is true BST indeed cooperated with the Commission's investigation, and does not substantially contest the facts on which the Commission bases its allegations in its Statement of Objections.

393. BST provided the Commission with evidence that substantially assisted the Commission in proving the infringements. BST is also cited in the Statement of Objections as an important source of the factual information on which the Commission based its conclusions. Annex 14 of BST's reply to the Commission's request for information helped the Commission to establish the content of numerous meetings such as the bulk of the contents of the agreements in the early 1990s, the contents of the Vienna meeting and the content of the Zurich agreement of 9 September 1997. BST was the only undertaking to supply the Commission with the price lists that it received at the time of the agreements with its competitors. In its letter of 23 April 2003, BST did not merely provide factual data but in points 4.3. "*Contents/discussions during informal meetings*" actually provided the Commission with important evidence.

394. Taking all the above into consideration, the Commission grants BST (under first and second indent of point D2 of the 1996 Leniency Notice) a 20% reduction of the fine that would otherwise have been imposed, on account of the infringement affecting the thread market, if it had not cooperated with the Commission.

Amann, Gütermann and Zwicky

395. Before receiving the Statement of Objections, *Amann, Gütermann and Zwicky* also provided the Commision with information, documents or other evidence which materially contribute to establishing the existence of the infringement. The information provided by these undertakings did not prove as usefull for the purpose of Commission's investigation as that provided by BST. The cooperation of these three companies and their contributions were largely similar, the value of the information

provided by each of them is comparable and no one of them contributed significantly more than others to establishing the existence of the infringement.

396. The fact that price lists were exchanged and discussed during the meetings has been admitted by all these suppliers in their first replies to the Commission's request for information. Furthermore, they did not substantially contest the facts on which the Commission bases its allegations after receiving the Statement of Objections.

397. Taking all the above said into consideration, the Commission grants *Amann, Gütermann and Zwicky* (under first and second indent of point D2 of the 1996 Leniency Notice) a 15% reduction of the fine.

Bieze Stork

398. Before receiving the Statement of Objections *Bieze Stork* also provided the Commision with useful information, documents or other evidence.

399. Furthermore, in its reply to the Statement of Objections, it generally did not contest the facts on which the Commission based its allegations and the existence of the agreements. Bieze Stork admitted that it increased its list prices at least twice, as agreed during the meetings. Nevertheless, *Bieze Stork* contended that it did not participate in the exchange of information on the implementation of price list increases, rebate reductions and increases in special prices to customers. However, for the reasons stated above (see recital 123) this contention apparently does not correspond to the reality of the facts for at least two occasions and can therefore not be accepted: the Commission has evidence that Bieze Stork confirmed reducing rebates during the meeting in Prague on 8 September 1998 and discussed the implementation of previous commitments in the meeting on 8 October 1996.

400. In consideration of these circumstances the Commission grants Bieze Stork (under first and second indent of point D2 1996 of the Leniency Notice) 10% reduction of the fine.

Ability to pay

401. BST stated that if the Commission fined BST more than a symbolic amount, BST would go out of business. Its total sales have fallen by […%] since 1990 and its manpower by […%]. Its aggregate turnover fell by […%] in 2003. Its net income was at EUR […] in 2004.

402. Similarly, during the hearing, in an in-camera session, Gütermann highlighted the difficult economic situation of Zwicky. Zwicky had made losses until it was taken over by Gütermann. Even now, Zwicky only made profits through real estate sales. It was argued that a high fine would endanger the company's existence.

403. Amann also stated during the Hearing, in an in-camera session, that the group sales declined, corresponding to the declining sales in the overall thread industry.

