

## II

*(Acts whose publication is not obligatory)*

## COMMISSION

## COMMISSION DECISION

of 20 December 2001

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

Case COMP/E-1/36.212 — Carbonless paper

*(notified under document number C(2001) 4573)***(Only the English, French, German and Spanish texts are authentic)****(Text with EEA relevance)**

(2004/337/EC)

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the final report of the Hearing officer in this case <sup>(4)</sup>,

Having regard to the Treaty establishing the European Community,

Whereas:

Having regard to the Agreement on the European Economic Area,

## 1. PART I — THE FACTS

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty <sup>(1)</sup> as last amended by Regulation (EC) No 1216/1999 <sup>(2)</sup>, and in particular Articles 3 and 15 thereof,

### 1.1. SUMMARY OF THE INFRINGEMENT

Having regard to the Commission decision of 26 July 2000 to open a proceeding in this case,

- (1) The following undertakings, addressees of the present Decision, have infringed Article 81 of the Treaty and Article 53 of the EEA Agreement:

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 and 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 <sup>(3)</sup>,

— Arjo Wiggins Appleton Limited (AWA),

— Bolloré SA (Bolloré),

— Carrs Paper Ltd (Carrs),

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

— Distribuidora Vizcaína de Papeles S.L. (Divipa),

— Mitsubishi HiTech Paper Bielefeld GmbH (MHTP),

<sup>(1)</sup> OJ 13, 21.2.1962, p. 204/62.

<sup>(2)</sup> OJ L 148, 15.6.1999, p. 5.

<sup>(3)</sup> OJ L 354, 30.12.1998, p. 18.

<sup>(4)</sup> OJ C 96 of 21.4.2004.

— Papelera Guipuzcoana de Zicuñaga SA (Zicuñaga),	Sappi Limited	from January 1992 until September 1995
— Papeteries Mougeot SA (Mougeot),	Torraspapel SA	from January 1992 until September 1995
— Papierfabrik August Koehler AG (Koehler),	Zanders Feinpapiere AG	from January 1992 until September 1995
— Sappi Limited (Sappi),		

## 1.2. THE CARBONLESS PAPER INDUSTRY

— Torraspapel SA (Torraspapel),

### 1.2.1. THE PRODUCT

— Zanders Feinpapiere AG (Zanders).

(2) The infringement consists of participation of the members of the Association of European Manufacturers of Carbonless Paper (AEMCP) and three other European carbonless paper producers and/or distributors in a continuing agreement and/or concerted practice, contrary to Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement (from January 1994) covering the whole of the Community and the EEA, by which they fixed price increases, allocated sales quotas and fixed market shares and set up machinery to monitor the implementation of the restrictive agreements.

(3) The respective duration of the infringement by the undertakings was as follows:

Arjo Wiggins Appleton Limited	from January 1992 until September 1995
Bollore SA	from January 1992 until September 1995
Carrs Paper Ltd	from January 1993 until September 1995
Distribuidora Vizcaína de Papeles S.L	from March 1992 until January 1995
Mitsubishi HiTech Paper Bielefeld GmbH	from January 1992 until September 1995
Papelera Guipuzcoana de Zicuñaga SA	from October 1993 until January 1995
Papeteries Mougeot SA	from May 1992 until September 1995
Papierfabrik August Koehler AG	from January 1992 until September 1995

(4) The product concerned in this case is carbonless paper, which is also known as self-copying paper. Carbonless paper is intended for the multiple duplication of documents and is made from a paper base to which layers of chemical products are applied <sup>(5)</sup>.

(5) The principle behind carbonless paper thus involves obtaining a copy by reaction between two complementary layers under pressure of handwriting or the impact of a computer printer or typewriter. The first layer, the transmitting coated back (CB) layer, is composed of microcapsules which contain colour formers. The pressure or impact bursts the microcapsules, thus releasing these colour formers which are then absorbed by the second layer, the receiving coated front (CF) layer. This CF layer is made from a reactive substance (or 'activated clay') which reacts with the colour formers to give a sharp image.

(6) The following types of carbonless paper exist: <sup>(6)</sup>:

— CB (coated back) is a carbonless paper coated with a transmitting layer containing microcapsules. This

<sup>(5)</sup> According to Sappi the paper base is made from a special type of wood pulp and this pulp is supplied by a limited number of suppliers (File p. 219).

<sup>(6)</sup> There are also special types, called 'self-contained':

- Carbonless paper whose top side contains a layer of microcapsules and another of active clay. It can be used as the receiving sheet (CF) without it being necessary for the top sheet to have been coated on the back with microcapsules (for copying from conventional offset paper).
- A self-contained carbonless paper whose top side contains both the layer of microcapsules and the layer of activated clay; while the underside contains the layer of microcapsules. It can be used as the middle sheet without the need for a top sheet coated with microcapsules.

sort of carbonless paper is used as the top copy of the bundle. It is available in different grades: standard, for optical character reading, or coated lightly on the back to provide a better image.

— CFB (coated front and back) is a carbonless paper coated on the front with a reactive substance, intended to act as a chemical developer, and coated on the back with microcapsules. This type of carbonless paper is used as the middle sheet or one of several middle sheets. It is the central part of the bundle, which receives and transmits the copy. It is the most delicate sheet and is available in standard grade; there are also certain grades for special applications.

— CF (coated front) is a carbonless paper used as the last sheet, which is coated with a receiving layer of reactive substance on the front but no microcapsules on the back capable of bursting under pressure. This sheet is no different to ordinary paper, at least as regards its handling, and it is less delicate than the other sheets that make up the bundle. This type is available in a standard grade, another for optical character reading, a grade receptive on both sides, and certain grades for special applications.

(7) Each of the three types of carbonless paper is available in white and other colours, especially blue, pink, yellow and green. From these families of carbonless paper one can make up bundles of all kinds by inserting carbonless paper of one type or another depending on requirements.

(8) The composition of carbonless paper alone makes it necessary to handle carbonless paper carefully and protect it from pressure. This makes it necessary to take precautions for transport, storage and printing. Nevertheless, with existing techniques carbonless papers can be glued, folded, combined with other bases (cardboard, paper, carbon, plastics), made less sensitive if necessary, marked with pencil, ballpoint pen, typewriter, computer printer, telex or printing machine, made into ordinary bundles or self-separating ones, used for applications requiring optical character reading, etc.

(9) Business forms <sup>(7)</sup> have always been the single largest application for carbonless papers, accounting for over 90 % of total consumption <sup>(8)</sup>. Other applications for carbonless papers include roll converting <sup>(9)</sup>.

(10) Carbonless paper is sold in reels (80 %) and sheets (20 %) <sup>(10)</sup>. Most carbonless paper producers cater for sheet demand by cutting reels into sheets, whereas some small specialised producers make directly sheeted products <sup>(11)</sup>.

(11) Carrs implies that the carbonless paper reels and sheets form separate relevant product markets. Carrs argues that 'the market for sheets is entirely separate in commercial terms from reels — both as regards production costs, pricing and distribution channels'. Carrs also says that there are substantial differences between reels and sheets, which in Carrs' case can be evidenced by the differences in the technical specification of its carbonless paper sheet product, Signal Plus. For Carrs the distinction between reels and sheets arise from an understanding of their end-use and the needs of these end-users. Ultimately this means understanding the requirements of printers and the type of printing equipment they use <sup>(12)</sup>.

(12) Printers use two types of printing press: reel-fed and sheet-fed. Reel-fed presses pull the paper through a press from a continuous reel. Sheet-fed presses push sheets through the printing press machine. According to Carrs the sheet-fed press requires paper sheets that are stiffer and more resistant to stress than reel-fed printers in order to achieve less wastage and high speeds. Carrs states that most printers tend to use either reel- or sheet-fed presses, but not both. According to Carrs it is not feasible for a printer to react to any changes in the relationship between the price of sheets and reels by

<sup>(7)</sup> Listings (10 %), computer bespoke (37 %), unit sets (42 %). Euroforms January 1991. File pp. 3188-3189.

<sup>(8)</sup> 'European and worldwide markets for carbonless paper to 2000 and beyond. Phase I'. A report prepared for AEMCP by Mikulski Hall Associates (MHA), December 1996, p. 35 (File p. 1115).

<sup>(9)</sup> 4 %: telex rolls, office printers, till rolls, or automated teller machines.

<sup>(10)</sup> MHA report, December 1996, p. 20 (File p. 1100)

<sup>(11)</sup> Carrs' reply to the Statement of Objections, file pp. 20341-20342.

<sup>(12)</sup> Carrs' reply to the Statement of Objections, file pp. 20341 and 20351.

switching from one to the other. It also implies that the cutting of reels into sheets would not be a viable alternative for printers using sheet-fed press <sup>(13)</sup>.

that figure the total European capacity reaches 1 035 000 tonnes <sup>(18)</sup>.

- (13) The Commission concludes that, since the cartel covers both the carbonless paper reels and sheets, for the purposes of this case it is not necessary to further define the product market.

- (16) At the time of the infringement, the AEMCP members accounted together for 85-90 % of carbonless paper sales in the territory that became the EEA in 1994. Estimated market shares of each of them (except Binda, not active anymore in the market after 1993) are presented in Table 1(a).

TABLE 1(a)

**Market shares of AEMCP members in 1995 based on estimates made by Sappi and AWA <sup>(19)</sup>**

(in %)

AWA	30-35
Stora	15-18
Koehler	12-15
Zanders	10-12
Torraspapel	Approximately 8 %
Copigraph	Approximately 5 %
Sappi	Approximately 4 %
Mougeot	Approximately 3 %

## 1.2.2. THE MARKET FOR CARBONLESS PAPER

### 1.2.2.1. Supply

- (14) Production of carbonless papers in Europe has increasingly become dominated by a relatively small number of major producers as smaller suppliers have withdrawn from the market <sup>(14)</sup>. In the EEA all main producers belong to the Association of European Manufacturers of Carbonless Paper (hereinafter AEMCP). At the time of the infringement under consideration here the following companies were AEMCP members: Arjo Wiggins Appleton (AWA), Cartiere Sottrici Binda, Copigraph <sup>(15)</sup>, Papierfabrik August Koehler, Papeteries Mougeot, Stora Feldmühle (later Stora Carbonless Paper and today Mitsubishi HiTech Paper Bielefeld) <sup>(16)</sup>, Zanders Feinpapiere, Sappi <sup>(17)</sup>, and Torraspapel. To a large extent these producers benefit from integrated production of base paper and chemicals.

- (15) According to the MHA report, prepared for the AEMCP in 1996, the size of the EU carbonless paper market was some ECU 850 million in 1995. The report estimated that in the same year the west European (EEA and Switzerland) production capacity of carbonless paper was 1 010 000 tonnes, of which the AEMCP members accounted for 890 000 tonnes (i.e. 88 %). When east European production capacity is added to

- (17) In addition to the AEMCP members there are a number of non-integrated small producers, including forms printers who produce for their own in-house requirements or supply mainly local markets and buy in base papers ('support') and chemicals from other suppliers <sup>(20)</sup>. The principal non-AEMCP companies include Carrs (UK), Fabriano (Italy), Hauffe (Germany), Bartsch (Germany), Zicuñaga (Spain) and Divipa (Spain). This Decision is also addressed to three of these small producers, namely Carrs, Divipa and Zicuñaga. In addition, two East European companies are known to be producing carbonless papers, namely Aero (Slovenia) and Krkonosské (Czech Republic) <sup>(21)</sup>.

- (18) Table 1(b) presents the overall size in 2000 of each addressee of the present Decision, as well as an indication of its relative importance on the EEA-wide carbonless paper market in 1994 and 1995. The figures

<sup>(13)</sup> Carrs' reply to the Statement of Objections, file pp. 20341-20342.

<sup>(14)</sup> MHA report, December 1996, p. 42 (File p. 1122).

<sup>(15)</sup> Bolloré, the parent company of Copigraph, was directly implicated in the cartel together with its subsidiary (see paragraphs (353) to (356)); to facilitate the description and analysis of the case, they are both hereinafter referred to as 'Copigraph'.

<sup>(16)</sup> Hereinafter referred to as 'Stora'.

<sup>(17)</sup> Several subsidiaries of Sappi Limited have been implicated in the cartel (see paragraphs (357) to (359)); to facilitate the description and analysis of the case, all are hereinafter referred to as 'Sappi'.

<sup>(18)</sup> MHA report, December 1996, p. 44 (File p. 1124); data collected by the Commission from the producers suggests that the figure on the size of the market could be somewhat higher, see table 1.b).

<sup>(19)</sup> File pp. 217 (Sappi's document), 3262-3265 (AWA's document).

<sup>(20)</sup> Euroforms, January 1991. (File p. 3188).

<sup>(21)</sup> MHA report, December 1996, p. 42-43 (File pp. 1122-1123).

provided are based on the companies' responses to requests for information and estimates of the Commission <sup>(22)</sup>.

TABLE 1(b)

**The size of the addressees and their relative importance in the EEA carbonless paper market <sup>(23)</sup>**

Undertaking	Total turnover of the relevant companies or groups of companies involved (in EUR) for 2000	Carbonless paper turnover (M.EUR) and estimated market shares in the EEA for 1994	Carbonless paper turnover (M.EUR) and estimated market shares in the EEA for 1995
AWA	5 524 138 000	369,9 (32,8 %)	380,4 (31,7 %)
MHTP (STORA)	236 220 000	161,7 (14,3 %)	161,9 (13,5 %)
ZANDERS	579 787 000	135,3 (12,0 %)	147,3 (12,3 %)
KOEHLER	487 775 000	111,4 (9,9 %)	119,6 (10,0 %)
TORRASPAPEL	814 876 000	61,4 (5,4 %)	82,8 (6,9 %)
BOLLORE	4 240 000 000	56,4 (5,0 %) (Copigraph)	60,0 (5,0 %) (Copigraph)
SAPPI	5 106 061 000	39,2 (3,5 %)	39,5 (3,3 %)
MOUGEOT	139 589 000	30,2 (2,7 %)	30,9 (2,6 %)
DIVIPA	24 641 000	20,5 (1,8 %)	23,1 (1,9 %)
ZICUNAGA	110 932 000	16,8 (1,5 %)	19,9 (1,7 %)
CARRS	33 128 000	11,6 (1,0 %)	13,8 (1,2 %)

forms and rolls. Some printers use reels and some sheets. In 1995 the estimated number of reels printers in Europe was 2 000, and the number of sheets printers 47 000 <sup>(24)</sup>.

(20) Reels are sold either directly to reels printers or via merchants, whereas sheets are mainly distributed via merchants.

(21) According to Sappi, merchants have considerable market power, which is mainly due to production over-capacity <sup>(25)</sup>. Merchants demand uniform and regular deliveries. They also require short delivery times and adaptation of deliveries to their needs of forms and sizes, in order to reduce their own stocks <sup>(26)</sup>. Carrs explains that, according to its experience, merchants generally seek price increases in the sheets business wherever possible and encourage the producer to increase its prices <sup>(27)</sup>.

(22) As carbonless paper is a branded product, there is strong relationship between suppliers and merchants. Suppliers tend to have a long-term relationship with their merchants. This is at least partly due to the high cost of switching merchants due to stocks carried by them and the investments made in promotion of a brand <sup>(28)</sup>.

#### 1.2.2.2. Demand

(19) The principal clients in the self-copying paper sector are printers, who convert carbonless paper to business

(23) According to Sappi, AWA, Stora and Torraspapel in particular carry out part or all of the distribution function themselves or through their own merchant companies. Some small producers, mainly supplying local markets, likewise often sell direct to customers. The other carbonless producers sell mainly to independent merchants <sup>(29)</sup>.

<sup>(22)</sup> The sales for years 1994 and 1995 are provided as an example. The relative importance of each undertaking's annual carbonless paper sales may have varied from year to year over the period of the infringement. The market share estimates are derived directly from the data submitted by the undertakings (except for Copigraph where the market share is based on the information that in 1995 it had a market share of 5 %) and are provided on a purely indicative basis. The market share estimates are based on the assumption that the companies in Table 1(b) together covered 90 % of the EEA market.

<sup>(23)</sup> All turnover figures provided in the present Decision are given in ECU or Euro, as appropriate. Exchange rates used for Euro calculation are the official yearly (or, as the case may be, monthly) mean exchange rates published by the Commission for the calculation of turnovers.

<sup>(24)</sup> In 1993 the estimated number of reels printers was 1 260 and sheets printers 44 200. (File pp. 3134-3135. See also file p. 340.)

<sup>(25)</sup> File p. 220.

<sup>(26)</sup> File p. 339.

<sup>(27)</sup> Carrs' reply to the Statement of Objections, file p. 20352.

<sup>(28)</sup> File p. 4628.

<sup>(29)</sup> Sappi's submission of 22.12.1996 (File p. 220). MHTP states in its reply to the Statement of Objections (file p. 20404) that it (or Stora Carbonless Paper before it) sells carbonless paper mainly to paper wholesalers (all sheets and over 95 % of reels) and that it does not carry out part or all of the distribution function itself. MHTP does not specify, however, whether it owns some of the merchant companies as Sappi claims.

### 1.2.2.3. *Development of supply and demand in Western Europe, 1990-1996*

- (24) The Western European carbonless paper market is characterised by structural over-capacity. In 1995 the capacity utilisation rate was 65 % <sup>(30)</sup>. Capacity has not increased over the last decade. Demand on the other hand fell in the mid-1990s, and this decline was expected to continue <sup>(31)</sup>.
- (25) The demand for carbonless copy paper grew rapidly in the 1980s as it replaced one-time carbon (OTC) paper. As the European market has matured, transactions have increasingly been carried out by electronic means, and this has hit demand. In 1990 consumption of carbonless in Western Europe (territory that became EEA in 1994 and Switzerland) reached just over 700 000 tonnes; thereafter the growth in demand slowed to a standstill, and in 1995 and 1996 demand started to fall <sup>(32)</sup>.
- (26) In the mid-1990s consumption was highest in Germany, followed by France and the United Kingdom in joint second place. Italy was the fourth largest consumer in Europe, with the Benelux countries following in fifth place <sup>(33)</sup>.
- (27) There were sharp short-term fluctuations in west European consumption in the 1990s. The most dramatic

of these occurred in 1994/1995 and in autumn 1996. According to a study carried out for the AEMCP in 1996 by Mikulski Hall Associates, 'these fluctuations were generally accepted to be due largely to changes in stocks, resulting mainly from changes in price levels'. However, the study did not point to specific changes in demand or supply conditions that would explain these fluctuations. The only development that can be clearly identified from the study is that growth in carbonless demand in Western Europe has been constrained for a number of years. The study draws attention primarily to the trend towards a reduction in the number of copies for multi-part sets. The most significant factor limiting demand for carbonless, however, was the reduced requirement for multi-part forms as a result of the growing use of electronic data interchange (EDI), electronic media and bar-coding, combined with the shift to non-impact printing (laser or ink jet) <sup>(34)</sup>.

- (28) In Western Europe, total deliveries by AEMCP suppliers remained rather stable between 1990 and 1996, at just 600 000 tonnes, while volumes supplied by non-AEMCP producers fell from 112 000 tonnes in 1990 to just over 70 000 tonnes in 1996. Imports from outside Western Europe halved over the same period <sup>(35)</sup>. In 1990 the share of imports was 1.4 %, whereas in 1996 it had dropped to around 0.7 %. Table 2 summarises changes in deliveries to and consumption in the European market <sup>(36)</sup>.

<sup>(30)</sup> Figures calculated on the basis of information provided in the MHA report, December 1996, p. 40 (File p. 1120).

<sup>(31)</sup> MHA report, December 1996, p. 4 (File p. 1084).

<sup>(32)</sup> MHA report, December 1996, p. 3, 18-20 (File p. 1083 and pp. 1098-1100).

<sup>(33)</sup> PPI, February 1997, File p. 2787.

<sup>(34)</sup> MHA report, December 1996, p. 3, 9, 20-21 (File p. 1083, 1089, 1100-1101) and MHA report May 1997, p. 60 (File p. 11670).

<sup>(35)</sup> MHA report, December 1996, p. 3 (File p. 1083).

<sup>(36)</sup> MHA report, December 1996, p. 19 (File p. 1099).



TABLE 2

**Delivery and consumption of carbonless paper: Western Europe, 1990-1996**

Deliveries to Western Europe (‘000 tonnes)				Consumption (‘000 tonnes)	
	AEMCP	Non-AEMCP	Imports	Total consumption	% change on previous year
1990	590	112	10	712	+ 5,3
1991	628	97	10	735	+ 3,2
1992	632	85	8	725	– 1,4
1993	618	76	7	701	– 3,3
1994	645	89	6	740	+ 5,5
1995	570	82	5	657	– 11,2
E. 1996	610	74	5	689	+ 4,9

Source: MHA report, December 1996.

**1.2.2.4. Inter-state trade**

(29) In the EEA the production of carbonless paper is concentrated and mills are located in five Community Member States: Belgium, France, Germany, Spain and the United Kingdom. Generally speaking, however, producers sell throughout the EEA, and transport costs do not seem to hinder trade inside this area <sup>(37)</sup>.

(30) The Commission has detailed information on sales in the territory that became the EEA in 1994, by country, covering most of the reference period of the cartel, for the following companies: AWA, Divipa, Koehler, Mougeot, Sappi, Stora, Torraspapel, Zanders and Zicuñaga <sup>(38)</sup>. The data shows that at the time of the infringement more than 56 % of these companies' aggregate sales in the EEA was outside their respective domestic markets (i.e. the countries in which their production sites were located).