404. The Commission observes that in a free market economy, entrepreneurial risk of occasional losses or even bankruptcy always exists. The fact that an undertaking may not happen not to make profits is not a licence for it to enter into secret collusion with competitors to cheat consumers and other competitors. According to settled case-law, the Commission is not required when determining the amount of the fine to take account of an undertaking's financial losses since recognition of such an obligation would have the effect of conferring an unfair competitive advantage on the undertakings least well adapted to the conditions of the market. The fact that the Commission has found in previous decisions that it was appropriate to take account of the financial

difficulties of a given undertaking does not mean that it is obliged to systematically do so in subsequent decisions as well[445]. -

Amount of the fines

405. In conclusion, the amounts of the fines to be imposed should be as follows:

–	Coats:	EUR 15.05 million
–	Amann und Söhne GmbH:	EUR 13.09 million
–	Belgian sewing thread N.V.:	EUR 0.979 million
–	Gütermann AG:	EUR 4.021 million
–	Barbour Thread Ltd:	EUR 2.145 million
–	Bieze Stork B.V.:	EUR 0.514 million
–	Zwicky:	EUR 0.174 million

406. Ackermann Nähgarne stopped participating in the collusion between suppliers of thread to industrial customers in Benelux and the Nordic countries more than five years before the Commission inspected Coats in November 2001. Therefore, pursuant to Articles 25 of Regulation (EC) No 1/2003, the Commission cannot impose fines or penalties on Ackermann Nähgarne GmbH & Co in respect of its participation in that collusion prior to 1994.

8.2.2. Cartel concerning industrial thread sold in the United Kingdom

407. Notwithstanding the fact that the Commission has concluded that there was an infringement of Article 81 of the Treaty, it is not appropriate to impose a fine pursuant to Article 23(2) of Regulation (EC) No 1/2003 (Article 15(2) of Regulation 17) in respect of the cartel concerning industrial thread sold in the United Kingdom as there isinsufficient evidence of the participation of Coats UK Ltd, Donisthorpe, Oxley

445 Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01, *Tokai Carbon Co. Ltd and Others v Commission*, paragraph 370., Case T-23/99 *LR AF 1998/Commission*, [2002] ECR II-1705, paragraph 308 and the case-law quoted there.

Threads, Barbour Thread Ltd and Perivale Gütermann in a continuous cartel relating to the UK market for industrial thread within the five years preceding Coats' inspection by the Commission in November 2001. Therefore, pursuant to Articles 25 of Regulation (EC) No 1/2003, the Commission cannot impose fines or penalties on Coats UK Ltd, Donisthorpe & Co Ltd, Perivale Gütermann, Barbour Thread Ltd or Oxley Threads Ltd in respect of their participation in the cartel for industrial thread sold in the United Kingdom. Nor can the Commission impose fines on their parent companies Coats plc, Hicking Pentecost plc, Dollfus Mieg et Cie SA or Gütermann AG, in respect of the participation of their subsidiaries in the collusive agreements between the UK industrial thread suppliers. It is therefore not necessary to carry out any further appreciation of the gravity, the duration or any other fine-related circumstances of this infringement.

408. The question may be raised whether the Commission has, in this case, a legitimate interest in adopting a decision finding that the agreements concerning industrial thread sold in the United Kingdom, which have according to the parties been terminated, given that the limitation period for the imposition of penalties laid down in Article 25 of Regulation (EC) No 1/2003 has expired.

409. According to Article 7(1) of Regulation (EC) No 1/2003, the Commission may find that an infringement has been committed in the past if it has a legitimate interest in doing so. According to the Court[446], such an interest exists if there is a real danger of a resumption of the practices which the undertakings have terminated.

410. The Commission has established that Barbour Thread Ltd, Coats UK Ltd, Donisthorpe Ltd, Perivale Gütermann Ltd, Oxley Thread Ltd have indeed participated in agreements and concerted practices affecting the

[446] Judgment of the Court of 2 March 1983. - *Gesellschaft zur Verwertung von Leistungsschutzrechten mbH (GVL) v Commission of the European Communities*, Case 7/82

markets of thread for industrial customers in the United Kingdom from October 1990 until 1996.

411. However, the Commission considers that, in the circumstances of this particular case, there are concrete indications that they may have attempted to resume those activities, given the nature of certain contacts between the parties after 1996.