(31) The reference period of the cartel was also characterised by significant trade flows between the Community and different EFTA countries. In 1994, substantial quantities of carbonless paper were sold to Austria, Finland and Sweden. From 1994 onwards trade flows also existed

with Iceland and Norway. There is therefore substantial cross-border trade within the whole EEA territory.

**1.2.3. THE PRODUCERS****1.2.3.1. Arjo Wiggins Appleton**

(32) Arjo Wiggins Appleton p.l.c. was transformed on 29 November 2001 into Arjo Wiggins Appleton Limited. It is the parent company (hereinafter AWA) of the Arjo Wiggins group, which consists of more than 150 subsidiaries worldwide and is active, among others, in the manufacture and distribution of carbonless, thermal, fine, coated and speciality papers. It has substantial operations throughout Europe and in North America, as well as interests in other parts of the world. The group is the world's largest manufacturer of carbonless paper, with shares of more than 30 % of the European market and 50 % of the North American market. Carbonless papers were organised under the divisional name of Arjo Wiggins Carbonless Paper Operation (CPO) until in 1998 a Carbonless & Thermal division was created. AWA has carbonless paper mills in Belgium, France and the United Kingdom.

**1.2.3.2. Binda**

(33) Cartiere Sottrici Binda S.p.A, renamed Binda S.p.A in May 1996, produced carbonless paper until October 1993. At that point Binda ceased production and reached various option agreements with AWA on the

<sup>(37)</sup> According to Sappi, average transport costs for deliveries in Europe are < 10 % of delivered price. File p. 215.

<sup>(38)</sup> For year 1992 the Commission has detailed figures for 6 companies, for 1993 and 1994 for 8 companies and for years 1995-1997 for 9 companies.

sale of its trademark 'Biplura' and several machines used in the production of carbonless paper. These options have not been fully exercised and AWA has acquired in 1995 the trademark 'Biplura' and one machine from Binda. Binda continued to produce release and cast coated paper until August 1998, when it was liquidated <sup>(39)</sup>.

- (34) In this Decision, Binda is mentioned for the purpose of the description of the factual situation. However, in view of the disappearance of this undertaking and in the absence of any legal or economic successor, it is not possible for the Commission to address this Decision to any legal or natural person for the behaviour of Binda until October 1993.

#### 1.2.3.3. **Carrs**

- (35) Carrs Paper Limited (Carrs) has its registered office in the West Midlands, United Kingdom. The company's immediate parent company is Carrs (Birmingham) Limited, which is incorporated in England and Wales. Carrs produces and sells carbonless paper (almost entirely sheets) in the United Kingdom, and exports predominantly to Ireland and Denmark.
- (36) Carrs has been an innovator in the carbonless market and led the change from blue to black carbonless in 1983. It was the first to launch laser/copier grades in 1991. In 1992 it launched the Signal Plus brand, a product it advertised as the first printer-friendly carbonless paper.

#### 1.2.3.4. **Copigraph**

- (37) Copigraph SA was a wholly owned subsidiary of a French company, Bolloré SA (formerly known as Bolloré Technologies SA) until November 1998, when AWA acquired it. Copigraph SA was part of Bolloré's special papers division. Bolloré produced base paper in its mill at Thonon which was coated at Thonon, at Copigraph's Malesherbes facilities in France and at the Wülfrath facilities belonging to Eupaco grafische Papiere GmbH & Co KG in Germany (Bolloré acquired Eupaco in 1992 and closed its coating facilities in 1995) <sup>(40)</sup>. When Copigraph sold the finished carbonless paper, its main markets in the EEA were France and Germany.

#### 1.2.3.5. **Divipa**

- (38) Distribuidora Vizcaína de Papeles S.L. (Divipa) is a Spanish company, which buys large carbonless paper reels and converts them into sheets and smaller reels for sale in Spain.

#### 1.2.3.6. **Koehler**

- (39) Papierfabrik August Koehler AG, with its registered office in Oberkirch, Germany, is the parent company of the privately-owned Koehler group, and owns the entire capital of Reacto Papier GmbH, Hannover, and Koehler Kehl GmbH, Kehl. Koehler produces carbonless paper, fine paper and thermal paper

#### 1.2.3.7. **Mougeot**

- (40) Papeteries Mougeot SA (Mougeot) is a French company which is incorporated in Laval-sur-Vologne, Vosges, France, and is controlled by the [...] (\*) family. Mougeot produces carbonless paper in France and its principal export markets are the United Kingdom, Germany and Austria. In addition to carbonless paper Mougeot produces sanitary and household papers and diapers that are sold under the distributors' brands

#### 1.2.3.8. **Sappi**

- (41) Sappi Limited (Sappi) is an international company incorporated in the Republic of South Africa. It is the parent company of the Sappi group of companies.
- (42) Sappi entered the European carbonless market in 1990 with the acquisition of the Transcript manufacturing plant from DRG in the United Kingdom. After entering the market it operated in Europe through its subsidiary Sappi UK Limited that set up in 1993 with another Sappi Limited subsidiary (Hannoversche Papierfabriken Alfeld-Gronau AG) a European sales organisation as a joint venture, Sappi Europe SA. From May 1995, Sappi Europe Limited was the European holding company to which Sappi UK Limited and Hannoversche Papierfabriken Alfeld-Gronau AG report <sup>(41)</sup>. In April 1998, following the acquisition of KNP Leykam (Europe's largest producer of coated woodfree paper),

<sup>(39)</sup> File p. 7793 and pp. 19752-19755.

<sup>(40)</sup> File pp. 414-415 and 13352.

(\*) Information between square brackets marked with an asterisk replace confidential information which has been deleted from the text.

<sup>(41)</sup> File pp. 19-20, 26-28.

the Sappi group was restructured, and now operates as two operating divisions, Sappi Fine Paper plc and Sappi Forest Products. The core businesses of Sappi Fine Paper are coated and uncoated woodfree paper, mechanical paper, coated and uncoated speciality paper, and release paper. Sappi Fine Paper's operations are managed through three regional subsidiaries, Sappi Fine Paper Europe, North America and South Africa. Sappi's carbonless paper mill, the Transcript mill, is owned by Sappi UK limited, a Sappi Fine Paper plc subsidiary.

#### 1.2.3.9. *Stora*

- (43) In 1990 the German paper producer Feldmühle Aktiengesellschaft was taken over by Stora Kopparbergs Bergslags AB, an international industrial group incorporated in Sweden and active in the production and sale of forest industry products, in particular paper, board, pulp and sawn timber. Stora Feldmühle was Stora Kopparbergs Bergslags AB's wholly owned subsidiary. Until the end of 1992 the carbonless paper operations of the group were carried on directly by Stora Feldmühle AG that was a member of the AEMCP. At the beginning of 1993 this business was confined to a new wholly owned subsidiary of Stora Feldmühle, which was named Stora Carbonless Paper GmbH (SCP). Stora Carbonless Paper GmbH produces carbonless paper in Germany and sells it throughout Europe.
- (44) In November 1998 the Commission approved a concentration between Stora Kopparbergs Bergslags AB and a Finnish forest industry group, Enso Oyj. As a result of the operation, Enso Oyj acquired 100 % of the share capital of Stora Kopparbergs Bergslags AB. The new entity, Stora Enso Oyj (Stora Enso), started operations at the end of 1998 <sup>(42)</sup>.
- (45) Immediately after the concentration was finalised Stora Enso sold a majority holding in its carbonless paper subsidiary Stora Carbonless Paper to Mitsubishi Paper Mills Ltd, and a minority holding to Mitsubishi Corporation, with effect from 31 December 1998. Stora Enso still has a minority holding in Stora Carbonless Paper GmbH, whose name was changed after the transaction to Mitsubishi HiTech Paper Bielefeld GmbH.

#### 1.2.3.10. *Torraspapel*

- (46) The Torraspapel group (Torraspapel) is primarily engaged in the manufacture and sale of high-quality paper products for printing, writing and other

applications. The parent company of the group is Torraspapel SA. The group's carbonless paper operations are handled by a wholly owned subsidiary, Sarriopapel y Celulosa SA (Sarrió), that has a production site at Leitza, Spain. The group had no carbonless paper production until 1991, when Grupo Torras SA (the then parent company of the Torraspapel group) acquired, through its subsidiary Sarriopapel y Celulosa, the entire non-board paper activities of SarrióSA <sup>(43)</sup>.

- (47) In 1999 the CVC Group, a private equity provider active in the provision of fund management and investment advice services, acquired sole control of Torraspapel (Case No COMP M.1728). Before the acquisition CVC did not have any activities in the carbonless paper market.
- (48) The group is the market leader on the paper markets in Spain, and has a strong presence in Portugal, France, Germany, Italy and the United Kingdom.

#### 1.2.3.11. *Zanders*

- (49) Zanders Feinpapiere AG (Zanders) is a German company incorporated in Bergisch Gladbach, with production sites in Bergisch Gladbach and Düren, both in Germany. Zanders produces mainly coated papers and cartonboard, and carbonless and speciality papers.
- (50) Until January 2001 Zanders was affiliated to the US forest and paper products company International Paper, and was part of its International Division. International Paper's German subsidiary International Paper Deutschland Inc. & Co. Holdings KG owned approximately 72 % of Zanders' shares. International Paper ranks among the world's largest producers of high-quality printing and writing papers.
- (51) On 14 November 2000 the Commission received a notification of a proposed concentration by which Metsä-Serla Corporation, a Finnish based forest industry company, was to acquire a sole control of Zanders Feinpapiere AG (Case No COMP/M.2245 — Metsä-Serla/Zanders). The Commission in December 2000 approved the concentration. On 3 January 2001 Metsä-Serla and International Paper completed Metsä-Serla's acquisition of the control of Zanders. On 6 April 2001 Metsä-Serla renamed itself M-real.

<sup>(42)</sup> See Commission Decision 1999/641/EC of 25 November 1998 in Case IV/M.1225, OJ L 254, 29.9.1999, p. 9.

<sup>(43)</sup> See Commission Decision of 24.2.1992 in Case No IV/M.166 — Torras/Sarrió.

1.2.3.12. *Zicuñaga*

- (52) Papelera Guipuzcoana de Zicuñaga SA (Zicuñaga) belongs to the Madrid-based Iberpapel group. Iberpapel Gestión SA, set up in 1997, is the holding and parent company of the group, which carries on various activities in the paper industry. Zicuñaga owns 100 % of Papeteries de l'Atlantique SA, located at Hendaye, France, which has produced carbonless paper since 1992.

## 1.2.4. THE ASSOCIATION OF EUROPEAN MANUFACTURERS OF CARBONLESS PAPER — (AEMCP)

- (53) AEMCP was founded in 1981 by nine companies <sup>(44)</sup>. It operated as an affiliated Product Group of the European Paper Institute (EPI) until the early 1990s, when the EPI merged with CEPAC, another paper industry trade association, to form the Confederation of the European Paper Industries (CEPI). After this merger the then chairman of the AEMCP, [an AWA employee] from AWA, started to organise a 'reconstitution' of the association, aimed at formal and legal establishment of the association in Belgium. Consequently, on 13 September 1993 the following companies signed the new articles of association: Arjo Wiggins Appleton plc, Copigraph SA, Koehler AG, Papeteries Mougeot SA, Alfred Rose, Sappi Europe Ltd, Stora Feldmühle AG, Torraspapel SA and Zanders Feinpapiere AG. The association was approved as an international association under Belgian law in 1994.

## 1.3. PROCEDURE

## 1.3.1. ORIGIN OF THE CASE

- (54) In autumn 1996 the paper products group Sappi provided to the Commission information and documents which gave the Commission reason to suspect that there was or had been a secret price fixing cartel in the carbonless paper sector, in which Sappi was operating as a producer. Sappi invoked the provisions of the Commission Notice on the non-imposition or reduction of fines in cartel cases (the Leniency Notice <sup>(45)</sup>).

<sup>(44)</sup> Wiggins Teape, Feldmühle, Koehler, Zanders, Ahlström (ceased production in 1991), Binda (ceased production in 1993), DRG, Sarrio and Reed (ceased production in 1986). (File p. 165).

<sup>(45)</sup> OJ C 207, 18.7.1996, p. 4.

## 1.3.2. THE INVESTIGATIONS

- (55) Further to Sappi's submissions, the Commission, by decisions dated 23 January 1997, ordered a number of carbonless paper producers to submit to investigations under Article 14(3) of Regulation No 17. These investigations were carried out on 18 and 19 February 1997 on the premises of the following undertakings: Arjo Wiggins Belgium SA, Papeteries Mougeot SA, Torraspapel SA, Sarriopapel y Celulosa SA, Grupo Torras SA.
- (56) Investigations under Article 14(2) of Regulation 17 were carried out between July and December 1997 on the premises of the following producers:
- on 2, 3 and 4 July, Sappi Limited, Sappi Europe Limited and Sappi (UK) Limited;
  - on 21 and 22 October 1997, Arjo Wiggins Appleton P.L.C., Arjo Wiggins Europe Holdings Ltd., Arjo Wiggins SA and its subsidiary Guerimand SA;
  - on 23 and 24 October 1997, Papeteries Mougeot SA;
  - on 6 and 7 November 1997, Torraspapel SA and Sarriopapel y Celulosa SA;
  - on 20 and 21 November 1997, Unipapel, Sociedade Comercial de Celulose e Papel Lda;
  - on 4 and 5 December 1997, Stora Carbonless Paper GmbH; and
  - on 9 and 10 December 1997, Papierfabrik August Koehler AG.

- (57) By mutual agreement with Sappi, a visit to the Brussels offices of Sappi's subsidiary, Sappi Europe SA, took place on 25 July 1997.

## 1.3.3. REQUESTS FOR INFORMATION

- (58) On 8 March 1999 the Commission addressed requests for information under Article 11 of Regulation No 17 to Arjo Wiggins Appleton plc, Papeteries Mougeot S.A., Torraspapel S.A., Cartiere Sottrici Binda S.p.A., Carrs Paper Ltd, Distribuidora Vizcaína de Papeles S.L., Ekman Iberica S.A. and Papelera Guipuzcoana de Zicuñaga S.A. On 15 March 1999 requests for information under Article 11 of Regulation No 17 were also addressed to Papierfabrik August Koehler AG, Stora Carbonless Paper GmbH and Zanders Feinpapiere AG, and on 20 December 1999 to Copigraph S.A.

(59) Further requests under Article 11 of Regulation No 17 were sent to Carrs Paper Ltd, Stora Carbonless Paper GmbH and Torraspapel S.A.

(60) In the requests the undertakings were required to provide information regarding their price increase announcements, sales volumes, customers, turnover and meetings with competitors. The same questions were put to Sappi.

(61) AWA, Stora and Copigraph admitted in their replies to the request for information their participation in multilateral cartel meetings held between the producers of carbonless paper. AWA gave a list of 'improper' meetings or groups of meetings between competitors from 1992 to 1998 where carbonless paper prices were also discussed, including discussion of historical trends, but also extending to an exchange of intentions regarding announcements of price increases <sup>(46)</sup>. Most (and the best documented) of these meeting were held during the period 1992-1995. Stora admitted its participation in meetings with competitors at which 'there was discussion not just of the general economic situation in the industry but of prices as well', but claimed that 'the competitors did not reach agreement on price increases' <sup>(47)</sup>. These meetings took place in the period between the end of 1992 and continuing till the middle of 1995. Copigraph admitted participation in meetings with competitors where 'carbonless paper reels prices were raised' <sup>(48)</sup> and more specifically one Copigraph executive remembers attending two or three meetings in 1993 and 1994.

#### 1.3.4. GENERAL STATEMENTS GIVEN BY THE PRODUCERS BEFORE RECEIVING THE STATEMENT OF OBJECTIONS

(62) Mougeot and Sappi have admitted participation in multilateral cartel meetings held between the producers of carbonless paper. As already described, Sappi provided the Commission with the evidence of the cartel's existence. After having received the request for information under Article 11 of Regulation No 17,

Mougeot approached the Commission stating that it was willing to cooperate in the cartel investigation under the Leniency Notice. Mougeot admitted the existence of a carbonless paper price fixing cartel and its own participation in it between October 1993 and July 1995, and provided the Commission with information on the structure of the cartel and, in particular, on the individual price fixing meetings its representatives had attended <sup>(49)</sup>.

#### 1.3.5. THE ADMINISTRATIVE PROCEDURE

(63) On 26 July 2000, the Commission initiated proceedings in the present case and adopted a Statement of Objections against the following undertakings: Arjo Wiggins Appleton p.l.c, Binda S.p.A, Bolloré SA, Carrs Paper Ltd, Copigraph SA, Distribuidora Vizcaína de Papeles S.L., Iberpapel Gestión S.A., International Paper, Mitsubishi HiTech Paper Bielefeld GmbH (MHTP (Stora)), Mitsubishi Paper Mills Ltd, Papelera Guipuzcoana de Zicuñaga SA, Papeteries Mougeot SA, Papierfabrik August Koehler AG, Sappi Limited, Stora Enso Oyj, Torraspapel SA and Zanders Feinpapiere AG.

(64) All addressees of the Statement of Objections except Binda S.p.A, International Paper and Mitsubishi Paper Mills Ltd submitted written observations in response to the Commission's objections.

(65) The undertakings had access to the Commission's investigation file via a CD-ROM copy of the file, which was sent to them on 1 August 2000.

(66) In its reply to the Statement of Objections, Koehler argued that granting access to the file by sending a CD-ROM does not satisfy the Commission's own principles as laid down in its Notice on access to file <sup>(50)</sup> on the basis of case law. Koehler argued that the undertaking in question is unable to check whether the CD-ROM actually does contain all the documents available to the Commission that must be made accessible to it, whether the documents are complete as such or whether in the scanning documents have been recorded incompletely. Koehler made accordingly a

<sup>(46)</sup> File pp. 7828-7829.

<sup>(47)</sup> Original in German: 'nicht nur die allgemeine wirtschaftliche Situation der Branche erörtert, sondern auch über Preise gesprochen wurde' ... '[Z]wischen den Wettbewerbern [wurde] kein Einvernehmen über Preiserhöhungen erzielt'. (File p. 9044).

<sup>(48)</sup> File p. 13353.

<sup>(49)</sup> File pp. 7647-7658.

<sup>(50)</sup> Commission Notice on the internal rules of procedure for processing requests for access to the file in cases pursuant to Article 85 and 86 (currently 81 and 82) of the EC Treaty, Article 65 and 66 of the ECSC Treaty and Council Regulation (EEC) No 4064/89 (OJ C 23, 23.1.1997, p. 3).

request to have access to the file by way of consultation of the file on the Commission's premises in addition to the access to file given to it via a CD-ROM <sup>(51)</sup>.

(67) With the CD-ROM the undertakings received an enumerative list of all documents in the investigation file (with a running page numbering), which shows for each document its degree of accessibility. In addition, Koehler has been informed that the CD-ROM gives the parties a full access to all documents obtained by the Commission during the course of the investigation, excluding only business secrets or other confidential information. Koehler was offered confirmation of that information by the Hearing Officer but has not made use of this possibility <sup>(52)</sup>.

(68) An Oral Hearing was held on this case on 8 and 9 March 2001. The following undertakings took part in the Hearing: Arjo Wiggins Appleton p.l.c., Carrs Paper Ltd, Distribuidora Vizcaína de Papeles S.L., Mitsubishi HiTech Paper Bielefeld GmbH, Papelera Guipuzcoana de Zicuñaga SA, Papeteries Mougeot SA, Papierfabrik August Koehler AG, Sappi Limited, Torraspapel SA and Zanders Feinpapiere AG.

(69) In their written replies to the Statement of Objections Torraspapel <sup>(53)</sup>, Divipa <sup>(54)</sup> and Zicuñaga <sup>(55)</sup> have contested any participation in any collusive agreement. However, most of the addressees of the Statement of Objections have admitted existence of the cartel and their participation in it.

(70) The undertakings which had previously admitted their participation in the cartel have to a large extent not contested the findings of the Commission described in the Statement of Objections except for the period after summer 1995. More precisely Sappi has indicated that its participation 'ended prior to its approach of the Commission on 19 September 1996' <sup>(56)</sup>. Mougeot has confirmed its participation to the cartel from September 1993 to summer 1995 <sup>(57)</sup>, as does Copigraph <sup>(58)</sup>. AWA has not contested the facts set out in the Statement of Objections but regarding the period after

summer 1995 indicates that 'there were occasional meetings between sales managers at national level. [...] [S]ome of its individual national sales managers had not entirely broken contacts with their counterparts in other producers. [...] However, where it occurred it resulted from local initiatives by national managers and should not be viewed as a continuation of the cartel that existed until summer 1995 <sup>(59)</sup>'. Mitsubishi HiTech/Stora has not contested the infringement over the period 1992 to summer/autumn 1995 <sup>(60)</sup>.

(71) Some undertakings that did contest any collusion in their replies to the requests for information from the Commission have admitted in their replies to the Statement of Objections their participation in the cartel. Carrs has admitted that it participated in the UK meetings during the period January 1993 to March 1997, the extent of Carrs participation varying over the period <sup>(61)</sup>. Koehler has not contested some of the facts for the period from autumn 1993 to May 1995 inclusive <sup>(62)</sup>. Zanders has not contested the description of the cartel made by the Commission for the period 1992 to autumn 1995 <sup>(63)</sup>.