412. The contacts which occurred after 1996 have not been addressed as objections to the parties, since the Commission considered that from October 1996, these contacts had been too heterogeneous and fragmented to demonstrate that the infringement was single and continuous after 1996[447] , and too sporadic to constitute an overall scheme with the object or effect of restricting competition.

413. However, some of these contacts indicate that the undertakings may have wanted to restart the cartel. This is shown, for example, by the meeting in October 2001 between Oxley, Coats and Donisthorpe. According to the parties, the main purpose of the meeting "was to try to get the other parties to reinstate the UKTMA". Even though this attempt failed, such a meeting is one of several elements illustrating that there is a concrete danger of resumption.

414. Furthermore, Coats and Oxley have admitted to having had some telephone calls with competitors to check price levels offered to customers even after the Commission's inspection, namely in the year following the down raid, which reinforce the Commission’s interest in adopting a decision in the particular circumstances of this case.

415. It is also important to note that the undertakings concerned have recently participated in other cartels for other markets, namely in the Benelux and Nordic countries for industrial thread and in the EEA for automotive thread.

447 See Statement of Objections, paragraph 234.

416. Lastly, the market for industrial thread in the United Kingdom is the most important market in term of size (it has been estimated by the parties at between EUR [50-70] and [80-100] million), in comparison with the two other markets which are the object of the Decision. Any resumption of the anticompetitive practices in the UK thread market identified in this Decision would be extremely detrimental, in terms of impact, for customers and, ultimately, to the consumers.

417. For those reasons, the Commission considers that, in the particular circumstances of this case, it has a legitimate interest in adopting a decision finding that the agreements between October 1990 and September 1996 concerning industrial thread sold in the United Kingdom, which have according to the parties been terminated and are now prescribed, constituted an infringement.

8.2.3. Cartel concerning automotive thread in the EEA

418. The basic amount of the fine is determined according to the gravity and duration of the infringement.

The gravity of the infringement

419. In its assessment of the gravity of the infringement, the Commission takes account of its nature, its actual impact on the market, and the size of the relevant geographic market.

The nature of the infringement

420. As shown in Part I of this Decision, the infringement related to automotive thread consists essentially of fixing target prices for core products sold to European automotive customers; the exchange of information on prices to individual customers and the agreement of minimum target prices for those customers; and agreement to avoid undercutting to the advantage of the incumbent supplier.

421. Such practices are by their very nature the worst kind of violations of Article 81 of the Treaty and Article 53 of the EEA Agreement. By its

very nature, the implementation of a cartel agreement of the type described above leads to an important distortion of competition, which is of exclusive benefit to producers participating in the cartel and is detrimental to customers and, ultimately, to the consumers.

422. The Commission therefore considers that this infringement constituted by its nature a very serious infringement of Article 81of the Treaty and Article 53 of the EEA Agreement.

The actual impact of the infringement

423. In their replies to the Statement of Objections, the members of the cartel argued that the agreements were not implemented.

424. However, the Commission considers that, contrary to the arguments of the parties, the cartel's agreements have been implemented since at least some of the agreed prices were implemented, as well as the agreement not to undercut each other's prices. Hence, it is clear that following the meetings with its competitors in 1999, Cousin successfully implemented an increase in its prices to its customer […]. Similarly, Coats/Barbour's offer to […] in January 2000 was above EUR [10-20] for Nylon Bonded M 40/3[448] and Coats/Barbour's offer to […] in March 2000 was above EUR [10-20…] for Bonded Nylon and Aptan Bonded, that is to say above the minimum prices agreed on during the Zurich meeting.

425. Besides, as already explained, there is no need to quantify in detail the extent to which prices differed from those which might have been applied in the absence of the anti-competitive arrangements in question. Indeed, this cannot always be measured in a reliable manner, since a number of external factors may simultaneously have affected the price development of the products, thereby making it extremely difficult to draw conclusions on the relative importance of all possible causal effects.