#### 1.4. DETAILS OF THE INFRINGEMENT

##### 1.4.1. INTRODUCTION

(72) Most of the addressees have admitted participation in the cartel. However, these undertakings have sometimes given a different description and different times for the beginning and for the end of the existence of the cartel. The undertakings admitting the facts do never contest the existence of the cartel during the period from September 1993 to spring or summer 1995.

(73) As to the beginning of the period, Copigraph, Koehler and Mougeot deny any participation in the cartel before

<sup>(51)</sup> Koehler's reply to the Statement of Objections, file pp. 20733-20735.

<sup>(52)</sup> File pp. 20739-20740.

<sup>(53)</sup> File p. 20439.

<sup>(54)</sup> File p. 19592.

<sup>(55)</sup> File p. 18468.

<sup>(56)</sup> File p. 20603.

<sup>(57)</sup> File p. 19717.

<sup>(58)</sup> File p. 19563.

<sup>(59)</sup> File p. 19733.

<sup>(60)</sup> File p. 20403.

<sup>(61)</sup> File p. 20358: Carrs indicates that during 1993-1994 it actively attended UK meeting. From the end of 1994, it generally no longer attended the meetings but was kept informed of the conclusions of these meetings by telephone, generally by AWA.

<sup>(62)</sup> File pp. 20703 and 20721.

<sup>(63)</sup> File p. 20506.

September 1993 and Stora (MHTP) before the end of 1992. However, statements made by Sappi suggest that there were contacts of a collusive nature between the European carbonless producers as long ago as the founding of their trade association, the AEMCP, in 1981, and in particular from the mid-1980s onward <sup>(64)</sup>. The evidence provided by Sappi shows that there were cartel meetings starting in 1989 and continuing until a meeting on 2 February 1995 in Frankfurt.

documented nor corroborated by sufficient evidence to conclude that the behaviour at issue in these proceedings continued after September 1995.

- (76) Therefore, the Commission will in the present case limit its assessment to the period up to September 1995, this date being the moment until which the Commission has corroborated evidence of the existence of the cartel.

#### 1.4.2. BASIC PRINCIPLES OF THE CARTEL

##### 1.4.2.1. *Objectives*

- (74) The Commission will in the present case limit its assessment from January 1992 onward, this date being the moment from which the Commission has converging statements from cartel participants and corroborated evidence of regular collusive contacts between carbonless paper producers.

- (77) The Commission's investigation revealed that the parties to the cartel agreed on an overall anti-competitive plan aiming essentially at improving the profitability of the participants by collectively increasing prices. In the framework of this global plan, the principal objective of the cartel was to agree price increases and also the schedule for the increases (effective dates of the increases). This was done by means of cartel meetings held at various levels (general, national or regional).

- (75) As to the end of the period, as described in the Statement of Objections, there is also some suspicion that at least some elements of the collusive arrangement put in place at the latest in January 1992 continued after September 1995. However, all parties except AWA, Carrs and Sappi deny any continuation of their participation in the collusion after September 1995 — including parties that admit their participation prior to that date (Copigraph, Mougeot, Stora, Zanders). Moreover, the statements made by AWA, Carrs and Sappi are substantially different from each other as to the nature and the dates of the alleged collusive contacts. Finally, the statements are not well enough

- (78) Documentary evidence on the general cartel meetings shows that this plan was implemented through meetings where the participants agreed on several consecutive price increases expressed in percentage form for each EEA country. At the national and regional cartel meetings the cartel members agreed on percentage price increases and in most cases also monitored the implementation of the price increases fixed previously. In the case of the Spanish and Portuguese markets, instead of a percentage increase the parties often agreed on a target price for each type of the product (CB, CFB and CF). This target price was a minimum price.

<sup>(64)</sup> Sappi has provided to the Commission a statement made by one of its employees who has been in sales of carbonless paper since the 1970s, saying that 'He had first suspected that there was collusion in carbonless paper in about the mid 1980[s] because of comments made by senior management ... He would have believed that the collusion involved Arjo Wiggins, Köhler and Stora Feldmühle, among others. He had been aware of bilateral exchanges of information from about the mid/late 1980s' (File p. 4656). Another statement from another Sappi employee suggests that there were collusive contacts and meetings between competitors during the period from 1991 to 1993 at an EC-wide level. This Sappi employee 'believed that there was collusion through these contacts and that there were discussions between suppliers about prices at an EC-wide level' (File p. 4652-4653. This employee joined DRG in 1988 and between May 1991 and March 1993 worked for [a Sappi employee]\* based at the Transcript mill).

- (79) A document found on Sappi's premises explains the form of the agreed price increases, at least concerning the Spanish market, in the following way: 'On the agreement taken, reels are discussed in terms of buying price, but sheets are discussed as selling price and is left to each supplier the margin he wants their merchants to obtain.' <sup>(65)</sup>. The terms 'buying prices' and 'selling prices' also appear in another document found on Sappi's premises, which summarises the price increases for the

<sup>(65)</sup> File p. 2011.

UK market from 7 February 1994 until November 1995 <sup>(66)</sup>. Given that sheets are mainly distributed via merchants, this means that sheet prices were agreed in the form of prices to merchants. Reels, on the other hand, are sold either directly to the end-users or via merchants, and it seems that reel prices were agreed in the form of prices to end-users. As this pattern of trade is common to all EEA countries, it is likely that the price increases were agreed in the same way for the whole area.

(80) As far as prices for reels are concerned, the producers also agreed to differentiate prices according to the purchasing power of the customer, at least on the Spanish and Portuguese markets. Three documents reporting on Spanish market meetings and one document reporting on a Portuguese market meeting show that the reels customers were divided into three groups — A, B and C — and that the agreed target prices for each of these groups were different <sup>(67)</sup>. In addition, the document on the Portuguese market meeting, held on 9 February 1994, contains a 'definition of a minimum price according to potential of purchases' and 'customer classification according to potential of purchases' <sup>(68)</sup>. During the investigation at Unipapel (Sappi's agent in the Portuguese market), [an Unipapel employee]\* confirmed that clients were classified in categories A, B and C according to their purchasing power <sup>(69)</sup>.

(81) In order to ensure implementation of the agreed price increases, in some national cartel meetings sales quotas were allocated and market shares were fixed for each participant <sup>(70)</sup>. The agreements on volumes and market shares show the intention to avoid departures from the common scheme as well as to refrain from competition on other commercial aspects. The following statement by Mougeot illustrates this: '[an AWA employee]\* added that this was a problem of prices rather than volumes, but that on the latter point he would see to it that the problems were sorted out as soon as we were participating in the restoration of profitability' <sup>(71)</sup>.

<sup>(66)</sup> File p. 2245.

<sup>(67)</sup> File pp. 8, 4476, 1839, 47-51.

<sup>(68)</sup> File p. 50.

<sup>(69)</sup> File p. 4520.

<sup>(70)</sup> See chapter .

<sup>(71)</sup> Original in French: '[an AWA employee]\* a précisé qu'il ne s'agissait que d'un problème de prix et non de volume mais que sur ce point il se chargerait de régler ces problèmes dès l'instant où l'on participerait à la restauration de la rentabilité.' (File p. 7648).

#### 1.4.2.2. **Organisation**

(82) Two levels of cartel meetings can be clearly distinguished — the general cartel meetings attended by chief executives, commercial directors or equivalent in the carbonless paper business, and the national or regional cartel meetings attended by national or regional sales managers, often together with those senior managers. Statements from Mougeot and Sappi support the Commission's conclusions on the structure of the cartel <sup>(72)</sup>.

##### (a) **General cartel meetings**

(83) The EEA-wide planning and co-ordination of the cartel took place at the general cartel meetings convened under the cover of the official meetings of the trade association, the AEMCP.

(84) At the general cartel meetings the participants decided in principle on timing and the amount (in percentage form) of the price increases for each EEA country. They agreed on several consecutive price increases and for some months ahead.

(85) The AEMCP meetings functioned as cartel meetings at least from January 1992 until September 1993. From that date, separate general cartel meetings were held on the occasion of the official AEMCP meetings (either before or after) (see paragraphs 107) to (109)).

(86) The Commission has received copies of the minutes of the official AEMCP meetings starting from the meeting of 23 January 1992 <sup>(73)</sup>. Official AEMCP meetings were held five times a year from 1992 to 1995. Annex I, Table A lists official AEMCP meetings from 1992 onward and general cartel meetings for which there is documentary evidence, beginning with the meeting in September 1993 where separation of the trade association and cartel functions was decided.

<sup>(72)</sup> File pp. 9936, 11596-11598.

<sup>(73)</sup> See e.g. file pp. 72 and 3973-3976. (Minutes of the meetings can be found on file pp. 73-197, 3978-4173 and 4732-4750.) The meetings were first called as the EPI AEMCP Product Group meetings and from the end of 1993 onward as the AEMCP General (Assembly) Meetings. Annexed to the minutes of the AEMCP meeting held on 1.12.1995 there is a list of chairmen and secretaries of the association starting from April 1981 (File p. 186). This list shows that a chairman and a secretary of the association were appointed every year from one of the member companies, both coming from the same company at a time.



(87) The AEMCP meetings were normally well attended, and at the time of the infringement all the then AEMCP members participated in those meetings: AWA, Binda, Copigraph, Koehler, Mougeot, Sappi, Stora, Torraspapel/Sarrió<sup>(74)</sup> and Zanders. Attendance was checked, and members were requested to explain reasons for any failure to attend. The minutes of the AEMCP meeting on 29 February 1996, for example, note that Sarrió was absent for the second time in succession, and that the chairman would contact the company and ask the reasons for its absence<sup>(75)</sup>.

(88) The attendance of each producer in the official AEMCP meetings from January 1992 until summer 1995 is shown in the Annex I, Table B.

#### (b) National and regional cartel meetings

(89) The general cartel meetings were followed by a series of national or regional cartel meetings. The purpose of these meetings was to ensure market-by-market implementation of the price increases previously agreed at the general cartel meetings. It appears that the price increases, which were decided at the general cartel meetings by the senior managers, would not have been successful without participation of the regional and national managers.

(90) Concerning the reasons for holding cartel meetings market by market (i.e. separate national/regional meetings) Mougeot has stated that 'AWA felt that unless the managers responsible for local markets were involved there was little chance of achieving the results hoped for, which explained the holding of meetings market by market'. Mougeot continued by saying that: 'the local managers were told by their superiors that they wanted a price rise, and had to decide between themselves how the rise should be secured in practice'<sup>(76)</sup>.

(91) At the national and regional cartel meetings the price increases agreed at European level were confirmed or revised, if necessary, and adherence to the price increases agreed previously was checked. Mougeot's

statement also confirms that the participants at these meetings agreed on steps to be taken to implement in practice the price increases.

(92) National and regional cartel meetings were usually held from one to three months prior to implementation of each price increase agreed at a general cartel meeting. Sometimes, however, a national cartel meeting too served to fix several consecutive price increases.

(93) The Commission has evidence that national or regional cartel meetings were held concerning the following markets: France, Portugal and Spain, the United Kingdom and Ireland<sup>(77)</sup>, Austria, Germany, Italy, Benelux and the Nordic countries (paragraphs (129) to (188)).

(94) All the then AEMCP members attended some or all national or regional cartel meetings, and some non-members also attended several national cartel meetings. Of the non-members, in particular, Divipa and Zicuñaga attended the meetings concerning the Spanish market, and Carrs attended the meetings concerning the UK market.

#### (c) Other contacts between the producers

(95) Those cartel members who did not participate in a cartel meeting were informed by other cartel members of what had been decided, usually by telephone. Mougeot has explained how it received information on the concerted price increases if it did not participate in some cartel meetings: 'Papeteries Mougeot received phone calls from one company or another, most often from AWA, announcing the details of price increases by market. This continued essentially until mid-1995'<sup>(78)</sup>.

(96) Occasionally the agreed timetable for implementation of the increases needed to be revised, but there was neither time nor any necessity for a new meeting. On these

<sup>(74)</sup> Representatives of both Torraspapel SA and Sarriopapel y Celulosa SA participated in the AEMCP meetings.

<sup>(75)</sup> File pp. 187-190.

<sup>(76)</sup> Original in French: 'il était considéré par AWA que sans implication des responsables locaux des marchés, il y avait peu de chances d'atteindre les résultats escomptés, expliquant par-là même la tenue des réunions marché par marché' ... 'les responsables locaux informés par leurs dirigeants d'une volonté de hausse de prix étaient chargés de définir entre eux les modalités pratiques pour obtenir cette hausse'. (File p. 11597).

<sup>(77)</sup> The documentary evidence, and in particular the information on price increases, indicates that the UK and Irish markets were considered as one region.

<sup>(78)</sup> Original in French: 'Les Papeteries Mougeot recevait des uns ou des autres, le plus souvent d'AWA, des coups de téléphone annonçant les modalités de hausses de prix par marché. Ceci a été essentiellement pratiqué jusqu'à mi 1995'. (File p. 11598).

occasions the competitors kept one another directly informed of their intentions regarding the course of conduct they were going to take. Usually this seems to have been done by telephone, and no traces were left, but there are two documents showing how AWA informed Sappi of its decision to revise some increase dates. The first document is a fax where AWA informs Sappi that the price increase of June 1993 should be withdrawn because competitors have failed to put up their prices <sup>(79)</sup>. The second document, also coming from Sappi, says: 'After our call I [a Sappi employee]\* was advised by ARJ/W [Arjo Wiggins] that they have decided to go one month later in Scandinavia. E.g. 1/5/94' <sup>(80)</sup>.

in the years 1992, 1993 and 1994 and 'forecast' sales for 1995 and 'budgeted' sales for 1996 in the Benelux area <sup>(83)</sup>. Tables of the same kind were also found on AWA's premises showing the individual producers' sales in the UK, Spanish and Portuguese markets in 1995 (and even 1996 and 'forecasts' for 1997) <sup>(84)</sup>. The second type of table lists individual producers' shares of the Dutch, Belgium/Luxembourg and total Benelux markets in 1993 and 1994, and 'estimated' shares for 1995 (and 'forecasted' shares for 1996) <sup>(85)</sup>. Yet another set of tables shows the percentage growth or decrease in each producers' sales in the Benelux area in the periods 1993/1994, 1994/1995, 1995/1996 and 1992/1995 <sup>(86)</sup>. The market share and growth figures are given with an accuracy of one decimal place. All the tables are dated December 1995 <sup>(87)</sup>.

#### 1.4.2.3. *Monitoring system and sanctions*

(97) The carbonless paper producers exchanged individual, confidential information in order to facilitate the reaching of the agreements on price increases and sales quotas and to monitor adherence to the agreements. During the national or regional cartel meetings the participants exchanged detailed and individual information on their prices and sales volumes <sup>(81)</sup>. Mougeot has confirmed both the price and volume information exchange, and emphasised the role of AWA in this procedure <sup>(82)</sup>.

(98) The official co-operation of the AEMCP members within the association includes the collection and distribution of statistical information on carbonless paper deliveries. Since the end of 1994 the statistical service has been run by Deloitte & Touche, and before that was run by COPACEL. AEMCP members supply individual data on a monthly basis to Deloitte & Touche, which collates the information and produced aggregated statistics for west European countries and combined statistics for both the other European countries and the overseas markets. These aggregated statistics provided for the AEMCP members do not identify the sales volumes of individual producers.

(99) However, on AWA's premises the Commission also discovered tables containing detailed information on individual carbonless paper producers' sales. The first type of table shows annual sales by individual producers

(100) Equally detailed market share figures (accurate to one decimal place) are shown in hand-written notes taken by Mougeot's representative at the meeting in Geneva on 6 December 1994 <sup>(88)</sup>. These notes list shares of the French market in 1994 and 1995 (1995 shares agreed in the meeting) for AWA, Copigraph, Zanders, Sarrió(Torraspapel), Koehler, Feldmühle (Stora) and Mougeot. Meeting minutes and company statements show that the cartel members also exchanged individual sales volume data <sup>(89)</sup>.

(101) The tables found on AWA's premises and the minutes and notes of cartel meetings confirm that, in order to monitor the operation of the price-fixing and quota system, at least the AEMCP members exchanged their individual sales and market share figures outside the

<sup>(83)</sup> File pp. 940, 942-943, 945, 948, 3378-3380. For year 1992 only concerning Belgium and Luxembourg.

<sup>(84)</sup> File pp. 3414, 3641, 3643. For Portugal only concerning year 1996.

<sup>(85)</sup> File pp. 3381-3383 and 946. Tables of this type were also found for the UK and Spanish markets in the years from 1995 to 1997 ('estimate') and for the Portuguese market in the year 1996 (File p. 3415, 3642, 3644; see also file p. 3265, which gives equally detailed market share information for main competitors in European level).

<sup>(86)</sup> File pp. 3384-3386 and 947.

<sup>(87)</sup> The firms are presented in the tables in two groups: AEMCP members (AWA, Feldmühle (Stora), Koehler, Zanders, Sappi, Sarrió (Torraspapel), Copigraph and Mougeot) and outsiders (Molineus, Hauffe, Carrs, Jujo, Nashua etc.). For the AEMCP members the tables provide complete information for each year, whereas for the outsiders only some information is given.

<sup>(88)</sup> File pp. 7657-7658.

<sup>(89)</sup> Information on sales volumes was exchanged at least at the following meetings: 30.9.1993 in Barcelona, 1.10.1993 in Paris, 9.2.1994 in Lisbon, spring 1994 in Nogentel and 6.12.1994 in Geneva. For details see chapter below.

<sup>(79)</sup> File pp. 10005-10006.

<sup>(80)</sup> File p. 2482.

<sup>(81)</sup> See chapter 1.4.4.2.

<sup>(82)</sup> File pp. 11493 and 11598.

official arrangements for the collection and distribution of statistical information operating within the AEMCP.

(102) Standard form letters announcing price increases to customers were also used to ensure compliance with the price-fixing agreements. According to Mougeot, [an AWA employee]\* required that the price increases should be announced by sending standard form letters to customers <sup>(90)</sup>. Mougeot has confirmed that AWA and 'some of the main players on this market' used such price increase letters <sup>(91)</sup>. The Commission has found and received from several producers numerous standard form letters.

(103) Mougeot claims that it received the competitors' price increase letters found on its premises from customers. Even if customers sometimes worked as the channel to transmit the information, it is clear that at least AWA kept its competitors directly informed of its price increase announcements. This is confirmed by a set of AWA's price increase letters to its customers found at Sappi's London offices with a signed AWA card 'with compliments' from Arjo Wiggins Belgium s.a. <sup>(92)</sup>.

(104) Mougeot's account of the meeting of 1 October 1993 indicates that there were sanctions for failure to comply with the agreements: '[an AWA employee]\* said quite expressly that he would not tolerate any failure to follow this price increase and that he would "personally look after" anyone who did not "play the game"' <sup>(93)</sup>. When asked to describe the control mechanism and the reasons for the authority of [this AWA employee]\* and AWA, Mougeot replied: 'As far as we know there were no contracts, documents or legal circumstances which gave AWA any sort of authority. But they had a position of moral and economic leadership on the market. To the old manufacturers [he]\* was the man who had successfully launched self-copying paper in Europe for AWA, and then secured encouraging results in the United States. AWA's financial and industrial weight enabled him to say that if any of these increases were not passed on AWA would make it its business to push the market right down by applying a price policy that

would leave most people high and dry. He showed quite clearly what he was capable of by crushing Binda in Italy' <sup>(94)</sup>.

(105) AWA was (and still is) clearly the largest carbonless paper producer in Europe, with an EEA market share of approximately 30-35 %. It also had by far the largest production capacity, twice as much as the second or third competitor in the EEA. It appears, however, that AWA would not have been able to 'crush' the largest of its competitors, Stora and Zanders.

(106) It appears that AWA's threats worked better on the smaller competitors. Mougeot claims that in view of the small scale of their production the sanctions and threats they received were limited to reprimands ('reproches'), to which they replied by promising to implement any future price increases. There are, however, indications that stronger measures were taken by AWA against Torraspapel (another smaller producer) in order to ensure compliance with the agreements. Indeed, in the French market meeting held on 6 December 1994 there was some disagreement between the cartel members on the accuracy of price increase and volume information exchanged in the course of the meeting <sup>(95)</sup>. In order to verify the figures submitted, [an AWA employee]\*, who doubted the figures supplied by Sarrió (Torraspapel), had asked and received permission to audit the information on Sarrió's sales volumes on Sarrió's premises <sup>(96)</sup>.

#### 1.4.3. THE CARTEL MEETINGS AND OTHER COLLUSIVE CONTACTS

##### 1.4.3.1. *General cartel meetings*

##### (a) **General cartel meetings up to restructuring of the AEMCP in 1993**

(107) Sappi admitted that there was collusion between the competing manufacturers at regular meetings that took

<sup>(90)</sup> File p. 7649.

<sup>(91)</sup> File p. 7655. Original in French: 'certaines des principaux intervenants sur ce marché'.

<sup>(92)</sup> File pp. 2485-2491.

<sup>(93)</sup> Highlighting added. Original in French: '[un employé d'AWA]\* a très explicitement indiqué qu'il ne tolérerait pas que cette hausse de prix ne soit pas suivie et qu'il "s'occuperait personnellement" de tous ceux qui ne "joueraient pas le jeu"' (File p. 7648).