[448] See Coats' application for leniency (38337, p. 10363).

426. Even the reported failures to achieve the price increases or respect the "rule" not to undercut each other's prices are not sufficient to rebut in any convincing manner the Commission's view and to prove that the cartel agreement had no effect on the market. It is true that the net price increases were generally not as high as the price list increases since customers negotiated rebates on price lists. Furthermore, despite the general agreement, competitors do seem to have undercut each other's prices on certain occasions. However, the fact that in spite of the cartel's efforts the results sought by the participants were not always achieved may illustrate the difficulties encountered by the parties in increasing prices in a specific market situation, but it does not in any way prove that the cartel had no effect on the market, or that prices were not kept at an artificial level.

427. In conclusion on this point, the Commission considers that the cartel agreements were implemented and did have an impact on the market concerned and for the product concerned, even if it is difficult to measure that effect in a precise manner.

The size of the relevant geographic market

428. For the purpose of assessing gravity it is important to note that the cartel covered the whole EEA.

The Commission's conclusion on the gravity of the infringement

429. Taking all these factors into account, the Commission considers that the undertakings to which the Decision is addressed have committed a very serious infringement of Article 81 of the Treaty and 53 of the EEA agreement. In setting the amount of the fine to be imposed in this case, the Commission will take into account the small size of the market.

Differential treatment

430. Within the category of very serious infringements, the scale of likely fines makes it possible to apply differential treatment to undertakings in order to take account of the effective economic capacity of the offenders

to cause significant damage to competition, as well as to set the fine at a level which ensures that it has sufficient deterrent effect.

431. In the circumstances of this case, which involves several undertakings, it will be necessary in setting the basic amount of the fines to take account of the specific weight and therefore the real impact of the offending conduct of each undertaking on competition. For this purpose, the undertakings concerned can be divided into different categories, established according to their relative importance in the relevant market, subject to adjustment where appropriate to take account of other factors such as, in particular, the need to ensure effective deterrence. This exercise is particularly necessary where, as in this case, there is an important disparity in the market size of the undertakings participating in the infringement.

432. As the basis for the comparison of the relative importance of the undertakings concerned, the Commission considers it appropriate in this case to take each undertaking's turnover in the EEA in 1999, which is the last full year of the infringement, for the product with which these proceedings are concerned.

Table: Sales of automotive thread in 1999

Undertaking	**EEA's sales of automotive thread in 1999** **EUR million**
Coats	[1-3]
Amann/Cousin	[5-10]
Oxley	[1-3]
Barbour (1998)	[1-3]

433. As explained under section 6.1. of this Decision, Amann exercised decisive influence over Cousin's participation since the first meeting of the cartel in May/June 1998. At that date, Amann was already in the process of buying Cousin. Between 30 September 1996 and 31 October 1998, Amann owned […]% of Cousin's shares and appointed […] out of the […] directors on Cousin's Board[449]. Between 31 October 1998 and 29 September 2001, Amann owned […]% of Cousin's shares and appointed […] out of the […] directors on Cousin's Board[450]. After 29 September 2001, Amann owned […]% of Cousin's shares and appointed […] out of the […] directors on Cousin's Board[451]. Since 1 September 2002, Amann has owned 100% of Cousin's shares and appoints the four directors. Cousin did not participate in the meeting in May or June 1998, but point 8 of the minutes of the meeting made it clear that policy agreed with Amann (which at that time owned […]% of Cousin) would equally apply to Cousin[452]. During the meeting at Schipol Airport on 15 April 1999 (shortly after Amann had acquired […]% of Cousin), Amann proposed to organise a meeting with Barbour and Cousin[453]. Amann's objective was to raise Cousin's price to […] and, to that end, Amann was seeking support from Oxley Threads and Coats[454]. Cousin subsequently participated in the meetings on 8 June 1998, 9 July 1999, 15 May 2000 and 13 June 2001. At the meeting on 15 May 2000 at Coats' premises, Amann and Cousin were represented by […], who had been appointed by Amann to be on Cousin's Board of Directors since October 1996. Therefore, Amann exercised decisive influence over Cousin's participation since the first meeting of the cartel in May or June 1998. Therefore, Cousin Filterie SA and Amann & Söhne GmbH & Co KG have been jointly and severally liable for their participation in the cartel for automotive thread sold in Benelux and the EEA since the