<sup>(94)</sup> Original in French: 'Il n'y avait pas à notre connaissance de contrats, documents ou situations juridiques permettant à AWA de revendiquer une quelconque autorité. En revanche, ces derniers avaient une position de leader moral et économique sur le marché. [un employé d'AWA]\* était pour les anciens fabricants celui qui avait lancé avec succès l'autocopiant en Europe pour AWA, puis obtenu des résultats flatteurs aux Etats-Unis. La présence financière et industrielle de AWA lui permettait de déclarer que pour le cas où ces hausses ne seraient pas répercutées, AWA faisait son affaire de complètement écraser le marché en appliquant une politique de prix qui laisserait le plus grand nombre "sur le carreau". Il fit d'ailleurs une parfaite démonstration de sa capacité en écrasant BINDA en Italie'. (File p. 11494)

<sup>(95)</sup> Mougeot's statement of 14.4.1999 (File p. 7653).

<sup>(96)</sup> Mougeot's statement of 29.6.1999 (File pp. 11493-11494).

place at least from the beginning of 1992 onward. A Sappi employee stated that such meetings were held 'at an EC-wide level' from 1991 onward. AWA admitted as well that such meetings took place as from the beginning of 1992. In addition, the period for which the Commission has extensive evidence of regular meetings and contact of a national or regional character begins in January 1992. The evidence relates in particular to meetings concerning the Spanish and Portuguese markets. Other meetings and contacts beginning at the same time concern the markets in France, Italy, the Nordic countries and the United Kingdom.

restructuring of the cartel. Also according to this statement, at the AEMCP meeting of 14 September 1993 (or at the meeting before) <sup>(100)</sup> [An AWA employee]\*. [An AWA employee]\* informed other AEMCP members of his decision to start to organise carbonless paper producers cartel meetings outside those of the association. It appears that on the basis of AWA's proposal there was a consensus reached among the AEMCP members to separate the trade association activities from the cartel activities.

(108) Mougeot, which joined the AEMCP at the end of 1992 <sup>(97)</sup>, has given a statement concerning the contents of an official AEMCP meeting held in 1993, on the basis of which the Commission infers that the 'reconstitution' of the association also involved a restructuring of the cartel. Mougeot says: 'Probably on the occasion of the official AEMCP meeting in Frankfurt on 14 September 1993, or at the meeting before that, but certainly when [an AWA employee]\*1993, or at the meeting before that, but certainly when [an AWA employee]\* became head of AWA's self-copying division [he]\*clearly decided to invite the main self-copying manufactureres on each market to thies unofficial meetings, and to change the organisation of the official AEMCP meetings. [He]\* decided that from now on there would be a lawyer present at all AEMCP meetings in order to give them an official character and ensure that the proceedings were not open to criticism. Anything to do with prices would no longer be discussed at those meetings but only at "unofficial" meetings, and to change the organisation of the official AEMCP meetings. [He]\* decided that from now on there would be a lawyer present at all AEMCP meetings in order to give them an official character and ensure that the proceedings were not open to criticism. Anything to do with prices would no longer be discussed at those meetings but only at "unofficial" meetings' <sup>(98)</sup>.

(110) As the first official AEMCP meeting with a lawyer was held on 18 November 1993 <sup>(101)</sup>, it appears that at least from that meeting onward the cartel activities were effectively moved from 'official' AEMCP meetings to the 'non-official' meetings, i.e. the general cartel meetings and the national/regional cartel meetings.

(111) Thus Mougeot's statement confirms that, before the reconstitution of the AEMCP, carbonless paper price-fixing agreements were concluded within the official AEMCP meetings, and, after that, those agreements were concluded outside those meetings.

(109) The statement quoted above shows that the election of [an AWA employee]\* as the chairman of the AEMCP on 9 February 1993 <sup>(99)</sup> triggered the subsequent

(112) The following recollection of a Sappi employee who worked in Sappi Europe SA from February 1993 regarding his then superiors' and colleagues' participation in the cartel meetings confirms that prices were agreed at the official AEMCP meetings or at meetings held on the occasion of these meetings: 'However, he admits that he had very strong suspicions, close to a degree of knowledge, that [two Sappi employees]\* had been to meetings with competitors. He recollects that one or other of them would come back from meetings, including AEMCP meetings, with a very definite view on the price increases that were to be implemented and that they were relatively unconcerned by competitor reactions. He knew that they did meet competitors from time to time but was not aware of the details or structure. He assumed that the collusion related to prices and was EC-wide' <sup>(102)</sup>.

<sup>(97)</sup> Mougeot states that it was introduced to AEMCP as a candidate member on 25.11.1992, and that the first meeting it attended as a member was on 9.2.1993. Nevertheless, [a Mougeot employee]\* attended AEMCP meetings as long ago as 26.5 and 10.9.1992. File pp. 3996 and 4001.

<sup>(98)</sup> Original in French: 'Sans doute à l'occasion de la réunion officielle de l'AEMCP du 14 septembre 1993 à Francfort ou à celle d'avant, en tout cas lors de l'entrée en fonction de [un employé d'AWA]\* à la tête de la Direction Générale de la branche autocopiant d'AWA. [Il]\* a clairement décidé de convoquer à des réunions "non-officielles" les principaux producteurs de l'autocopiant marché par marché, et de modifier l'organisation des réunions officielles de l'AEMCP. Désormais, [il]\* a décidé qu'un avocat assisterait à chaque réunion de l'AEMCP pour donner à celles-ci un caractère officiel et insusceptible de critique. En revanche il décida que tout ce qui concernerait les prix n'y serait plus abordé mais uniquement traité lors de réunions "non-officielles".' (File p. 7647).

<sup>(99)</sup> File pp. 74-82. Apparently [an AWA employee]\* had become the head of AWA's carbonless paper sector just before this meeting took place. The minutes of the meeting expressly mention his return to Europe and say, '[an AWA employee]\* ... takes the Chair in place of [...] who has left ARJO WIGGINS'.

<sup>(100)</sup> The AEMCP meeting preceding the meeting of 14.9.1993 was held in Zurich on 7.7.1993.

<sup>(101)</sup> File pp. 106-111.

<sup>(102)</sup> File p. 5407.

(113) The Commission therefore concludes that, until restructuring of the association AEMCP and the cartel in September 1993, general cartel meetings already took place. The Commission infers from the Mougeot statement quoted in paragraph 108 that these meetings took place in the framework of the regular AEMCP meetings. The Commission has information on the dates and also minutes of the official AEMCP meetings since the meeting of 23 January 1992. The minutes of these meetings in the Commission's possession show that between January 1992 and the restructuring in September 1993 there were eight AEMCP meetings, all held in Zurich (see Annex I, Table A).

(114) The AEMCP meeting of 14 September 1993 was held in Frankfurt. Representatives of the following companies (all the then AEMCP members) attended this meeting and, therefore, participated in the restructuring of the cartel: AWA, Copigraph, Koehler, Mougeot, Sappi, Stora, Torraspapel and Zanders <sup>(103)</sup>.

**(b) General cartel meetings after the restructuring**

(115) As regards the general cartel meetings held after the restructuring, the Commission has documentary evidence and statements which allow identification of the proceedings, outcome and participants of four such meetings:

— meeting on 19 January 1994 in Paris,

— meeting on 21 June 1994 in Frankfurt,

— meeting on 22 September 1994 in Frankfurt,

— meeting on 2 February 1995 in Frankfurt,

(116) All of those general cartel meetings were held on the occasion of an official AEMCP meeting.

(117) The first general cartel meeting in 1994, aiming at fixing and controlling the price increases of the first half of

the year in the EEA, was held on 19 January in Paris <sup>(104)</sup>. According to the minutes of the official AEMCP meeting of 19 January 1994, it opened at 13.55 and ended at 15.30 <sup>(105)</sup>. AWA has confirmed that the cartel meeting took place before the official AEMCP meeting and that AWA was represented in the meeting by [...] (then Chief Executive, AWA Printing and Writing) <sup>(106)</sup> and [...] (then Sales Director, AWA Carbonless Paper). As for the other participants, AWA says 'This meeting is believed to have been attended by executives from some or all of Koehler, Stora-Feldmühle, and Zanders.' <sup>(107)</sup>. The Commission also has a travel expense form which shows that Koehler's representative in the official AEMCP meeting could have participated in the general cartel meeting before the official meeting <sup>(108)</sup>. A copy of the diary of [a Mougeot employee]\* shows that he was also in Paris on 19 January 1994 <sup>(109)</sup>.

(118) The Commission has found on Sappi's premises a table dated 21 January 1994 (two days after the meeting) setting out price increases for most EEA countries from January 1994 to May 1995 <sup>(110)</sup>. Some of these increases correspond to those shown in minutes of national cartel meetings held before the general cartel meeting of 19 January. The Commission has also evidence on implementation of the price increases set out in that table by those companies and some other carbonless paper producers. This all provides further evidence on the general cartel meeting and the agreements reached therein (see paragraphs to 189) to (206)).

(119) On 21 June 1994 an official AEMCP meeting took place in Frankfurt. According to the minutes the meeting

<sup>(104)</sup> File p. 121. At the official meeting the following companies were represented: AWA, Copigraph, Koehler, Mougeot, Sappi, Stora, Torraspapel and Zanders.

<sup>(105)</sup> File pp. 121-127.

<sup>(106)</sup> The Commission also has a copy of the relevant page of the 1994 diary of [an AWA employee]\*. This document shows that on 19.1 he was planning to be in Paris at the hotel Sofitel at 08.00, have lunch at 12.00, and attend a meeting (the official AEMCP meeting) at 13.00. He had also circled the hours 11 and 16 in his diary (File p. 927).

<sup>(107)</sup> AWA reply to the Commission request for information (File p. 7828) and to the Statement of Objections, p. 19749.

<sup>(108)</sup> A travel expense form for [a Koehler employee]\* (File p. 5044), which shows that he left for Paris on 18 January at 16.00 and returned to Germany on 19 January at 21.00.

<sup>(109)</sup> File p. 1147.

<sup>(110)</sup> File pp. 2484, 10035-10036.

<sup>(103)</sup> File pp. 91 and 97. The companies were also represented at the previous AEMCP meeting held on 7.7.1993 in Zurich.

opened at 11.00 and closed at 13.00 <sup>(111)</sup>. The official AEMCP meetings were normally well attended, and at the meeting of 21 June 1994 all AEMCP member companies (AWA, Copigraph, Koehler, Mougeot, Sappi, Stora, Torraspapel and Zanders) were represented. It appears that, following the established pattern, a general cartel meeting was held shortly before or after the official AEMCP meeting of 21 June. This is confirmed by a table dated 23 June 1994 (two days after the AEMCP meeting) setting out price increases for various EEA countries from 1 June 1994 to 1 October 1994 <sup>(112)</sup> and the evidence on implementation of these price increases by the abovementioned companies (see paragraphs (207) to (216)).

- (120) Another general cartel meeting, aimed at fixing price increases in the EEA, was held on the occasion of the official AEMCP meeting of 22 September 1994 in Frankfurt. The official AEMCP meeting opened at 11.00 hrs and ended at 13.30 hrs <sup>(113)</sup>. The general cartel meeting was held just before that at Hotel Steinberger (Frankfurt), in the Jagdzimmer room starting at 08.30 hrs and it was convened by [an AWA employee]\*. Holding of the meeting is confirmed by AWA and Mougeot and by notes in the diary of Mougeot's representative <sup>(114)</sup>. According to Mougeot, at the meeting [the AWA employee]\* informed the participants of percentage price increases and the implementation dates decided country by country, and urged them to implement the same increases simultaneously <sup>(115)</sup>.

- (121) On the basis of the statements from AWA and Mougeot and travel expense forms of Koehler's and Stora's representatives <sup>(116)</sup>, the Commission considers that representatives at least of AWA, Koehler, Mougeot, Stora

and Zanders participated in this general cartel meeting. Tables found in Sappi, Torraspapel and AWA <sup>(117)</sup>, setting out identical price increases, indicate that Sappi and Torraspapel were also represented at the meeting (see paragraphs (217) to (221)).

- (122) The Commission has in its possession minutes of a general cartel meeting between the European producers of carbonless paper held on 2 February 1995 at Frankfurt airport <sup>(118)</sup>. According to Sappi, the purpose of this secret meeting was to 'discuss price increases in various countries' <sup>(119)</sup>. On the same date there was also an official meeting of the AEMCP, which was held in a conference room at the Sheraton Hotel, at Frankfurt Airport, Terminal 1 and chaired by [a Koehler employee]\*. The official meeting was held between 11.00 and 13.00 hrs and the participants continued with a lunch <sup>(120)</sup>.

- (123) The cartel meeting probably took place after the official AEMCP meeting. Sheraton Hotel had confirmed Koehler's reservation of a conference room for 25 persons from 11.00 until 18.00 hrs. Hand-written notes found on the premises of Koehler, dated 26 January, show that two different meetings were planned, of which the first is the official AEMCP meeting. The second meeting seems to be the cartel meeting, planned for a smaller group after the official meeting. The notes contain the following remarks on the time and place of the second meeting: 'Room reservation for eight to ten persons, Airport Center, room No 19 ["room No 19" is written on the margin of the page], 2 February 1995 from 14.00 to 17.00 or 18.00, in the name of Koehler' <sup>(121)</sup>.

- (124) The minutes of the cartel meeting give the following list of participants <sup>(122)</sup>:

— [three AWA employees]\*

— [a Mougeot employee]\*

— [two Zanders employees]\*

— [two Stora employees]\*

<sup>(111)</sup> File pp. 144-149.

<sup>(112)</sup> Documents found in the premises of Sappi and its agent in Portugal, Unipapel. File pp. 2358, 4539-4540, 10053-10054.

<sup>(113)</sup> File pp. 150-155. At the official meeting the following companies were represented: AWA, Copigraph, Koehler, Mougeot, Sappi, Stora, Torraspapel and Zanders.

<sup>(114)</sup> AWA reply to the Commission request for information (File p. 7828) and to the Statement of Objections, p. 19742. See file p. 1748 and 11597.

<sup>(115)</sup> File pp. 11597 and 11599.

<sup>(116)</sup> [a Koehler employee]\* travel expense form shows that he left for Frankfurt on 21 September at 14.00 and that he returned on 22 September at 17.00. [a Stora employee]\* travel expense form shows that he left for Frankfurt at 07.30 and returned at 18.15 on 22 September 1994. A page from [an AWA employee]\* diary shows that had reserved the whole day of 22 September for 'AEMCP/Frankfurt', and that he had made plans to leave from Frankfurt for Paris on flight LH 4306 at 17.20. (File pp. 930, 1748, 4787 and 5057). The above documents show that [a Koehler employee]\*, [a Stora employee]\* and [an AWA employee]\* could have participated in a general cartel meeting before the official AEMCP meeting.

<sup>(117)</sup> File pp. 2494, 691 and 918.

<sup>(118)</sup> File p. 7.

<sup>(119)</sup> File pp. 9938, 9940 and 9973.

<sup>(120)</sup> File pp. 161-167, 549, 890-892, 905, 4116-4118, 4781, 4783, 4785, 4786, 5216, 5218, 5222-5226, 5230-5232, 5234.

<sup>(121)</sup> File p. 5219-5220. Original in German: 'Raumreservierung für 8-10 Pers. Airport Center/Raum Nr 19 2.2.95 ab 1400 (~ 17/1800) auf den Namen Koehler'.

<sup>(122)</sup> The attendance list of the official meeting lists all these names and some others (File p. 164).

— [two Koehler employees]\*

— [a Sappi employee]\*

— [two Torraspapel employees]\*.

(125) The Commission has pages from diaries, travel bills, tickets and oral explanations given during the investigations which prove that the representatives of AWA, Stora, Koehler and Torraspapel named in the cartel meeting minutes were in Frankfurt on the date of the meeting <sup>(123)</sup>.

(126) Mougeot denies having participated in any cartel meeting on 2 February 1995, and says it knows nothing of a general price agreement of that date <sup>(124)</sup>. Mougeot has provided statements and documents on its representatives' use of their time after the official meeting according to which [a Mougeot employee]\* left Frankfurt at 14.33 hrs and [another Mougeot employee]\* at 15.30 hrs <sup>(125)</sup>. In any event it is clear from the evidence on Mougeot's participation in the price increase initiatives agreed in the meeting and the discussion concerning Mougeot's volume needs recorded in the meeting minutes that Mougeot did adhere to the agreements reached at the meeting (see paragraphs (237) and (250) to (251)). Therefore, its claim that it did not participate in the meeting is not relevant to the assessment of the case. The documentary evidence on implementation of the price increases agreed in the meeting provide further evidence also on other companies' participation (see paragraphs (228) to (240)).

(127) A document found on the premises of Koehler indicates that after the general cartel meeting of 2 February 1995 the parties had agreed to hold at least another three such meetings in 1995 <sup>(126)</sup>. Following the pattern already established, each of these meetings was to be held on the occasion of an official AEMCP meeting. The

document, dated 14 February 1995, shows that [two Koehler employees]\* (Koehler, the AEMCP chairman in 1995) and (Koehler, the AEMCP secretary in 1995) had arranged the reservation of meeting rooms for three AEMCP meetings <sup>(127)</sup> and after each of them for meetings in a smaller group <sup>(128)</sup> for 21 April, 28 June and 29 September 1995.

(128) The minutes of the official AEMCP meeting of 29 September 1995 report a dramatic drop in orders and deliveries in July, August and September. The minutes continues with the following statement: 'the main problem in June were the increasing costs of raw materials and the fact that the paper price could not be increased as fast as necessary in the individual markets' <sup>(129)</sup>. Discussion on the decline of the European carbonless market and on price development continued at the AEMCP meeting of 1 December 1995 and the AEMCP chairman, [a Koehler employee]\*, emphasised that 'every member has to make every effort to return to profitability in the carbonless sector'. [He]\* also went on to speak of the problem of over-capacity and declining carbonless prices in most countries, which he said would lead to zero profits and even to losses <sup>(130)</sup>.

#### 1.4.3.2. *National and regional cartel meetings and collusive contacts*

##### (a) **General**

(129) In addition to the general cartel meetings the Commission has been able to identify dates and often also venues of 20 national or regional cartel meetings between carbonless paper producers concerning the French, Portuguese, Spanish and United Kingdom (including Ireland) markets. Table 3 contains a list of these meetings. The Commission identified also other meetings for which the date cannot be established so precisely.

<sup>(123)</sup> File pp. 264-267, 862, 931, 3675-3676, 3876, 3879, 4246-4247, 4250-4251, 4254, 5001-5002, 5011-5012, 5364-5365, 5382. The extract from [an AWA employee]\* 1995 diary shows that he was planning to leave Frankfurt for Paris on flight LH 4306 at 17.20, which shows that he would still have been in Frankfurt some hours after the official meeting.

<sup>(124)</sup> File pp. 11496-11497.

<sup>(125)</sup> File pp. 11500-11501, 11601, 11674 ([a Mougeot employee]\*'s parking receipt) and p. 11675 ([a Mougeot employee]\*'s boarding pass).

<sup>(126)</sup> File p. 5095.

<sup>(127)</sup> From 11:00 until 13:00, 25 persons, with lunch. The document gives the time and the place of the meeting and says either 'Ausschilderung AEMCP' ('signposted AEMCP') or 'keine Ausschilderung' ('no signposting').

<sup>(128)</sup> From 14:00 until 18:00, 10 persons. The document gives the time and place of the meeting and says either 'keine Ausschilderung' ('no signposting') or 'Ausschilderung Koehler' ('signposted Koehler').

<sup>(129)</sup> File p. 178.

<sup>(130)</sup> File p. 183.

TABLE 3

**National and regional cartel meetings from February 1992 until spring 1995.**

TIME	PLACE	MARKETS CONCERNED
17 February 1992		Spanish market
5 March 1992	Barcelona	Spanish market
Spring 1992 (probably April)	Paris, Charles de Gaulle airport	French market
16 July 1992	Barcelona	Spanish and Portuguese markets
14 January 1993	London Heathrow Business Centre	UK and Irish markets
Spring 1993 (probably in April)	Paris, near Place de l'Etoile	French market
30 September 1993	Barcelona	Spanish market
1 October 1993	Paris, Charles de Gaulle airport	French market
19 October 1993	Barcelona	Spanish market
9 November 1993	London, Sheraton Sky hotel	UK and Irish markets
20 January 1994	Châtillon, France	French market
9 February 1994	Lisbon	Portuguese market
3 May 1994	Barcelona	Spanish market
May 1994	Nogentel, Nogent-sur-Marne, France	French market
29 June 1994	Barcelona	Spanish market
23 September 1994		Spanish market
19 October 1994	Barcelona	Spanish market
6 December 1994	Geneva, Mövenpick hotel	French market
20 January 1995	Zurich	French market
Spring 1995		French market

(130) For the meetings listed in Table 3, there is documentary evidence (including unofficial minutes) and statements detailing the object, proceedings, outcome and often also the participants.

(131) Participation of the carbonless paper producers, and their representatives if known, is shown meeting by

meeting in Annex II. This identification of participants cannot be taken as exhaustive, as it has not been possible to establish all the participants for each meeting with certainty. For example the companies giving information on the participants have often indicated that there may have been also other participants in addition to those explicitly mentioned.

(132) In addition to the meetings listed in Table 3, the Commission concludes from AWA's and Copigraph's replies to the Commission request for information and from Sappi's statements that during the period 1992-1995 improper, anti-competitive contacts and meetings took place at least in the following periods and concerning the following markets <sup>(131)</sup>:

— between 1992 and 1995 concerning the French, Italian, Portuguese and Spanish markets;

— between 1992 and 1995 concerning the UK, Irish, Benelux and the Nordic countries markets <sup>(132)</sup>;

— between 1993 and 1994 concerning the Austrian and German markets.

(133) The information provided by AWA, Copigraph and Sappi, together with the documentation and statements concerning the meetings for the French, Portuguese, Spanish and the United Kingdom markets, indicates that the system of regular national or regional meetings covered the whole EEA territory.

(134) In addition to those national and regional cartel meetings there is a considerable amount of documentation on other anti-competitive contacts and meetings between carbonless paper producers during the same period. This documentation provides evidence of collusion in respect of the same markets, namely France, Portugal, Spain and the United Kingdom, and also Germany, the Nordic countries and Italy.

<sup>(131)</sup> File pp. 7828-7829; File p. 13353; File pp. 33-34, 223-224, 4647-4669.

<sup>(132)</sup> File pp. 7828-7829. In AWA's sales organization the Benelux countries come within the responsibility of a regional manager whose territory also includes the United Kingdom, Ireland and Overseas (File p. 1931). A document found on AWA's premises indicates that there were meetings concerning the Benelux area (File p. 953).



(b) **France**

(135) In its reply to the Commission's request for information, AWA has stated that there were meetings between competitors in Paris, Zurich and Geneva over the period 1992-1995 which were attended by [...] (Sales Managers, Tenor brand France, AWA Carbonless papers) and sometimes by [...] (then Sales Manager, Idem brand France, AWA Carbonless Papers), [...] (then Sales Director, AWA Carbonless Papers) and [...] (then Chief Executive, AWA Printing and Writing Papers) <sup>(133)</sup>. According to AWA these meetings were among the 'improper meetings ... at some of these ... carbonless paper prices were also discussed, including discussion of historical trends, but also extending to an exchange of intentions regarding announcements of price increases' <sup>(134)</sup>.

(136) Sappi and Mougeot have in their statements confirmed holding of several French market cartel meetings. Based on the statements and documents from these two companies, the Commission has been able to identify dates and venues of eight of the cartel meetings held for the French market during the period from spring 1992 to spring 1995 (see Annex II for participants and Table 3).

(137) The first two of these meetings were held in Paris, one in spring 1992 and the other in spring 1993 <sup>(135)</sup>, both probably in April <sup>(136)</sup>. Sappi states that the purpose of these meetings was 'to exchange information, discuss customers and the prices that were being applied to those customers' <sup>(137)</sup>.

(138) One French market cartel meeting was held on 1 October 1993 in Paris <sup>(138)</sup>. An 'attendance note' drawn up by Sappi's representative at the meeting records the outcome of the meeting <sup>(139)</sup>. Both Sappi and Mougeot have admitted that the purpose of this meeting was to agree a price increase for the French market. The note

of Sappi's representative shows that, in addition to price increases, participants also agreed 'Q4 1993 quotas to allow price increases', that 'merchants must be controlled' and that 'AWA and Sarrio will make press releases re cost increases etc.' <sup>(140)</sup>.

(139) Mougeot's statement provides evidence of further five French market cartel meetings held respectively on 20 January 1994 in Châtillon, in spring 1994 in Nogent-sur-Marne, 6 December 1994 in Geneva, 20 January 1995 in Zurich and in spring 1995.

(140) The French market meeting of 20 January 1994 was held immediately after the general cartel meeting of 19 January 1994 in Paris and it was convened by [an AWA employee]\*. The purpose of the meeting was to follow up the price increases of December 1993 (agreed in the meeting of October 1993) and to prepare an increase on the French market to take place on 1 April 1994 <sup>(141)</sup>.

(141) Another French market meeting was held in spring 1994. Mougeot has stated that it was probably held on 31 May at the Hotel Nogentel in Nogent-sur-Marne and that [an AWA employee]\* convened this meeting also <sup>(142)</sup>. Mougeot says that the object of this meeting was 'monitoring the French market, price increase probably 1 July 1994' and that [an AWA employee]\* 'urged others to follow the price increase of 6 % which AWA intended to apply on 1 July 1994' <sup>(143)</sup>.

(142) Regarding the meeting of 6 December 1994 held in the Mövenpick Hotel in Geneva, Mougeot has provided hand-written notes taken by its representative there <sup>(144)</sup>. The Commission also has a page from the 1994 diary of [a Mougeot employee]\*, which against the

<sup>(133)</sup> File p. 7828.

<sup>(134)</sup> File p. 7829.

<sup>(135)</sup> The Commission has travel expenses forms showing that [a Koehler employee]\* and [a Stora employee]\* were both in Paris on 14.4.1993. File p. 5034 and pp. 4798-4799.

<sup>(136)</sup> File pp. 34, 223-224 and 9940.

<sup>(137)</sup> File p. 9940.

<sup>(138)</sup> File pp. 7648-7649 and File p. 9973.

<sup>(139)</sup> File p. 6.

<sup>(140)</sup> Ibid.

<sup>(141)</sup> File p. 7650.

<sup>(142)</sup> File p. 7651. As to the date of the meeting, the price increase documents of AWA and Mougeot indicate that the meeting was held earlier than the date Mougeot recalls. Mougeot's internal note dated 16.5.1994 speaks of a need to announce the same week that prices would increase by 6 % on 4.7.1994. AWA for its part had announced the price increase on 20.5.

<sup>(143)</sup> Original in French: 'suivi du marché français, augmentation des prix vraisemblablement au 1<sup>er</sup> juillet 1994'; [un employé d'AWA]\* 'a incité à suivre l'augmentation de prix de 6 % qu'AWA entendait mettre en oeuvre le 1<sup>er</sup> juillet 1994'.

<sup>(144)</sup> File pp. 7652-7653 and pp. 7657-7658.

date of 6 December refers to Mövenpick, Geneva, and sets out some details of the meeting <sup>(145)</sup>. The meeting reviewed the implementation of the price increases agreed previously, starting from the December 1993 increase and ending with the October 1994 increase. On the basis of the meeting notes, Mougeot confirms that for reels the following increases were decided at the following meetings:

- 10 % on 1 December 1993 decided at the meeting of 1 October 1993,
- 6 % on 1 April 1994 decided at the meeting of 20 January 1994,
- 6 % on 1 July 1994 <sup>(146)</sup> decided at the meeting of 31 May 1994, and
- 10 % on 1 October 1994 [probably decided at a meeting on July 1994].

(143) As these increases were cumulative, the total increase was to be 36 %, whereas Mougeot increased its prices for reels by a total of only 29 %. Mougeot says that because of this [an AWA employee]\* %. Mougeot says that because of this [an AWA employee] reproached it in the meeting for failing to comply with AWA's instructions <sup>(147)</sup>.

(144) The note of Mougeot's representative on the meeting also sets out the following plan for the movement of the carbonless paper price from November 1994 until January 1996: 'Nov 118 F, Decem. 132 F, Mi 95 ["mid-1995"] 165 F, Fin 95 ["end 1995"] 170 F' <sup>(148)</sup>. This indicates that at the meeting the participants agreed on price increases and on their timing for the end of 1994 and for the year 1995. According to this scheme, the carbonless paper price was to be increased by FRF 70 by the end of 1995.

<sup>(145)</sup> File p. 1751.

<sup>(146)</sup> Not in June, as written in Mougeot's representatives hand-written note.

<sup>(147)</sup> File pp. 7652-7653; 11493-11495.

<sup>(148)</sup> These figures represent probably price indexes where the price in October 1994 is marked by 100 and the increases thereafter are set in relation to that. This would be consistent with the fact that the cartel usually set price increases in percentage form (except in the Spanish market).

(145) Mougeot has stated that a 6 % increase for reels was agreed at the French market meeting of 6 December 1994, to be implemented on 1 January 1995 <sup>(149)</sup>. The general cartel meeting of 22 September 1994 referred to in paragraph (120), however, had agreed a 10 % increase for reels and a 5 % increases for sheets, both likewise to be effective from 1 January 1995 (see Table 6). The conclusion that these increases were in fact confirmed at the 6 December meeting is supported by the fact that at least AWA, Copigraph, Sappi, Stora, Torraspapel and Zanders announced these increases to take effect in January 1995 (Zanders's announcement concerned reels only).

(146) The next French market meeting was held on 20 January 1995 in Zurich. The participants at this meeting fixed a price increase for 1 April 1995 and reviewed the implementation of increases agreed previously. They also exchanged information on their individual sales volumes on the French market <sup>(150)</sup>. The next French market meeting was held in spring 1995; at this meeting the participants agreed on price increases for July 1995 (see paragraphs (231) and (232)) <sup>(151)</sup>.

(147) There are also indications that in addition to the cartel meetings referred to in paragraphs (137), (138) and (139), two further French market meetings were held in 1994, one in July and another in October. Mougeot has stated that 'Although we have no record or precise memory, it is likely that a meeting was held in July 1994 to prepare for a price increase in October the same year. Another meeting may have been held in October 1994' <sup>(152)</sup>.

(148) AWA confirms in its reply to the Statement of Objections <sup>(153)</sup> that the meetings in spring 1992, spring and October 1993, 6 December 1994 and 20 January 1995 were among the 'improper' <sup>(154)</sup> meetings between competitors referred to in its reply to the request for information.

<sup>(149)</sup> File pp. 7652-7653.

<sup>(150)</sup> File pp. 7653-7654.

<sup>(151)</sup> File p. 7654.

<sup>(152)</sup> Original in French: 'Quoique n'ayant pas retrouvé de trace et n'ayant pas garde de souvenirs précis, il est vraisemblable qu'il y ait eu une réunion au mois de juillet 1994 afin de préparer une hausse de prix pour le mois d'octobre de la même année. Il se peut également qu'une autre réunion se soit tenue au mois d'octobre 1994.' (File p. 7652).

<sup>(153)</sup> AWA's reply to the Statement of Objections, file p. 19748.

<sup>(154)</sup> File p. 7829.

(149) Those documents and statements from Sappi, Mougeot and AWA, together with some travel documents and diary remarks, <sup>(155)</sup> show that the following undertakings were represented at the French market cartel meetings: AWA, Copigraph, Koehler, Mougeot, Sappi, Stora, Torraspapel and Zanders. (See Annex II.)

markets; ... German meeting — 26.11.93' <sup>(159)</sup>. Sappi has confirmed that this meeting took place and that its representative probably participated in the meeting <sup>(160)</sup>. The exact number and identity of the participants is not known to the Commission.

#### (c) Germany

(150) In its reply to the Commission request for information AWA admits among the 'improper' meetings four such meetings in Basel in Switzerland and in Ettlingen and Wiesbaden in Germany in 1993 and 1994, which were attended by [...]\*, AWA Carbonless Papers' regional manager for Germany, Austria, Switzerland and Italy. According to AWA some or all of Koehler, Stora, Sarrió (Torraspapel), Hauße and Eupaco <sup>(156)</sup> attended these meetings <sup>(157)</sup>.

(151) Copigraph confirms that during the period 1993-1994 there were meetings between competitors, which were attended by the 'joint Geschäftsführer' of Eupaco KG and Copigraph GmbH and executives from all the companies referred to in paragraph (150), including AWA. Copigraph recalls that in these meetings, one of which was held in Basel, 'carbonless paper reels prices were raised' <sup>(158)</sup>.

(152) The note by Sappi's representative in the French market meeting held in Paris on 1 October 1993 provides evidence of the planning of a German market meeting, which was scheduled to be held in late 1993: 'Other

#### (d) Spain and Portugal

(153) There is a large amount of documentation and statements providing evidence of collusion on the Spanish and Portuguese markets. These markets were characterised by the integration of producers into distribution. Copigraph and Sappi had sales offices in Spain and AWA and Torraspapel had their own merchant companies on the market. Divipa and Zicuñaga were both selling direct to printers. Only Koehler, Stora and Zanders (and until early 1994 also Sappi <sup>(161)</sup>) were not integrated into distribution in Spain (Zanders sold through Torraspapel). In addition, as already described at paragraph (17), two producers, Divipa and Zicuñaga were small non-integrated producers of carbonless paper sheets or small reels purchasing base papers and chemicals or even large reels ('jumbo reels') from other producers. The collusive contacts took place between all the producers (often qualified in the documentation as 'distributors') including these small producers/processors.

(154) Concerning the Spanish and Portuguese markets, AWA admits among the 'improper' meetings four such meetings in Lisbon and Barcelona between 1992 and 1994, which were attended by [...]\* (then AWA Carbonless Papers' Sales Manager for Portugal) and [...]\* (Area Manager for the Iberian Peninsula) and another three or four meetings in the period 1992 to 1994 attended by [...]\* (then AWA Carbonless Papers' Sales Manager for Spain) with [...]\* <sup>(162)</sup>.

(155) Sappi admits its participation in the Spanish market cartel meetings starting from February 1992 and submits documents showing that there was a concerted price rise of ESP 10/kg at the beginning of February 1992 the application of which was discussed at cartel meetings on 17 February and 5 March 1992.

(156) The first document, a memo dated 9 March 1992 from Sappi's agent in Spain to Sappi Europe, speaks about a

<sup>(155)</sup> Meeting in spring 1993: travel expenses forms show that [a Koehler employee]\* and [a Stora employee]\* were both in Paris on 14.4.1993 (File p. 5034 and pp. 4798-4799). Meeting of 1.10.1993: The presence of [a Koehler employee]\* in Paris on 1.10.1993 is confirmed by a travel expenses form, airline ticket and hotel bill (File pp. 5025-5028 and 5043). Remarks against the date 1.10 in the 1993 diary of [two Mougeot employees]\* show that both of these persons were in Paris on 1.10.1993. In the diary of [a Mougeot employee]\* from Mougeot there are the following words: 'Salle Saturne [Saturn Room] (Paris Roissy) 14h30. Marché France [French market]. Tel: 39.63.4000'. Against the same date in [a Mougeot employee]\*s (Mougeot) diary there are the words 'France AEMCP' (File p. 1151 and 1755).

<sup>(156)</sup> Eupaco grafische Papiere GmbH & Co KG (Eupaco KG) was a sister company of Copigraph SA and also produced carbonless paper. Their parent company, Bolloré Technologies SA, acquired Eupaco in 1992, and in 1997 Eupaco was merged with Copigraph's German subsidiary, Copigraph GmbH.

<sup>(157)</sup> AWA reply to the Commission request for information (File p. 7828) and to the Statement of Objections, file p. 19748.

<sup>(158)</sup> File p. 13353.

<sup>(159)</sup> File p. 6.

<sup>(160)</sup> File p. 9939.

<sup>(161)</sup> From approximately 1991 until early 1994, Sappi sold in Spain through an agent, Norandum Fibras. In 1994 Sappi established sales offices in Madrid and Barcelona which were operated by Sappi Europe (España) SL, and terminated the agency agreement. File pp. 4635 and 4637-4638.

<sup>(162)</sup> File p. 7828.

price increase of 'PTAs 10.-' per kg at the beginning of February set as the target by the distributors (i.e. sellers of carbonless paper in Spain). The memo describes how difficult it was to have this price increase applied on the market. It mentions that '2) The merchants selling TRANSCRIPT seem to be the only ones, who have raised prices by PTAs 10.- per kg to all customers', '3) "S" [Sarrió] claims that they have raised their prices to everybody', '4) The distributors selling "K" [Koehler] have only in very few cases raised the prices ... Divipa has absolutely not raised prices' and that '5) WT [Wiggins Teape, today Arjo Wiggins Appleton] speaks loudly about the price increase and how firmly they stick to it'. Sappi's agent argues in the memo that '... It is obvious that Sappi Europe cannot make the price go up, unless other suppliers follow', and suggests that Papelera Zicuñaga should also be integrated into the concerted price rises on the Spanish market <sup>(163)</sup>.

- (157) The memo indicates that the concerted increase of February 1992 was probably not followed by Koehler and Sarrió, who attempted to win over Sappi's customers. This led to the meeting of 17 February 1992. The gravity of the situation and the importance of the subject-matter of the meeting, of which [a Sappi employee]\* informed [another Sappi employee]\* by fax the same day, can be deduced from the haste shown by [the first one]\*, who tried to contact [the latter one]\* over a weekend: 'I tried to ring you at the weekend regarding further information from our mutual friend at Sarrio but there was no reply and I assume you were out. I have spoken to [a Norandum employee]\* today and the situation remains, to say at least, rather uncertain due to the conduct of Kohler and Sarrio. There is a meeting of interested parties today and I will be informed about this first thing tomorrow morning. I will phone you tomorrow to discuss' <sup>(164)</sup>.

<sup>(163)</sup> File pp. 4703-4704 (memo sent to [a Sappi employee]\* by Sappi's agent in Spain, [a Norandum employee]\*, on 9 March 1992).

<sup>(164)</sup> File pp. 4588 (Fax from [a Sappi employee]\* to his superior [a Sappi employee]\* dated 17 February 1992). See also file p. 9944.

- (158) The discussions continued in a meeting held on 5 March 1992. A memo dated 27 February 1992 from [a Sappi employee]\* to his superior [a Sappi employee]\* refers to 'Carbonless market-Spain' and says that: 'I have arranged to attend a meeting next week with other interested parties in Barcelona to discuss the recent moves that there have been in the Spanish market. The meeting is on Thursday 5<sup>th</sup> March and I will be accompanied by [a Norandum employee]\*' <sup>(165)</sup>. Sappi has confirmed that this meeting between the European manufacturers of self-copying paper did take place. It maintains that the purpose was 'to discuss recent moves in the Spanish market' <sup>(166)</sup>. The increase of ESP 10/kg in February had apparently been applied only by Sappi, which had lost several customers as a result, and the situation which had arisen made it necessary to ensure that increases agreed in future would be applied by all the manufacturers on the market; this was no doubt discussed at the March meeting in Spain.

- (159) Unipapel, Sappi's agent in Portugal has confirmed that on 16 July 1992 there was a cartel meeting in Barcelona regarding the markets in Spain and Portugal. At this meeting it was decided to increase the prices of reels of self-copying paper in Spain and Portugal <sup>(167)</sup>. According to Unipapel's representative, Sarrió (Torraspapel) and Stora were charging very low prices in Portugal, below the price of the base paper. He says that, in addition to Unipapel, the meeting was attended by representatives of Sarrió (Torraspapel), AWA and Koehler and that the purpose of the meeting was 'to discuss price increases and market shares. The agreements are concerned mainly with "reels"; there may be similar agreements regarding "sheets", but he cannot confirm this'. This shows that in the meeting an agreement was reached on price increases and market shares at least for reels. The Unipapel's representative indicates that there were more 'meetings of this kind' and that in these meetings 'information is exchanged on the quantities sold and the prices applied by each company' <sup>(168)</sup>.

<sup>(165)</sup> File pp. 4589 (Report from [a Sappi employee]\* to [a Sappi employee]\* dated 27 February 1992).

<sup>(166)</sup> File p. 9938.

<sup>(167)</sup> File pp. 4501-4503.

<sup>(168)</sup> File p. 4520 and 4484. Original in Portuguese: 'discutir aumentos de preços e quotas de mercado. Os acordos incidem essencialmente sobre "bobinas" mas admite, sem confirmar, a existência do mesmo tipo de acordos para "folhas"; "trocaram-se informações sobre as quantidades vendidas e os preços praticados por cada empresa'.

(160) Concerning the years 1993-1995, Sappi has submitted to the Commission evidence supplied by one of its employees on the operation of the cartel and, in particular, on price-fixing meetings between carbonless paper producers in Spain. Sappi says 'he [the employee] had attended six or seven meetings in Barcelona with other suppliers. These meetings had taken place about four or five times a year. He believed that he had first attended such a meeting on 19 October 1993. He last attended a meeting in 1995' <sup>(169)</sup>.

(161) As to the purpose and subject matter of the Spanish market cartel meetings in 1993-1995 Sappi says 'the purpose of the meetings was to fix prices in the Spanish market' and 'the meetings normally resulted in an agreed price percentage increase'. Although Sappi claims that 'the price agreements that were reached were never fully implemented or adhered to' it is clear that there was a concerted attempt to increase prices in the Spanish market <sup>(170)</sup>.

(162) The Commission has several notes on Spanish market cartel meetings during the said period written by Sappi representatives in the meetings and one written by Mougeot's representative in a meeting. These notes record the outcome of the following meetings: 30 September 1993 in Barcelona, 19 October 1993, 3 May 1994 in Barcelona, 29 June 1994 in Barcelona and 19 October 1994 in Barcelona.

(163) Sappi has provided the Commission with a note written by its representative at the meeting of 30 September 1993 in Barcelona. The note shows that in the meeting an agreement was reached on 'Q4 Quota' for each participant for year 1993 and on a price increase for both reels and sheets. There was also an agreement to 're-convene for confirmation that quotas adhered to' <sup>(171)</sup>. Sappi has confirmed that the purpose of this meeting was 'to agree on a price percentage increase' <sup>(172)</sup>.

(164) Three further notes written by Sappi representatives record the outcome of Spanish market meetings held on

19 October 1993, 3 May 1994 and 29 June 1994 <sup>(173)</sup>. The last two meetings were both convened by [a Torraspapel employee]\* and held in Barcelona whereas the location of the first meeting is not known. Also these meetings involved price-fixing. The note on the meeting of 3 May also shows that Torraspapel opened the discussion on price increases in the meeting.