449 Mr […] and Mr […]. See Cousin's reply to the Commission request for information (38337, p. 386).
450 Mr […] and Mr […]. See Cousin's reply to the Commission request for information (38337, p. 386)..
451 Mr […] and Mr […]. See Cousin's reply to the Commission request for information (38337, p. 386).
452 See 38337, pp. 8190-8191.
453 See section 4.3.3: "The cartel history".
454 See Oxley's letter dated 2 May 2003 (38337, p. 8742).

meeting in May or June 1998. These have not been contested by Amann or Cousin in their joint reply to the Statement of Objections. A single basic amount should therefore determined for the two companies in the group.

434. The Amann/Cousin group is the largest supplier of automotive thread. Its EEA's sales amounted to EUR [5-10] million in 1999. It should therefore be put in the first category. Coats, Barbour and Oxley, with EEA's sales between EUR [1-3] million, should be placed in the second category.

435. On the basis of the foregoing, the appropriate starting amounts for the fines to be imposed, resulting from the criterion of the relative importance in the automotive thread market, are as follows:

–	Cousin/Amann	EUR 5 million
–	Coats	EUR 1.3 million
–	Oxley	EUR 1.3 million
–	Barbour	EUR 1.3 million

The duration of the infringement

436. As explained in section 7.3, the collusion between the EEA suppliers of automotive thread lasted at least from June 1998 until May 2000.

437. Amann und Söhne GmbH & Co KG, Cousin Filterie SA, and Oxley Threads Ltd participated in the infringement at least from May/June 1998 until 15 May 2000, a period of one year and 11 months.

438. Coats Viyella plc participated in the infringement from 8 June 1999 until 15 May 2000, a period of 11 months.

439. Barbour Threads Ltd participated in the infringement at least from May/June 1998 until it was purchased by Coats Viyella plc in September 1999, a period of one year and 3 months.

440. Amann und Söhne GmbH & Co KG, Cousin Filterie SA, Oxley Threads Ltd and Barbour Ltd committed an infringement of medium duration. The starting amount of the fines for Amann und Söhne GmbH & Co KG, Cousin Filterie SA, Oxley Threads Ltd should be increased by 15%. The starting amount of Barbour's fine should be increased by 10%.

441. Coats committed an infringement of short duration. It is therefore not appropriate to increase the amount of the fine to be imposed on Coats.

442. This leads to the following percentage increases to each undertaking's starting amount:

- Cousin/Amann 15%
- Coats 0%
- Oxley 15%
- Barbour 10%

443. The basic amounts of the fines to be imposed are therefore as follows:

- Cousin/Amann EUR 5.75 million
- Coats EUR 1.3 million
- Oxley EUR 1.495 million
- Barbour EUR 1.43 million

Aggravating and attenuating circumstances

Aggravating circumstances

444. According to Coats and Oxley, it seems that Amann-Cousin, as leaders on the market for European speciality thread (including automotive thread), were also leaders in making contacts and organising meetings. Oxley believes it is likely that the meetings in 1999 and 2000 were called by Amann[455]. Mr […]of Coats also stated that Barbour was

[455] See Oxley's letter (38337, pp. 8742-8746/11115-11119).

approached around March/April 1999 to "improve" prices for thread to the automotive industry.

445. In its reply to the Statement of Objections, Oxley also states that "the agreements reached by the meeting participants generally reflected Amann's and Coats' requests"[456].

446. It is clear that Amman is the largest producer of automotive thread, followed by Coats. This fact is already reflected in the specific weight attributed to it for the purpose of determining the basic amount of the fine. However, the Commission has no grounds to conclude that Amann or Coats played a leading role in the cartel. As indicated by the minutes of the meetings, all the undertakings involved participated in most meetings of the cartel, and there is no evidence that a particular company compelled the others to participate.