(165) According to the note on the meeting of 19 October 1993 'all distributors ... except Copigraph' participated in the meeting <sup>(174)</sup>. The note on the meeting of 3 May 1994 shows a table with prices for 'today' ('hoy', i.e. 3 May 1994) <sup>(175)</sup> and 16 May 1994 and says that these prices were a result of 'agreements between distributors' ('acuerdos entre los distribuidores'). The use of the term 'distributors' in the meeting notes must be understood in the light of the fact that at the time of these meetings most of the carbonless paper suppliers selling in Spain were directly involved in distribution on this market, as already described in paragraph (153). Consequently, the Commission holds that the carbonless paper producers named in the meeting notes both attended the meetings and participated in the agreements on price increases reached in the meetings (see Annex II for participants).

(166) According to the notes on the Spanish market meeting of 29 June 1994, another cartel meeting for this market was scheduled for 23 September (the day after the general cartel meeting). It appears that around that date a Spanish market meeting or other collusive contacts took place whereby an agreement was reached on a price increase that was to be implemented on this market in November 1994. This follows from a Sappi internal fax, which indicates that the carbonless paper producers had agreed on a price increase for November 1994. The fax reveals that the Spanish market cartel leader, Torraspapel, had reduced prices, which the writer assumed would render the agreed November price increase ineffective: 'Our leader (TP) [Torraspapel] has announced a price reduction of ESP 10, and everything suggests that the November increases will have no effect; so far no distributor has announced them' <sup>(176)</sup>.

<sup>(173)</sup> File pp. 8, 4474, 4476, 9938-9940 and 9977-9980.

<sup>(174)</sup> File p. 4474 and 9987. Original in Spanish: '... todos los distribuidores excepto Copygraf'.

<sup>(175)</sup> AWA's price increase letter dated 3 March 1994 to a Spanish customer confirms the 'today' prices in the meeting report and also that those prices were meant to remain in force until 31 May. File p. 8144.

<sup>(176)</sup> Original in Spanish: 'Nuestro líder (TP [Torraspapel]) ha anunciado una disminución en precio de 10 Ptas y todo hace prever que los aumentos de Noviembre no tomaran efecto, ya que hasta la fecha ningún distribuidor los ha anunciado.' (File p. 4565).

<sup>(169)</sup> File p. 4657-4662. This employee had begun to work for Sappi in Spain in September 1993.

<sup>(170)</sup> File p. 4659.

<sup>(171)</sup> File pp. 5 and 9972.

<sup>(172)</sup> File p. 9938.

- (167) The carbonless paper producers met again in Barcelona on 19 October 1994 to conclude another agreement on price increases for the Spanish market. A hand-written note of Mougeot's representative reports on this meeting. According to Mougeot, the meeting was convened by Torraspapel and the purpose of the meeting was 'organisation of the Spanish market' ('Organisation du Marché Espagnol'). At the meeting, prices were fixed for the Spanish market depending on the size of the client <sup>(177)</sup>.
- (168) Concerning the Portuguese market, there was a cartel meeting in Lisbon on 9 February 1994, which was organised by Sarrió (Torraspapel), probably together with AWA <sup>(178)</sup>. Sappi's agent Unipapel sent two faxes to Sappi on 31 January 1994 and 1 February 1994 concerning a forthcoming meeting between competitors and asking Sappi to confirm whether it would be represented at the meeting <sup>(179)</sup>. As no one from Sappi was able to attend the meeting, [a Sappi employee]\* told Unipapel by fax that they had to represent Sappi, and also gave him instructions to try to increase prices. Hand-written notes in this fax message shows that the presence of the agent as representative of Sappi at 'secret mill meetings' was subject of discussion at Sappi <sup>(180)</sup>.
- (169) Unipapel sent a report on this 'Portuguese market suppliers meeting 09.02.94' to Sappi Europe by fax dated 14 February 1994 <sup>(181)</sup>. In the oral explanations given during the investigation at Unipapel, the company representative claimed that he did not participate in the meeting, and that the information in the report was supplied by [...]\*, the then AWA Carbonless Papers Sales Manager for Portugal <sup>(182)</sup>. Even supposing that the representative of Unipapel did not attend the meeting, he was well informed on the outcome and communicated it to Sappi as something he had agreed to on behalf of Sappi.
- (170) AWA confirms in its reply to the Statement of Objections that all the above-identified Spanish and Portuguese market meetings during the period 1992-1994 were among the 'improper' meetings between competitors referred to in its reply to the request for information <sup>(183)</sup>.
- (171) Most of those documents on Spanish and Portuguese market meetings contain also a list of the participants while some of them give indirect indication on the participants. Often these participants are the same as those that AWA identifies as participants to meetings in the period 1992-1994 <sup>(184)</sup>. Sappi and Mougeot have confirmed and completed the participants identified in or deduced on the basis of the meeting reports originating from their companies <sup>(185)</sup>. These documents and statement together with some travel documents and diary remarks <sup>(186)</sup> show that the following undertakings were represented in some or all of the Spanish and Portuguese market cartel meetings: AWA, Binda, Copigraph, Divipa, Koehler, Mougeot, Sappi, Stora, Torraspapel, Zanders and Zicuñaga (see also Annex II).
- (172) In addition to those Spanish and Portuguese market meetings, Sappi has indicated several other dates for meetings between competitors concerning specifically the Spanish market. Sappi says that its employee who had always attended Spanish market meetings with [a Sappi employee]\* from Sappi 'believed ... that all the pages in his diary marked with [a Sappi employee]\*'s name or initials indicated that meetings with competitors had been held. Relevant pages of his diary are attached ... and these show that meetings appear to have occurred on 24 January 1994, 18, 19 or 20 April 1994, 29 June 1994 ... and 19 December 1994.' <sup>(187)</sup>.
- (173) That the price-fixing cartel continued on the Spanish market in 1995 is confirmed by a Sappi document that gives some details of attempted price increases on that

<sup>(174)</sup> AWA reply to the Commission request for information (File p. 7828).

<sup>(185)</sup> Sappi's submissions of 4.12.1997 and 18.5.1999 (File p. 4657-4659, 15198-15200) and Mougeot's submissions of 14.4.1999 and 29.6.1999 (File p. 7652 and 11495).

<sup>(186)</sup> The meeting in Barcelona on 30.9.1993: A travel expenses form, an airline ticket and a hotel bill for [a Koehler employee]\* confirm that he was in Barcelona on 30.9.1993 (File pp. 5025-5028 and 5043). The meeting of 3.05.1994: Travel expenses forms and oral and written explanations received by the Commission prove that [a Koehler employee]\* and [two Stora employees]\* were in Barcelona on the date of the meeting (File pp. 4788-4790; 5009; 5637-5638; 5690-5693; 5052; 5014-5015; 5373). The meeting of 29 June 1994: The Commission has a travel expense form and oral explanations received during an investigation which confirm that both [a Koehler employee]\* and [...] from Koehler's agent [...] were present in Barcelona on 29.6.1994 (File pp. 5053 and 5373-5374).

<sup>(187)</sup> File pp. 4760-4764. In addition to the above dates [a Sappi employee]\*'s name or initials are also marked against the following dates: 25.1.1994, 28.1.1994 and 28.6.1994.

<sup>(177)</sup> File p. 1839, 7652 and 11495.

<sup>(178)</sup> File p. 9939 and 4483-4484.

<sup>(179)</sup> File pp. 35-36.

<sup>(180)</sup> File p. 41.

<sup>(181)</sup> File p. 47-51.

<sup>(182)</sup> File p. 4483-4484.

<sup>(183)</sup> AWA's reply to the Statement of Objections, file p. 19748-19749. AWA lists in its reply all these meetings except the possible meeting of around 23 September 1994.

market from February until September/October 1995<sup>(188)</sup>. According to Sappi this document, dated 26 September 1995, is part of an internal survey of price movements on its main markets<sup>(189)</sup>. Concerning reels, the document reads: 'But, at the end, the increases agreed were the increases applied (keeping everybody at the same level except for Zicuñaga, 10 % lower). These increases are the result of secret agreements, so everybody coincides in date and amount. Big accounts always enjoy special prices, but we have not done any special operation'<sup>(190)</sup>.

consumption in Portugal decreased by 4,4 %. Hence, it seems that the carbonless paper producers tried to offset their losses in sales volumes by collusive price increases.

- (176) In his reply to oral questions during the investigation a representative of Unipapel described the Portuguese market and the reasons for the collusion by stating that 'Customers were saying that all producers had increased prices at the same time ... There was a feeling that there was a market logic at the European level between the producers. Events in the Portuguese market could fit into this scheme.'<sup>(193)</sup>.

#### (e) United Kingdom

- (174) As for the Portuguese market, a report by Sappi's agent, Unipapel, on a meeting held on 9 February 1994 says that at this meeting the participants agreed on a set of cartel meetings to be held concerning the Portuguese market in the following months in 1994: April, May, June, September and November<sup>(191)</sup>. In all these months, except in May, official AEMCP meetings were also held. The provisional timetable for the Portuguese market meetings is consistent with the pattern of holding general cartel meetings on the occasion of the official AEMCP meeting and of holding national cartel meetings following each general cartel meeting.

- (177) Sappi has acknowledged its involvement in the carbonless paper producers' cartel activities in the UK market from 1989/1990<sup>(194)</sup>. A memorandum from [a Sappi employee]\* to [a Sappi employee]\* dated 24 September 1990 refers to two 'club agreements' reached in 1989, based on confidential discussions among 'the UK market participants' in Zurich, aiming at increasing the price of carbonless reels. The document refers to another 'pricing committee' meeting held on 15 January 1990 in Zurich and to 'the March price increase' that 'went through in the main quite successfully'<sup>(195)</sup>.

- (175) There is also evidence that the collusion continued in the Portuguese market in 1995. A fax from Unipapel to Sappi, describing the movement of reels prices, indicates that competitors had colluded on attempted price increases in Portugal from January to September 1995. The fax refers to 'an intention to apply 15 % increase (no one respected)' on 1 January 1995, and says that on 1 April 1995 there was 'again an intention to increase prices (no one respected)'. On 1 September 1995 there was some 'other intention to rectify prices'<sup>(192)</sup>. During the first eight months of 1995 total market

- (178) In addition, Sappi has admitted its participation in UK market cartel meetings on 'various dates in 1992, 1993, 1994'<sup>(196)</sup>. AWA has also admitted the existence of 'improper meetings' during the period from 1992 to 1994 attended by [...]\*, AWA Carbonless Papers' Regional Manager for the UK and Ireland<sup>(197)</sup>.

- (179) Sappi has submitted to the Commission evidence supplied by one of its sales employees who participated in those meetings in the United Kingdom<sup>(198)</sup>. That employee confirms that 'he attended three such

<sup>(188)</sup> File pp. 2010-2011 and 4602-4603. A draft of this fax, dated the day before, is on file pp. 4580-4581.

<sup>(189)</sup> File pp. 4579, 4668-4669. See also Sappi's statement in file p. 9969.

<sup>(190)</sup> Another document received from Sappi confirms that the agreed reels prices were generally respected by the cartel members, except Zicuñaga. File p. 4574-4575.

<sup>(191)</sup> File p. 51.

<sup>(192)</sup> File pp. 4600-4601. See also Sappi's comment on this document on file p. 9969.

<sup>(193)</sup> Original in Portuguese: 'Os clientes diziam que todos os fabricantes aumentaram os preços ao mesmo tempo ... Havia o "feeling" de que existia uma lógica de mercado, a nível europeu, entre os produtores. Essa lógica poderia justificar o que estava a acontecer no mercado português.' File p. 4525.

<sup>(194)</sup> File p. 9944.

<sup>(195)</sup> File pp. 10003—10004.

<sup>(196)</sup> File p. 9940.

<sup>(197)</sup> File p. 7828.

<sup>(198)</sup> File pp. 33-34 and p. 223. This employee was at the relevant times (1990-1995) [high-ranking commercial executive in Sappi's carbonless paper operation].

meetings one in each 1992, 1993 and 1994. He also may have attended one or two (but not more) further meetings'. He adds, 'The practice of holding such meetings was already established by this industry when he entered carbonless sales'. According to this statement, 'two meetings had taken place at the Heathrow airport <sup>(199)</sup> and one at the Intercontinental Hotel in London'.

'improper' meetings between competitors referred to in its reply to the request for information <sup>(202)</sup>.

(180) Based on the statements and documents from Sappi and Mougeot, the Commission has been able to identify dates and venues of two of the UK market cartel meetings held during the period from 1992 to 1994: a meeting on 14 January 1993 and another meeting on 9 November 1993.

(181) The meeting of 14 January 1993 was held at the Heathrow Business Centre at Terminal 2 at 10.00 and Arjo Wiggins 'led' the meeting. On the subject matter of the meeting, from Sappi statements it appears that '[t]he meeting was primarily concerned with the exchange of information as to which supplier was selling to which customers, markets trends and expectations.' According to Sappi 'No agreement was reached' <sup>(200)</sup>.

(182) The meeting of 9 November 1993 was convened and organised by [...] then Sales Director of AWA Carbonless Papers and it was held in the Orlon hall at the London Sheraton Sky hotel at Heathrow airport. The object of the meeting was a price increase in the UK market on 1 February 1994 <sup>(201)</sup>.

(183) AWA confirms in its reply to the Statement of Objections that both of these meetings were among the

(184) The statements of Sappi, Mougeot and AWA together with some travel documents and diary remarks <sup>(203)</sup> show that the following undertakings were represented at the UK market cartel meetings: AWA, Binda, Carrs, Copigraph, Koehler, Mougeot, Sappi, Stora, and Torraspapel <sup>(204)</sup>. (For details see Annex II).

(185) There is also evidence of collusive contacts in the UK market in summer 1993. As a 'significant piece of documentary evidence in relation to the cartel's activities', Sappi has given the Commission a letter dated 2 August 1993 from [an AWA employee]\* to Sappi referring to the UK market, which includes the following: 'Idem [AWA brand] price increase June 93. It appears that to remain competitive we must withdraw our price increase and fall back into line with our competitors who eventually preferred not to put their prices up' <sup>(205)</sup>.

(186) Moreover, a document found on Sappi's premises suggests that all price increases in the UK market from December 1993/January 1994 until September 1995 were based on collusion between the AEMCP members <sup>(206)</sup>. This document compares Sappi's price increases with 'AEMCP/AEMP' <sup>(207)</sup> price increases on this market. Both Sappi's and the AEMCP's price increases for the years 1994 and 1995 are identical to price increases agreed either at the general cartel meetings on 19 January 1994, 21 June 1994 and 2 February 1995, or at the national cartel meeting held on 9 November 1993. This document indicates that these meetings were not confined to legitimate practices but that they resulted in concerted price increases.

<sup>(199)</sup> This is confirmed by Mougeot in respect of the November 1993 meeting, see paragraph (182) below.

<sup>(200)</sup> File pp. 34, 223, 4654-4657. Sappi has provided a copy of some pages of [one of their high-ranking commercial executives in carbonless paper operation] 1993 diary. On Thursday 14 January there is the following: 'T2 Heathrow 10 am Bus. Centre'. File p. 4752.

<sup>(201)</sup> In the document concerning the French market meeting in Paris on 1.10.1993 it is said: 'Other markets; ... U.K. meeting — 6.11.93' (File p. 6) It is more likely that the meeting was held on 9.11.1993 rather than 6.11.1993, because the latter date was a Saturday. Both Sappi and Mougeot confirm this interpretation. File p. 9939 and File pp. 7649-7650.

<sup>(202)</sup> AWA's reply to the Statement of Objections, file p. 19748.

<sup>(203)</sup> Meeting of 14.1.1993: A travel expense form shows that [a Koehler employee]\* was in London on 14.1.1993 (File p. 5033). Meeting of 9.11.1993: Copies of the diaries of [two Mougeot employees]\* show that these persons were in London on 9.11.1993 (File pp. 1150 and 1756).

<sup>(204)</sup> File pp. 33-34, 223 and 9940. File p. 7828.

<sup>(205)</sup> File pp. 9973 and 10005.

<sup>(206)</sup> File pp. 2504-2509.

<sup>(207)</sup> The latter abbreviation clearly also refers to the Association of European Manufacturers of Carbonless Paper.



(187) Carrs admitted in its reply to the Statement of Objections <sup>(208)</sup> that it participated in the UK meetings over the whole period (Carrs indicates that from the end of 1994 it generally no longer attended the meetings but was kept informed by telephone of the conclusions of these meetings by AWA).

Carbonless Papers), Koehler, Stora and Zanders; a meeting in Paris in August 1995 between AWA ([...]\*, Carbonless Papers' Regional Manager for Scandinavia and [...]\*, AWA Carbonless Papers' Sales Director) and Zanders, Koehler and Stora-Feldmühle.

(f) **Other EEA countries**

1.4.4. PRICE INCREASE, SALES QUOTA AND MARKET SHARING AGREEMENTS

(188) In its reply to the Commission request for information, AWA also refers to some other 'improper meetings' between competitors at some of which 'carbonless paper prices were also discussed... extending to an exchange of intentions regarding announcements of price increases' during the period from the beginning of 1992 to summer 1995 <sup>(209)</sup>.

1.4.4.1. **Price increase agreements**

a) **December 1993 to May 1994**

— At least four of these meetings relate to the Italian market: meeting in Milan in January or February 1992 between AWA, Koehler, Binda, Zanders and Stora and three or four meetings in Lugano in 1994 and 1995 between AWA, Koehler, Stora and Zanders;

(a)(1) *Agreements reached*

— At least three of these meetings relate to the Nordic countries' markets (Denmark, Finland, Norway and Sweden): two meetings in spring 1992 and 1993 between AWA ([...]\*, Regional Manager for Scandinavia and [...]\*, then Sales Director for AWA

(189) The Commission found a table on Sappi's premises that sets out price increases for various national markets from 1 January 1994 to 1 May 1994 <sup>(210)</sup>. Later Sappi submitted to the Commission a copy of Sappi's price increase instructions to its sales network, dated 21 January 1994 (two days after the general cartel meeting), which has the same table of price increases as an annex <sup>(211)</sup>. The table found on Sappi's premises is reproduced as Table 4.

<sup>(208)</sup> File p. 20348

<sup>(209)</sup> AWA reply to the Commission request for information (File p. 7828-7829) and to the Statement of Objections, file pp. 19748-19750.

<sup>(210)</sup> File p. 2484.

<sup>(211)</sup> Without the hand-written word TRANSCRIP, which appears in the version of that table found initially. File pp. 10035-10036.

TABLE 4

**Agreed price increases from January to May 1994**

(document found on Sappi's premises)

(in %)

	1.1.1994		1.2.1994 <sup>(212)</sup>		1.3.1994		1.4.1994		1.5.1994	
	Sheets	Reels	Sheets	Reels	Sheets	Reels	Sheets	Reels	Sheets	Reels
FRANCE	6	—	—	—	—	—	6	6	—	—
GERMANY	—	—	5	8	—	—	—	—	5	5
ITALY	—	10	10	—	—	—	—	10	10	—
UK <sup>(213)</sup>	—	—	—	—	—	—	6	6	—	—
AUSTRIA	—	—	—	10	—	—	—	—	—	8
BELGIUM	—	—	5	5	—	—	—	—	4	4
HOLLAND	—	—	—	5	—	—	—	—	4	4
FINLAND	—	—	—	6	—	—	5	10	—	—
SWEDEN	—	—	—	5	—	—	4	6	—	—
NORWAY	—	—	—	3	—	—	4	6	—	—
DENMARK	—	—	—	- 3	—	—	4	6	—	—
SPAIN	10	—	—	—	—	—	8	8	—	—
PORTUGAL	—	—	—	—	—	—	8	8	—	—
GREECE	—	—	—	—	6	6	—	—	—	—

- (190) The Commission considers that Table 4 sets out future price increases agreed at the general cartel meeting held on 19 January 1994 and some price increases agreed previously and already announced. This conclusion is supported by the fact that Sappi has included Italy, Finland and Denmark in the document on price increases, but it did not sell carbonless paper in these countries in 1994 <sup>(214)</sup>. Sappi has also included a price increase for reels in Portugal on 1 April 1994, despite the fact that in December 1993 it had decided to concentrate on sheets in Portugal <sup>(215)</sup>. Another document, annexed to the version of the table found initially, proves that Sappi had no reels business in Portugal at the time of the above price increases <sup>(216)</sup>. Hence Table 4 cannot have been purely internal or relating to Sappi's own business alone.

- (191) Furthermore, a comparison of Table 4 with the documentation on national meetings held at the end of 1993 reveals that the 1 January 1994 price increases for France and Spain were agreed at meetings between competitors on 30 September 1993 in Barcelona and on 1 October 1993 in Paris respectively.

<sup>(212)</sup> See File p. 2737.

<sup>(213)</sup> Probably includes the Irish market.

<sup>(214)</sup> This is confirmed by the information Sappi has provided to the Commission on its sales volumes by EEA Member States. In the tables for the years 1993 and 1994 Sappi does not provide a breakdown of the sales volumes for sheets and reels. (File p. 9957).

<sup>(215)</sup> File p. 10029.

<sup>(216)</sup> File p. 2483.

(192) The note on the meeting of 30 September 1993 in Barcelona <sup>(217)</sup> shows that the participants agreed at this meeting on a 10 % price increase for reels and sheets to be implemented on the Spanish market on 1 January 1994. Discussions on this agreed price increase continued on a meeting held on 19 October 1993 <sup>(218)</sup>. Apparently the second meeting was being held because it seemed that on the reels market the agreed 10 % increase would not be feasible. Reels are sold both direct to end-users or via merchants, and price increases were usually fixed in the form of increases in the end-users prices (see paragraph (79)). At the meeting of 19 October 1993 the participants agreed that the reels price increase for end-users should be 8 %. They also agreed to notify 'the manufacturer' (either their own parent company or another supplier) that they would accept only a 7,5 % increase in the manufacturers' prices. This would lead to a 0,5 % increase in the distributor's margin.