447. The Commission therefore considers that there are no aggravating circumstances.

Attenuating circumstances

Non-implementation in practice of the arrangements

448. All parties have requested that the Commission take into account, as an attenuating factor, the fact that the cartel was not implemented, quoting sporadic examples of undercutting practices or stating that some price increases have not been implemented. None of the undertakings showed that they systematically and clearly refrained from applying the agreements. As already demonstrated, the Commission considers that the anti-competitive agreements were implemented. If it has been proved that an undertaking participated in agreements on prices with its competitors, the fact that an undertaking did not behave at all times on the market in the manner agreed with its competitors is not necessarily a matter which should be taken into account as an attenuating

[456] See Oxley's reply to the Statement of Objections, paragraph 70.

circumstance when determining the amount of the fine to be imposed. As stated earlier, 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 benefit.

449. This attenuating circumstance is therefore not applicable to any of the participants in this infringement.

Application of the 10% turnover limit

450. The final amount of the fine to be imposed may not in any case exceed 10% of the world-wide turnover of the undertakings, as laid down by article 23(2) of Regulation (EC) No 1/2003 and 15(2) of Regulation No 17. The accounting year on the basis of which the world wide turnover is determined must, as far as possible, be the one preceding the year in which the Decision is adopted or, if figures are not available for that accounting year, the one immediately preceding it.

Application of the 1996 Leniency Notice

451. Certain of the addressees of this Decision have co-operated with the Commission, at different stages of the investigation and in conjunction with the different periods of the infringement under examination, in order to enjoy the favourable treatment referred to in the 1996 Leniency Notice. To meet the relevant undertakings' legitimate expectations as to immunity from fines or a reduction of fines in return for their co-operation, it is necessary to consider whether those parties meet the conditions set out in the 1996 Leniency Notice. In this case, it is the 1996 Leniency Notice which applies, as Coats approached the Commission before 14 February 2002, the date from which Commission Notice on immunity from fines and reduction of fines in cartel cases [457] ("the 2002 Leniency Notice") replaced the 1996 Leniency Notice. As already explained above, Section B and C of the 1996 Leniency Notice

[457] OJ C 45 of 19 February 2002, p 3ff, especially recital 28.

are not applicable in this case since no undertaking meets the conditions set out in those sections.

Coats and Barbour

452. On 26 November 2001, Coats filed an application on behalf of Coats and its subsidiaries[458] under the 1996 Leniency Notice. In its reply to the Statement of Objections, Coats stated that it should benefit from a significant reduction in a fine under Section D of the 1996 Notice for the cartel of automotive thread.

453. Coats is the first undertaking to have adduced decisive evidence of the infringements.

454. Coats put an end to its involvement in the illegal activity no later than the time at which it disclosed the cartel.

455. It provided the Commission with all the relevant information and all the documents and evidence available to it regarding the cartel and has maintained continuous and complete cooperation throughout the investigation and did not substantially contest the facts on which the Commission bases its allegations. For the cartel for automotive thread, the evidence originating from Coats was used to establish e.g. paragraphs 182, 184, 185, 187, 189, 190, 192, 193, 194, 195, 196, 198 of the Statement of Objections.

456. Taking all the above into consideration, the Commission grants Coats and its subsidiaries (under first and second indent of point D2 of the 1996 Leniency Notice) a 50% reduction of the fine that would otherwise have been imposed on account of the infringement affecting the thread market if it had not cooperated with the Commission.

Oxley and *Amann/Cousin*

458 The leniency application included documents concerning Barbour's participation in cartels as an independent entity prior September 1999

457. Before receiving the Statement of Objections, Oxley and Amann/Cousin also provided the Commission with information, documents or other evidence which materially contributed to establishing the existence of the infringement.

458. In its reply to the request for information dated 17 April 2003 and received on 18 April 2003 by the Commission, Oxley Threads applied for a reduction in the fine to be imposed. However the information provided by Oxley mainly concerned the UK cartel and to a much lesser extent the automotive thread cartel and therefore did not prove as useful for the purpose of Commission's investigation of the automotive thread cartel.

459. In its letters dated 17 April 2003 and 2 May 2003, Oxley Threads provided some information relating to contacts between automotive thread suppliers. In particular, Oxley admitted that it participated in meetings with Amann, Cousin and Barbour, at which target prices for European automotive customers were discussed. Oxley Threads also admits that participants discussed a target price for Cousin's thread to be supplied to […], which Oxley and Barbour would not undercut[459]. However, no documentary evidence of the contacts between the automotive thread suppliers was provided.

460. Similarly, before receiving the Statement of Objections, *Amann* and *Cousin* admitted having participated in meetings with competitors from 1999 to 2001 to discuss and maintain the prices. They also admitted that competitors agreed to charge for any production approval processes and for any service not directly in connection with the product.

461. The contribution of Oxley and Amann/Cousin were largely similar and the value of the information provided by them is comparable. None of

[459] See 38337, p. 8742.

them contributed more significantly than the other to establishing the existence of the infringement.

462. Furthermore, they did not substantially contest the facts on which the Commission bases its allegations after receiving the Statements of Objections.

463. In view of the foregoing, the Commission grants Oxley and Amann/Cousin (under first and second indent of point D2 of the 1996 Leniency Notice) a 15% reduction of the fine that would otherwise have been imposed on account of the infringement affecting the thread market if they had not cooperated with the Commission.

Amount of the fines:

464. The final amounts of the fines to be imposed in respect of the automotive thread cartel should be as follow:

–	Cousin/Amann	EUR 4.888 million
–	Coats	EUR 0.65 million
–	Oxley	EUR 1.271 million
–	Barbour	EUR 0.715 million

HAS ADOPTED THIS DECISION:

Article 1

1. The following undertakings have infringed Article 81 of the Treaty and Article 53 of the EEA Agreement by participating, for the periods indicated, in agreements and concerted practices affecting the markets of thread for industrial customers in the Benelux and Nordic countries:

a) Ackermann Nähgarne GmbH & Co, from January 1990 until January 1994

b) Amann und Söhne GmbH & Co KG, from January 1990 until September 2001;

c) Barbour Threads Ltd and Hicking Pentecost plc, jointly and severally liable, from January 1990 until September 1999;

d) Belgian Sewing Thread N.V., from June 1991 until September 2001;

e) Bieze Stork BV and Bisto Holding B.V., jointly and severally liable, from January 1990 until September 2001;

f) Coats Holdings Ltd, from January 1990 until September 2001;

g) Gütermann AG, from January 1990 until September 2001;

h) Zwicky & Co AG, from January 1990 until November 2000.

2. The following undertakings have infringed Article 81 of the Treaty by participating, for the periods indicated, in agreements and concerted practices affecting the markets of thread for industrial customers in the United Kingdom:

a) Barbour Threads Ltd and Hicking Pentecost plc, jointly and severally liable, from October 1990 until September 1996;

b) Coats UK Ltd and Coats Holdings Ltd, jointly and severally liable, from October 1990 until September 1996;

c) Donisthorpe & Company Ltd and Dollfus Mieg et Cie SA, jointly and severally liable, from October 1990 until September 1996;

d) Perivale Gütermann Ltd and Gütermann AG, jointly and severally liable, from October 1990 until September 1996;

e) Oxley Threads Ltd, from October 1990 until September 1996;

3. The following undertakings have infringed Article 81 of the Treaty and Article 53 of the EEA Agreement by participating, for the periods indicated, in agreements and concerted practices affecting the markets of automotive thread in the EEA:

a) Amann und Söhne GmbH& Co KG and Cousin Filterie SA, jointly and severally liable, from May/June 1998 until 15 May 2000;

b) Barbour Threads Ltd and Hicking Pentecost plc, jointly and severally liable, from May/June 1998 until September 1999;

c) Coats Holdings Ltd, from 8 June 1999 until 15 May 2000;

d) Oxley Threads Ltd, from May/June 1998 until 15 May 2000.