(193) As regards the French market, the note on the meeting of 1 October 1993 in Paris <sup>(219)</sup> shows that the participants agreed at this meeting on two price increases for the French market: a 10 % price increase for reels effective from 1 December 1993, and a 6 % price increase for sheets effective from 1 January 1994. Mougeot has confirmed <sup>(220)</sup> that [an AWA employee]\* made a presentation at this meeting on the financial situation of different producers, showing that all of them were losing money on the carbonless paper market. He said that AWA would increase its prices by 10 % on the French market starting from 1 December 1993, and asked everybody to do the same; he said he would not tolerate any failure to follow this price increase. [He]\* also requested that producers should announce these price increases to customers by using standard form letters. The 6 % increase (both for reels and sheets) decided during the general cartel meeting of 19 January 1994 for the French market to be effective from 1 April 1994 was confirmed at the French market cartel meeting held on 20 January 1994 <sup>(221)</sup>.

(194) Mougeot's statement concerning the UK market meeting of 9 November 1993 shows that also in this meeting (as at the French market cartel meeting of 1 October 1993) AWA took the initiative and proposed a 10 % price

increase effective on 1 February 1994, which it persuaded the others to follow <sup>(222)</sup>. It follows from Mougeot's statement that the participants agreed at this meeting to implement the 10 % price increase for reels on the UK market on 1 February 1994 as proposed by AWA <sup>(223)</sup>.

(195) The Commission considers that the collusion on February 1994 price increases in the UK covered both reels and sheets. This is shown by a document comparing Sappi's price increases with 'AEMCP/AEMP' price increases on the UK market <sup>(224)</sup>. The document indicates that the AEMCP members had agreed increases for both reels and sheets, but that originally the increase for reels (10 %) was to be implemented in December 1993 and the increase for sheets (6 %) in January 1994. Apparently the original decision was revised so that the increase for sheets became 7,5 % and both increases were to be implemented in February. This may also explain why these UK market increases do not appear in Table 4 drawn in the general cartel meeting of 19 January.

(196) It is likely that the other increases for January and February (spring 1994) presented in Table 4 were also agreed at meetings held during the last quarter of 1993, or were based on other collusive contacts between competitors during that period. This conclusion is supported by the minutes of Koehler's supervisory board meeting on 8 December 1993, which state: 'It is planned that the prices of the main types of carbonless paper should be increased in the various countries by an average of 5 %. In Italy, where a special situation has arisen owing to the take-over of Binda by Wiggins Teape, a price increase of 10 % is to be announced on 1 January and again on 1 April.' <sup>(225)</sup>. According to this document, the implementation of the increases depended on the success of an 8 % price increase on the French market effective from 1 December 1993 <sup>(226)</sup>. The price increases presented in the Koehler document are same or close to those set out in Table 4 for January and February <sup>(227)</sup>.

<sup>(222)</sup> Mougeot's submission of 14.4.1999 (File pp. 7649-7650).

<sup>(223)</sup> As Mougeot was selling only reels, it might be that the increase referred to by Mougeot related to reels only.

<sup>(224)</sup> File pp. 2504-2509. The latter abbreviation clearly also refers to the Association of European Manufacturers of Carbonless Paper.

<sup>(225)</sup> Original in German: 'Es ist vorgesehen, für die Hauptsorten im SD-Bereich eine Preiserhöhung von durchschnittlich 5 % in den verschiedenen Ländern vorzunehmen. In Italien, wo durch die Übernahme von Binda durch Wiggins Teape eine Sondersituation entstanden ist, soll eine Preiserhöhung zum 1.1. und 1.4. von jeweils 10 % angekündigt werden.' (File p. 5308-5311).

<sup>(226)</sup> The date of the increase is the same as agreed in the French market meeting on 1.10.1993, but the percentage is smaller. The increase agreed at that meeting was to have been 10 %.

<sup>(227)</sup> On 1 December 1993 Sappi gave its distribution network instructions to advise customers of price increases for Belgium, Holland and the Nordic countries, effective on despatches from 1 February 1994, which were identical to the February price increases in Table 4. (File p. 2737)

<sup>(217)</sup> File p. 5.

<sup>(218)</sup> File pp. 4474 and 9939.

<sup>(219)</sup> See File p. 6.

<sup>(220)</sup> File pp. 7648-7649.

<sup>(221)</sup> File p. 7650: the two graphs found at Stora show immediately after the 6 % and 10 % price increases, which had been agreed at the meeting of 1 October 1993, further 6 % increases for both reels and sheets (File pp. 4944-4945).

(197) Table 4 presents also price increases for April and May 1994. Regarding the Portuguese market, it shows that at the general cartel meeting there was an agreement on an 8 % price increase from 1 April 1994 for both reels and sheets. The report from the Portuguese market meeting of 9 February 1994, written by Sappi's agent Unipapel, shows for carbonless paper sheets a table of 'Actual prices and proposal for price increase to distributors ~~suggested to be invoiced to the distributors~~' <sup>(228)</sup>. This Unipapel table confirms that at the meeting target prices were agreed for sales of sheets to distributors by each of the following producers: AWA, Koehler, Sarrió, Stora and Zanders. These prices were to be effective from 1 April. The target prices for the first three companies referred to were the same, but the targets for Stora and Zanders were higher. Given that before the agreement the producers' actual average prices were different, the percentage price increases for AWA, Koehler and Sarrió ranged from around 8 % to more than 13 %. Hence, while the minimum increase for sheets was kept at 8 % as agreed at the general meeting, it was agreed at the national meeting that the increase would be higher for some producers <sup>(229)</sup>.

(198) At the national cartel meeting of 9 February 1994 the timing of the increase for reels was also changed. Based on Sarrió's proposals, the participants agreed increased target prices for reels, to be effective from 1 March. The prices were set as minimum prices for each product type and differentiated for customer groups A, B and C. Customers were classified into these three groups according to their purchasing power. An annex to the report lists several customers in groups A and B. In his oral explanations during the inspection at Unipapel, the company representative who had written the report on the meeting confirmed the customer classification, and also confirmed that the agreed prices were minimum prices <sup>(230)</sup>. In addition to the price increase to take place in March, new, higher minimum prices for reels were agreed which were to be implemented in June 1994.

(199) Turning to the Spanish market, the note on the meeting of 3 May 1994 shows that all participants agreed to increase the sheets price by 5 % from 1 June (Koehler by 7 %). Concerning reels, the note shows an agreement on an approximately 10 % price increase in May. The note also shows that customers for reels were classified into groups A, B and C, and that different target prices for reels were agreed for each of these groups <sup>(231)</sup>.

<sup>(228)</sup> The words 'proposal for' and 'to distributors' and the crossing out of words have been added by hand to the document.

<sup>(229)</sup> File pp. 47-51.

<sup>(230)</sup> File pp. 4520.

<sup>(231)</sup> File pp. 8 and 9977-9978.

(a)(2) *Implementation of the agreed price increases* <sup>(232)</sup>

(200) Sappi's instructions to its sales network show its determination to implement the price increases agreed at the general cartel meeting of 19 January 1994: 'we must now announce our intention to apply further increases, which will be applied rigidly in each market' <sup>(233)</sup>. A letter to a Sappi distributor in the Netherlands confirms Sappi's determination and also indicates that the January agreement resulted in an overall price increase: 'Everywhere in Europe, and in Holland too, carbonless prices are going up and I do not see why your customers should not get it.' <sup>(234)</sup>. Another document suggests that Sappi was determined to hold on the agreed January price increases for Spain even if the increase for sheets was only partially successful <sup>(235)</sup>.

(201) AWA's fax to its sales subsidiaries around the EEA shows similar determination to implement the increases agreed for April/May: 'As we continue to be very tight in capacity, I insist that prices are rigorously increased. The April/May increase must be enforced with all determination.' <sup>(236)</sup>.

<sup>(232)</sup> The Commission requested the carbonless paper producers to provide information on all price increases of general application (in percentage form) that each of them had announced since 1.1.1992. Only one company, AWA, gave information on its percentage price increases for the whole period requested. Sappi, Stora, Zanders and Copigraph provided information concerning all but the earlier years. Sappi gave information for the UK for the years 1994-1999 and for the rest of Europe from 1993 to 1995. Stora and Zanders gave information mainly for the time from 1995 onwards. Owing to the termination of its industrial activities and acquisition by AWA, Copigraph has been able to identify only some price increases since 1994. All others claimed that, as a rule, price increase negotiations were conducted on a very individual basis, or that the company no longer had the relevant documents in its possession for most of the period in question. Mougeot and Carrs, however, gave indicative information on price movements (in percentage form) in some markets, on the basis of increases announced to typical customers. Others (Koehler, Torraspapel, Zicuñaga) gave information only on monthly or annual average prices.

<sup>(233)</sup> File pp. 10035-10036.

<sup>(234)</sup> File p. 10037.

<sup>(235)</sup> File p. 10040.

<sup>(236)</sup> File p. 7866.

(202) A document found on Sappi's premises shows that implementation of some price increases set out in the table from the January meeting were rescheduled, whereas others were successful <sup>(237)</sup>. It appears that this document refers to a rescheduling of the agreed increases on the market in general, and not a rescheduling by Sappi alone. The February increases were delayed by one month in the case of Austria and by 15 days in the case of Belgium and the Netherlands. As for the Spanish market, this document states that the 10 % increase for reels was rearranged for 1 April 1994, but that Sappi at least had implemented the 10 % increase for sheets. The document states that on the Portuguese market the price increase for sheets was postponed until 1 April 1994, which, however, is the date indicated in Table 4. As regards the French market, the document indicates that the increase for sheets agreed for December 1993 and the increase for reels agreed for January 1994 were in fact implemented <sup>(238)</sup>. In the case of the Swedish market, the price increase for reels took place on 1 February 1994 as agreed.

(203) Regarding the increases agreed for 1 December 1993 (10 % for reels) and 1 January 1994 (6 % for sheets) in the French market meeting on 1 October 1993, two graphs found on Stora's premises show exactly the same increases <sup>(239)</sup>. On 12 October 1993 AWA announced the same increases to its customers <sup>(240)</sup>. There is also evidence that Mougeot took measures to implement the agreed 10 % increase for reels to apply from 1 December 1993, and that it announced it to customers <sup>(241)</sup>. A document found on Koehler's premises indicates that Koehler too had decided on an increase to apply from 1 December 1993, but that this increase was 8 % instead of 10 %. Other producers have not provided price increase information for this period.

(204) Starting from the price increases of January 1994 the Commission has more comprehensive evidence of producers' price increase instructions to their sales networks, announcements to customers and internal documentation relating to price increases that correspond with the price increases agreed at the general cartel meeting of 19 January 1994. Concerning the period from January to March 1994 this information shows that on some or all of the following markets AWA, Koehler, Sappi, Stora and Torraspapel announced price increases identical to those agreed or confirmed at the general cartel meeting of 19 January 1994 (for details of the price increases see Annex V, Table A):

Belgium and Luxembourg, Denmark, Germany, Italy, the Netherlands, Norway, and Sweden <sup>(242)</sup>.

(205) The documentation available also shows that the price increases agreed in November 1993 were implemented when both AWA and Sappi announced a 10 % increase for reels for the UK market (see Annex V, Table A). The AWA price increase was due to become effective from 1 February, and Sappi's increase from 7 February 1994. In addition, the documents show that AWA, Sappi and Carrs all announced a 7,5 % increase for sheets, likewise in February 1994 (Carrs was not selling reels).

(206) AWA, Koehler, Mougeot, Sappi, Stora and Torraspapel also announced price increases for April and May which were identical to those agreed at the general cartel meeting of 19 January on some or all of the following markets (Annex V, Table B): Denmark, France, Germany, Italy, Norway <sup>(243)</sup>, Sweden <sup>(244)</sup>, the United Kingdom and Ireland <sup>(245)</sup>.

#### (b) June to October 1994

##### (b)(1) Agreements reached

(207) On the premises of both Sappi and its Portuguese sales agent Unipapel, the Commission found a table dated 23 June 1994 (again two days after a general cartel meeting) setting out price increases for various national markets from 1 June 1994 to 1 October 1994 <sup>(246)</sup>. Later Sappi submitted to the Commission a copy of the same table attached to a fax giving instructions for price increases to its sales network <sup>(247)</sup>. The table submitted by Sappi is reproduced as Table 5.

<sup>(242)</sup> The evidence gathered on the price increases of various producers is not homogeneous. It comprises instructions to sales subsidiaries or selling agents, standard form letters to customers, press releases and various types of internal company documentation. For the sake of simplicity, all measures taken by companies to increase prices, whether announcements or internal instructions, discussions or decisions, are called 'price increase announcements' in the present Decision.

<sup>(243)</sup> Originally 1.4, but delayed to 1.5. File p. 2482.

<sup>(244)</sup> Originally 1.4, but delayed to 1.5. File p. 2482.

<sup>(245)</sup> Also Copigraph announced to customers the increases agreed for the German market for February (reels and sheets) and May (reels only), and Carrs announced to customers the February and April price increases for sheets which had been agreed for the UK and Irish markets. At least some of these price increase announcements are to be explained by the firms' participation in the cartel activity (see in particular paragraphs (194) to (195)).

<sup>(246)</sup> File p. 2358. File pp. 4539-4540.

<sup>(247)</sup> File pp. 10053-10054.

<sup>(237)</sup> File p. 2483.

<sup>(238)</sup> Both agreed at the meeting of 1.10.1993 in Paris, cf. also paragraph (203).

<sup>(239)</sup> File pp. 4944-4945. These graphs show the movement of prices and sales volumes and percentage price increases for both reels and sheets in the years 1993-1995 for the French market.

<sup>(240)</sup> File p. 7838.

<sup>(241)</sup> File pp. 7681, 7728, 1813-1814.

TABLE 5

**Agreed price increases from June to October 1994**

(table submitted by Sappi)

(in %)

	REELS in %	SHEETS in %	EFFECTIVE DATE
UK	12	6	1.9.1994
IRELAND	12	6	1.9.1994
GERMANY	8	6	1.9.1994
AUSTRIA	12	6	1.9.1994
FINLAND	12	6	1.9.1994
SWEDEN	8	—	1.9.1994
NORWAY	8	—	1.9.1994
DENMARK	8	—	1.9.1994
HOLLAND	8	6	1.9.1994
BELGIUM	10	6	1.9.1994
FRANCE 1	6		1.7.1994
FRANCE 2	10		1.10.1994
ITALY 1	10	10	1.6.1994
ITALY 2	15	15	1.10.1994
SPAIN	( <sup>a</sup> )	( <sup>a</sup> )	1.9.1994
PORTUGAL 1	15	5	15.7.1994
PORTUGAL 2	15	( <sup>a</sup> )	1.9.1994
GREECE	10	10	1.9.1994

(<sup>a</sup>) To be advised.

(210) In particular, concerning the 1 July 1994 price increase for reels on the French market (see paragraph (141)), there was already in May 1994 cooperation between the carbonless paper producers. Mougeot has stated that in a French market cartel meeting held probably in May 1994, [an AWA employee]\* 'urged others to follow the price increase of 6 % which AWA intended to apply on 1 July 1994' (<sup>248</sup>). Mougeot's statement shows that AWA clearly tried to influence the conduct of its competitors in the French market by disclosing to them exact information on the price increase that it had decided to implement. As a result an agreement appears to have been reached. This is shown by Table 5 drawn up at the general cartel meeting of 21 June 1994.

(211) At the general cartel meeting on 21 June 1994 a price increase for Spain was also planned, which was to be effective on 1 September 1994. Instead of giving the amount of the increase, Table 5 setting out the agreed price increases says that the Spanish increase is 'to be advised' (<sup>249</sup>). The report from the Spanish market meeting of 29 June 1994 shows that an agreement on the September price increase was reached in this meeting. For reels the note shows an agreement on a 10 % increase on 1 September and on target prices (ESP/kg) for direct sales to printers, which were divided into three groups (A, B and C), with different target prices for each group (by product type). On sheets, the report says that the prices agreed previously have not been complied with, and that the price has fallen back to the previous level. At this meeting it was agreed that the price would be increased in two stages on 1 July and on 1 September 1994, both times by 5 % (<sup>250</sup>).

**(b)(2) Implementation of the agreed price increases**

(208) Once again, as in Table 4 from the meeting on 19 January, Sappi has included Italy, Finland, Denmark and Portugal in the list of price increases even though it had no sales in these markets (in the case of Portugal it was selling sheets but not reels). Like Table 4, therefore, Table 5 cannot have been purely internal or relating to Sappi's own business alone. Instead it shows price increases resulting from collusive contacts between competitors.

(209) The Commission considers that Table 5 sets out future price increases agreed between competitors at the general cartel meeting held on 21 June 1994 and some price increases agreed previously and already announced to customers.

(212) The Commission has in its possession a document reporting on the implementation of some of the price increases agreed at the general cartel meeting of 21 June 1994. This document shows that the price increases agreed for Germany, France, the United Kingdom and Italy were implemented for the most part and in some cases even exceeded. The document, found on the premises of Torraspapel, shows that the September price increases in Germany (for sheets and reels) and the October price increases in Italy (also for sheets and reels) were implemented in practice, though there were

(<sup>248</sup>) Original in French: 'a incité à suivre l'augmentation de prix de 6 % qu'AWA entendait mettre en oeuvre le 1<sup>er</sup> juillet 1994'.

(<sup>249</sup>) File p. 2358. File pp. 4539-4540.

(<sup>250</sup>) File p. 4476.

some difficulties with the implementation of the price increase for sheets in Germany. In the United Kingdom there was an 8 % increase in the price of reels and a 6 % increase in the price of sheets in September 1994. The increase in the price of sheets is the same as that agreed at the meeting, but the increase for reels is higher. As regards the French market the Torraspapel document says that in October there was a 10 % price increase for reels and a 6 % price increase for sheets. The first of these increases is exactly the same as the one agreed at the meeting of 21 June 1994 <sup>(251)</sup>.

- (213) On 23 June 1994 Sappi Europe SA sent its sales subsidiaries and agents in different European countries a table summarising the price increase schedule agreed at the general cartel meeting, and on 28 June and 1 July 1994 it gave each of them instructions for the implementation of the price increases <sup>(252)</sup>. The Commission also has other documentary evidence of price increase announcements sent by various competitors to their customers or sales networks and internal documentation relating to price increases, which correspond to the increases agreed at the general cartel meeting of 21 June 1994.

- (214) The 6 % reels price increase which it had been agreed should take place on the French market on 1 July 1994 was announced by AWA, Mougeot and Sappi <sup>(253)</sup> for 1 or 4 July (see Annex V, Table C). The graph showing price movements for reels which was found on Stora's premises shows the same increase for this period <sup>(254)</sup>.

- (215) For September and October 1994 AWA, Sappi, Stora, Torraspapel and Zanders <sup>(255)</sup> announced price increases identical to those agreed at the meeting of 21 June 1994 on some or all of the following markets (see Annex V, Table D): Denmark, Finland, France, Germany, the Netherlands, Norway, Sweden, the United Kingdom and Ireland <sup>(256)</sup>.

<sup>(251)</sup> File p. 691. According to Torraspapel the document gives specific market information and was written by [a Torraspapel employee]\* in November 1994.

<sup>(252)</sup> File pp. 2359-2371 and 10068-10076.

<sup>(253)</sup> Sappi confirms the 6 % increase in its statement (File p. 9949), but some instructions to Sappi Paris show a 7 % increase for 1.7.1994.

<sup>(254)</sup> File p. 4944.

<sup>(255)</sup> Copigraph also announced the price increases agreed at this meeting for the French and German markets, though for reels only, and Carrs announced to its customers the increase for sheets agreed for the UK (and Irish) market.

<sup>(256)</sup> For the United Kingdom and Ireland AWA, Sappi and Torraspapel announced the same 8 % reels increase. The list of price increases agreed at the general cartel meeting of 21 June gives a 12 % increase for reels instead of 8 %. It appears that after the general cartel meeting, the cartel members agreed to reduce the percentage.

- (216) As regards the implementation of the increases agreed at for the Spanish market in the meeting of 29 June 1994, a document received from Sappi says that the increase in the price of reels was 'applied in full' but that the first increase for sheets was 'abandoned by Sarrio due to merchant pressure' <sup>(257)</sup>. The document confirms that in spite of Sarrio's withdrawal Sappi was determined to implement the September price increase for sheets too. Also an AWA's internal price increase instruction confirms that there were price increases both on 1 July and on 1 September <sup>(258)</sup>. Another Sappi document shows that the Spanish market leader, Sarrio, had already delayed implementation of the first price increase for sheets agreed in June, which led Sappi to conclude that it had misunderstood the agreement: 'Would you please note that the price increase of 1 September in Spain on carbonless sheets is in fact the June increase, which Sarrio <sup>(259)</sup> have delayed. We originally understood that the market was moving by two increases of 5 %, but this is not the case' <sup>(260)</sup>.

#### (c) December 1994 to February 1995

##### (c)(1) Agreements reached

- (217) At the general cartel meeting of 22 September 1994 [an AWA employee]\* informed the participants of percentage price increases and the implementation dates decided country by country, and urged them to implement the same increases simultaneously <sup>(261)</sup>. The Commission considers that at this meeting the participants agreed on price increases for the period from December 1994 to February 1995. These price increases are set out in a document found on the premises of Sappi, reproduced as Table 6 <sup>(262)</sup>.