Article 2

For the infringements referred to in Article 1, the following fines are imposed on the following undertakings:

a) Cartel of industrial thread in the Benelux and Nordic countries:

- Coats Holdings Ltd: EUR 15.05 million
- Amann und Söhne GmbH & Co KG: EUR 13.09 million
- Belgian sewing thread N.V.: EUR 0.979 million
- Gütermann AG: EUR 4.021 million
- Barbour Threads Ltd and Hicking Pentecost plc, jointly and severally liable: EUR 2.145 million
- Bieze Stork B.V. and Bisto Holding B.V., jointly and severally liable: EUR 0.514 million
- Zwicky & Co AG: EUR 0.174 million

b) Cartel of automotive thread in the EEA:

- Cousin Filterie SA and Amann und Söhne GmbH & Co KG, jointly and severally liable: EUR 4.888 million
- Coats Holdings Ltd EUR 0.65 million
- Oxley Threads Ltd EUR 1.271 million
- Barbour Threads Ltd and Hicking Pentecost plc, jointly and severally liable: EUR 0.715 million

The fines shall be paid in euro, within three months of the date of notification of this Decision, to the following account:

Account Nr 001-3953713-69 of the European Commission with FORTIS BANK S.A., Rue Montagne du Parc, 3 at B-1000 BRUSSELS (IBAN Code: BE71 0013 9537 1369 ; SWIFT Code : GEBABEBB).

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

Article 3

The undertakings listed in Article 1 shall immediately bring to an end the infringements referred to in that article if they have not already done so.

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

Article 4

This Decision is addressed to:

- Ackermann Nähgarne GmbH & Co

  Fabrikstrasse 11

  D – 86199 Augsburg

- Amann und Söhne GmbH & Co KG

  Hauptstrasse 1

  D – 74357 Bönnigheim

- Barbour Threads Ltd

  Pacific house (Second Floor)

  70 Wellington Street

  Glasgow

  UK – Scotland G2 6UB

- Belgian Sewing Thread N.V.

  Oude Heerweg 129

  B – 8540 Deerlijk

- Bieze Stork B.V.

  p.c. Stamstraat 19a

Postbus 22
NL – 7440 AA Nijverdal

- Bisto Holding B.V.
  Hofkampstraat 100
  NL – 7607 NJ Almelo

- Coats Holdings Ltd
  1 The Square
  Stockley Park
  Uxbridge
  UK – Middlesex UB11 1TD

- Coats UK Ltd
  1 The Square
  Stockley Park
  Uxbridge
  UK – Middlesex UB11 1TD

- Cousin Filterie SA
  8, rue de l'Abbé Bonpain
  F – 59117 Wervicq-Sud

- Dollfus Mieg et Cie SA
  10, avenue Ledru Rollin
  F – 75579 Paris

- Donisthorpe & Company Ltd
  Bath Lane
  Leicester
  UK – LE1 9BQ Leicestershire

- Gütermann AG
  Landstrasse 1
  D – 79261 Gutach-im-Breisgau

- Hicking Pentecost plc
  c/o Coats Holdings Ltd
  1 The Square
  Stockley Park
  Uxbridge
  UK – Middlesex UB11 1TD

- Oxley Threads Ltd
  Guide Mills
  UK – Ashton under Lyne, OL7 0PJ

- Perivale Gütermann Ltd
  Bullsbrook Road
  UK – Hayes Middx G.B. UB4 0JR

- Zwicky & Co AG
  Neugut
  CH-8304 Wallisellen

This Decision shall be enforceable pursuant to Article 256 of the Treaty.

Done at Brussels, […]

For the Commission

Neelie KROES
Member of the Commission