<sup>(257)</sup> File p. 10062. Sappi announced to customers on 30.6.1994 and AWA on 8.7.1994 the increases agreed for reels (10 %) and sheets (5 %) effective from 1.9.1994. File pp. 8150 and 10077.

<sup>(258)</sup> File p. 7868.

<sup>(259)</sup> The name Sarrio refers to Torraspapel, who organised the meetings in Barcelona. It is also the market leader in Spain.

<sup>(260)</sup> File p. 4598.

<sup>(261)</sup> File pp. 11597 and 11599.

<sup>(262)</sup> File p. 2494.

TABLE 6

**Agreed price increase from December 1994 to February 1995**

(document found on Sappi's premises)

(in %)

Country	Increase		Effective date
	Reels	Sheets	
Germany	6	0	1.12.1994
Austria	10	5	1.12.1994
Belgium	6	0	1.12.1994
Holland	6	0	1.12.1994
France	10	5	1.1.1995
Italy	15	15	1.1.1995
Spain	To be advised		
Finland	5?	5	1.1.1995
Norway	6	5	1.12.1994
Denmark	6	5	1.1.1995
Sweden	8	5	1.12.1994

price increases agreed between competitors. Both these documents set out price increases that are identical to the price increases in Table 6. The document found on Torraspapel's premises sets out 'forecasts' for December 1994 price increases in Germany and the United Kingdom and for January 1995 price increases in France and Italy that are identical to the increases in Table 6. The only difference is that Table 6 does not give price increases for the United Kingdom. Torraspapel's document 'forecasts' price increases of 10 % for reels and 5 % for sheets on the UK market in December. It appears that these increases were also agreed at the general cartel meeting of 22 September 1994.

(218) Once again, as in the other two tables found on Sappi's premises (see Tables 4 and 5), Sappi has included Italy, Finland, Denmark and Portugal in the list of price increases for both reels and sheets even though it was not selling reels in any of these countries and was not selling sheets in Italy, Finland and Denmark. This confirms that the table cannot have been purely internal or relating to Sappi's own business alone.

(219) The Commission has in its possession documents found on the premises of Torraspapel<sup>(263)</sup> and AWA<sup>(264)</sup> which support the conclusion that Table 6 contains

<sup>(263)</sup> File p. 691. During the investigation under Article 14(2) of Regulation No 17 carried out on Torraspapel's premises in November 1997, the Commission inspectors asked the company to give its interpretation of the above document, especially of the reference 'prochaine augmentation' ('forthcoming increase') in the title (File p. 4247). Torraspapel explained that the document gave specific market information and had been written by [a Torraspapel employee]\* in November 1994. Torraspapel further stated that the expression 'en Europe' ('in Europe') in the title was an expression used by Torraspapel to refer to its European subsidiaries who were selling direct from the mill, i.e. the German, French, British and Italian subsidiary companies. File p. 4251.

<sup>(264)</sup> File p. 918.

(220) The document found on AWA's premises lists 'price increase assumptions' for February 1995 in Germany, France and Italy which are identical to the December and January price increases set for these countries in the documents found at Sappi and Torraspapel. In addition, AWA's 'price increase assumption' for the Benelux countries is exactly the same as the December 1994 price increases indicated in Table 6 for both Belgium and the Netherlands. Similarly, AWA's 'price increase assumption' for Scandinavia is identical to the December 1994 and January 1995 price increases for Norway and Denmark indicated in the Sappi document.

(221) Those documents also confirm the participation of Sappi and Torraspapel in the general cartel meeting of 22 September 1994.

(222) The general cartel meeting on 22 September 1994 did not agree any price increase for Spain, but Table 6 setting out the agreed price increases contains the phrase 'To be advised' in the place of the Spanish increase. This indicates that the Spanish increase was to be agreed at a Spanish market meeting after the general cartel meeting. The hand-written note of Mougeot's representative at the Spanish market meeting of 19 October 1994 shows that at the meeting the participants agreed on price increases (without showing the size of the increase) and target prices (ESP/kg) that were to be applied in Spain from 3 January 1995<sup>(265)</sup>. Participants agreed different prices for three classes of customer —A, B and C— and for each product type. The prices recorded in the note are prices for reels. As

<sup>(265)</sup> File p. 1839.



Mougeot was selling only reels, it was natural that it should be interested in those prices only <sup>(266)</sup>. It cannot be excluded, however, that at this meeting price increases were also agreed for sheets.

(223) At the Spanish market meeting of 19 October 1994 Zicuñaga and Mougeot were authorised to sell somewhat below the agreed prices. The above mentioned meeting note of Mougeot says 'Zicuñaga and Mougeot *authorized* to sell ESP 5/kg below (what a gift)' <sup>(267)</sup>. Mougeot confirmed in reply to oral questions during an investigation that the large producers did indeed authorise this. Mougeot also said, 'As for Mougeot, Sarrio, who was a customer of ours and the principal operator on the Spanish market, asked us not to sell more than ESP 5 below the regular market price' <sup>(268)</sup>. Later Mougeot said 'we were reminded that we should not sell under ESP 5 below the announced minimum prices' <sup>(269)</sup>, indicating that the agreed target prices were minimum prices.

(224) Concerning the French market, the price increases decided at the general cartel meeting were confirmed at the French cartel meeting of 6 December 1994 (see paragraph (145)).

(c) (2) *Implementation of the agreed price increases*

(225) Concerning the period from December 1994 to February 1995, the Commission has discovered that all the participants at the general cartel meeting of 22 September 1994 —AWA, Koehler, Sappi, Stora, Torraspapel and Zanders— announced price increases identical to those agreed at the meeting for some or all of the following markets: France, Germany, Italy, the United Kingdom and Ireland (for details of the price increases see Annex V, Table E) <sup>(270)</sup>.

(226) Concerning the French market, at least AWA, Copigraph, Sappi, Stora, Torraspapel and Zanders

announced the increases confirmed at the 6 December 1994 meeting to take effect in January 1995, Zanders's announcement having concerned reels only (see paragraph (145)). The graphs of price movements found on the premises of Stora indicate a 10 % price increase for reels at the beginning of 1995 <sup>(271)</sup>.

(227) For the United Kingdom and Ireland, AWA, Koehler, Sappi and Torraspapel all announced or planned almost identical increases (10-11 % for reels and 5-6 % for sheets) for different dates from the end of November 1994 to January 1995. A document found on the premises of Sappi confirms that in spite of the different implementation dates this increase was based on collusion. AWA and Stora are explicitly mentioned as participating in the collusion. The document reads: 'As I hope you are aware, [an AWA employee]\* decided to withdraw their November/December price increase on the day of implementation due to "logistical problems". They therefore postponed until 3 January and duly implemented their increase accordingly. We alongside Feldmühle [Stora] elected to hold out for our increase, in the belief that if we withdrew, the market place would collapse and we would rapidly get back to a price war.' The document also confirms that AWA, Sappi and Stora implemented the UK and Irish market increases <sup>(272)</sup>.

(d) **February to September 1995**

(d)(1) *Agreements reached*

(228) The minutes of the general cartel meeting of 2 February 1995 list the price increases which were agreed for various countries, and specify dates when they were to become effective <sup>(273)</sup>. A document received from AWA lists exactly the same increases as in the minutes <sup>(274)</sup>. This document shows that AWA management decided those increases just before the cartel meeting. Therefore,

<sup>(266)</sup> In the case of other meetings too Mougeot reports only on price increases for reels, even though there is evidence that price increases were also agreed for sheets.

<sup>(267)</sup> Original in French: 'ZICUÑAGA et Mougeot *Autorisés* à vendre - 5 Pts/kg (Quel cadeau)', file p. 1839.

<sup>(268)</sup> Original in French: 'En ce qui concerne Mougeot, Sarrio qui était notre client et aussi le principal opérateur du marché espagnol nous a demandé de ne pas vendre à plus de 5 pts en dessous des prix réguliers du marché'. File p. 3916.

<sup>(269)</sup> Original in French: 'nous nous sommes fait rappeler que nous ne devions pas vendre moins de PTA 5 en dessous des prix minima affichés' (File p. 11495).

<sup>(270)</sup> Copigraph also announced the price increases agreed for the French market. In addition, Carrs announced for January 1995 the 5 % increase in the price of sheets agreed for the UK (and Irish) market.

<sup>(271)</sup> File p. 4944-4945. For sheets the increase indicated in these graphs is only 2 %, which would imply that the agreed increase for sheets was not fully implemented, at least by Stora.

<sup>(272)</sup> File p. 2742.

<sup>(273)</sup> File p. 7.

<sup>(274)</sup> File pp. 7879-7880.

it appears that at the general cartel meeting of 2 February, as at the meeting of 22 September 1994, AWA submitted price increases that it had planned beforehand for agreement to the other cartel members. According to the minutes, the increases agreed for EEA countries from February to October 1995 were as set out in Table 7.

TABLE 7

### Agreed price increases from February to September 1995

(from the minutes of the general cartel meeting of 2 February 1995)

(in %)			
Country	Date	Reels	Sheets
France	1.4.1995	10 %	0 %
France	1.5.1995 <sup>(275)</sup>	0 %	10 %
France	1.7.1995 <sup>(276)</sup>	TBA <sup>(277)</sup>	TBA
Germany	1.4.1995	10 %	5 %
Austria	1.7.1995	8 %	0 %
Spain	1.2.1995	10 %	5 %
Spain	1.3.1995	6 %	0 %
Spain	1.4.1995	0 %	10 %
Portugal	1.4.1995	10 %	5 %
U.K. <sup>(278)</sup>	1.3.1995	8 %	5 %
U.K.	1.5.1995	8 %	5 %
U.K.	1.9.1995	8 %	5 %
Italy	1.4.1995	15 %	15 %
Italy	1.9.1995	10 %	10 %
Finland	1.4.1995	8 %	5 %
Denmark	1.4.1995	8 %	0 %
Norway	1.6.1995	0 %	5 %
Sweden	1.6.1995	0 %	5 %
Greece	1.4.1995	10 %	10 %
Belgium	1.3.1995	6 %	6 %
Holland	1.6.1995	8 %	0 %
Iceland	1.4.1995	8 %	5 %

<sup>(275)</sup> In the original document the date reads 96, but this must be a typing error; the correct year must be 95.

<sup>(276)</sup> In the original document the date reads 96, but this must be a typing error; the correct year must be 95.

<sup>(277)</sup> The abbreviation TBA means that the increase is 'to be agreed' later.

<sup>(278)</sup> Probably includes Ireland.

(229) Like the price increase tables drawn up at the general cartel meetings held in 1994, Table 7 sets out both future price increases agreed at the meeting and other increases agreed previously. In particular, the April price increase for France had been agreed at the national cartel meeting of 20 January 1995.

(230) Mougeot recalls that the participants in the 20 January 1995 French market meeting agreed on a 6 % increase to be implemented on 1 April 1995 <sup>(279)</sup>. From other documents, however, it appears that the agreed price increase may have been 10 %. A 10 % increase for reels to take effect on 1 April figures not only in the minutes of the general cartel meeting of 2 February 1995 but also in the price development graph found at Stora <sup>(280)</sup>. Furthermore, a Mougeot 'Note de Service' dated 15 March 1995 confirms that the competitors had announced an increase of 10 % for reels in France for the second quarter of 1995, but that the market leaders would not apply it. Mougeot decide also to adjust its own increase aiming at 5 to 6 % <sup>(281)</sup>.

(231) The minutes of the general cartel meeting show planning of two further price increases for the French market: a 10 % price increase for sheets was to be implemented on the 1 May 1995 and another price increase on 1 July 1995 was to be agreed later ('TBA'). Mougeot's recalls that in spring 1995 there was a French market cartel meeting the purpose of which was to decide on an increase in July <sup>(282)</sup>. The producers appear to have agreed in that meeting on a 10 % increase for both reels and sheets for July. These are the figures marked for mid-1995 in the graphs of French market price movements found on the premises of Stora, which indeed reproduce precisely the agreements reached on price increases until then <sup>(283)</sup>.

<sup>(279)</sup> File pp. 7653-7654.

<sup>(280)</sup> File p. 7 and p. 4944.

<sup>(281)</sup> File p. 1859. File p. 11496.

<sup>(282)</sup> File p. 7654.

<sup>(283)</sup> File pp. 4944-4945. The price increases shown in the graphs start at the end of 1993 and continue until the end of 1995. Up to autumn 1995 the Commission has been able to confirm that all these price increases (except the first 2 % sheets price increase) were agreed between carbonless paper producers (at either the general or national cartel meetings). These documents also show that from the end of 1993 onward prices for both reels and sheets increased constantly, while sales volumes fluctuated sharply. The total increases 'of the average prices' were the following: from 1993 to 1994: reels +6 %, sheets +14 %; from 1994 to 1995: reels +15 %, sheets +6 %; from 1993 to 1995: reels +21 %, sheets +21 %.

(232) It follows that at least Mougeot and Stora participated in the French market cartel meeting held in spring 1995. As for the other usual participants in the French market cartel meetings (AWA, Copigraph, Koehler, Torrassapel and Zanders), the evidence does not allow it to be said with certainty whether they participated in this particular meeting. However, they have all continued to adhere to the cartel scheme, and therefore they can be held responsible for the increases agreed at this meeting too.

(233) At the general cartel meeting of 2 February 1995 the participants also agreed on a system for launching the price increases according to which AWA would lead the price increases and others would follow. As stated in the minutes: 'AWA will lead announcement of following increases per market. To follow, Koehler AG, Zanders, Stora, Sappi, Torras' <sup>(284)</sup>.

(234) Moreover, during the official meeting [an AWA employee]\*, while making a presentation on pulp price increases (which would normally have been done by the chairman, [a Koehler employee]\* on that occasion), said (according to Mougeot) that 'anyone who did not adapt their prices in the light of this increase would find themselves in a difficult financial situation' <sup>(285)</sup>. This is further confirmation of AWA's active role in the cartel.

(d) (2) *Implementation of the agreed price increases*

(235) The Commission is in possession of documents coming from AWA <sup>(286)</sup> and Sappi <sup>(287)</sup> that show price increases for most of the EEA countries corresponding to the increases agreed at the meeting. Sappi itself has compared the agreed price increases with the ones which it subsequently announced, and come to the

conclusion that 'the price increases that appear to have been agreed between the competitors at the meeting in Frankfurt correspond to a large degree to the price increases which Sappi later announced to its customers' <sup>(288)</sup>.

(236) The Commission also has evidence of other producers' price increase instructions to their sales networks, announcements to customers and other documentation relating to price increases that correspond with the price increases agreed at the general cartel meeting of 2 February. This information, together with the data from AWA and Sappi, shows that for the period from March to April 1995 AWA, Sappi, Stora, Torrassapel and Zanders, of the producers who participated in the meeting, announced price increases corresponding to the increases agreed at the general cartel meeting on some or all of the following markets (see Annex V, Table F): Denmark, France, <sup>(289)</sup> the Netherlands, Spain, the United Kingdom and Ireland <sup>(290)</sup>.

(237) Regarding the UK market increase, a fax from Mougeot dated 2 February 1995 and sent on 3 February 1995 to a UK distributor, J & H Paper reads: 'The U.K. market will increase by 8 % the 6<sup>th</sup> of March so we propose you our best offer.' <sup>(291)</sup>. This fax corroborates Mougeot's participation in the agreement reached at the general cartel meeting of 2 February 1995.

(238) As regards the increases on the Spanish market agreed for March and April, AWA, Sappi, Stora and Torrassapel announced the agreed increases, as is shown by Table F in Annex V. This is confirmed by a document dated 16 February, which was received from Sappi. The document includes the following: 'the increase of 6 % [reels] on 1.3.1995 is announced by the markets leaders Sarrio/Stora/AWA. Therefore if we go for more we are out of the market' <sup>(292)</sup>. Another document from Sappi

<sup>(284)</sup> File p. 7.

<sup>(285)</sup> Original in French: 'ceux qui ne feraient pas évoluer leurs prix en tenant compte cette hausse, se trouveraient en situation financière difficile'. File p. 11496.

<sup>(286)</sup> File pp. 937, 7879-7880. The last document shows complete correspondence with the price increases agreed at the general cartel meeting.

<sup>(287)</sup> File pp. 2250-2251 and 2492-2493. This document found on Sappi's premises proves that it told its subsidiaries and merchants (or agents) to announce price increases that were almost identical to the increases agreed at the meeting. For the Spanish market see file pp. 4567-4568 and 4571-4573.

<sup>(288)</sup> File pp. 9953-9954.

<sup>(289)</sup> The announced 10 % increase for reels in the French market was agreed both at the general cartel meeting of 2 February and at the French market meeting of 20 January. AWA, Copigraph, Sappi, Stora and Zanders all announced a 10 % increase in the price of reels to take effect on 1 or 3 April 1995.

<sup>(290)</sup> Only the increases for the Netherlands are different from the increases listed in the minutes of the general cartel meeting of 2 February 1995.

<sup>(291)</sup> File p. 1378.

<sup>(292)</sup> File p. 3043. The fact that AWA had announced this price increase to the customers on 22 February, which is later than the date of Sappi's fax, supports the conclusion that these increases were based on collusion.

says that in Spain in early 1995 there were some difficulties in implementing agreed increases in the price of reels. As for sheets, the document confirms that there were price increases in February and April which corresponded to those agreed at the general cartel meeting of 2 February 1995: 'The market increased effectively by 5 % on February and 10 % on April' <sup>(293)</sup>.

(239) Of those who participated in the general cartel meeting, AWA, Koehler, Sappi, Stora and Zanders announced identical price increases for the period from May to July on some or all of the following markets (see Annex V, Table G): Belgium and Luxembourg, France, Germany, the Netherlands, the United Kingdom and Ireland. Of these increases those for Belgium and Luxembourg, France and Germany do not appear in the table of price increases agreed at the general cartel meeting of 2 February 1995. As regards the French market, there is evidence that the announced 10 % increase was agreed at a separate national cartel meeting which was held later in spring 1995 (see paragraph (231)). The increase for the Netherlands was announced by AWA, Koehler, Sappi and Stora for the same date as agreed at the meeting, but all of them had raised it from 8 % to 10 %. The percentage agreed at the meeting must have been revised accordingly.

(240) AWA and Sappi also announced increases in the United Kingdom and Ireland for September 1995 which are same as the increases agreed at the general cartel meeting of 2 February 1995 (see Annex V, Table H) <sup>(294)</sup>.

#### 1.4.4.2. Allocation of sales quotas and market sharing

(241) The Commission has found evidence showing that, in order to support the implementation of the agreed price increases, in some national cartel meetings sales quotas were allocated and market shares were fixed for each participant.

<sup>(293)</sup> File pp. 2010-2011.

<sup>(294)</sup> Copigraph announced to customers on the French market 10 % increases for reels and sheets for 3.4 and 18.4.1995 respectively, which correspond to those agreed at the meeting. Carrs also announced to customers increases for sheets corresponding to those agreed for March, May and September for the UK (and Irish) market. At least some of these price increase announcements are to be explained by the firms' participation in the cartel activity (see in particular paragraph (230) on price increase agreement reached in the French market meeting of 20 January 1995 in which Copigraph participated).

(242) Sales quotas were allocated at least in the Spanish market cartel meeting held on 30 September 1993 in Barcelona <sup>(295)</sup> and in the French market cartel meeting held on 1 October 1993 in Paris <sup>(296)</sup>.

(243) In these meetings the participants agreed on sales quotas for the Spanish and French markets respectively for each of them for the last quarter of 1993, using confidential information as a device for fixing the quotas. In the Spanish market meeting the information exchanged was individual average monthly sales for years 1992 and 1993. In the French market meeting the participants used individual sales data for the eight-month period from January to August for years 1992 and 1993 in fixing the quotas.

(244) The Commission requested the carbonless paper producers to provide information on their annual and monthly sales volumes, but only a few of them gave monthly information for the years 1992 and 1993. Even this limited information on real sales figures shows a close correlation with the quotas agreed and with the sales volume information exchanged at the meetings of 30 September and 1 October 1993 (see Annex III). This demonstrates that the carbonless paper producers took the information exchange and the quota agreement seriously.

(245) Also the report from the Spanish market meeting of 29 June 1994 indicates that there were sales quotas agreed for reels, and that the producers were selling the complete amounts allocated to them <sup>(297)</sup>.

(246) Agreements on market shares were concluded at least in the French market meetings held in spring 1994 in Nogentel and on 6 December 1994 in Geneva. Regarding the meeting in spring 1994, Mougeot states that AWA described its sales volumes at the meeting and, that once the other participants had also described their 'activities' (i.e. sales volumes), '[an AWA employee]\* [an AWA employee] indicated what each one's share of the French carbonless paper market should be' <sup>(298)</sup>. Hence, it appears that on the basis of AWA's proposal there was a consensus reached among the participants that these market shares would be respected.

<sup>(295)</sup> File p. 5 and 9972.

<sup>(296)</sup> File p. 6.

<sup>(297)</sup> File p. 4476.

<sup>(298)</sup> File p. 7651. Original in French: '[un employé d'AWA]\* a indiqué ce que devait être les parts de marché de chacun sur le marché français de l'autocopiant.'

(247) The hand-written notes taken by Mougeot's representative from the French market cartel meeting of 6 December 1994 <sup>(299)</sup> indicates the participants' 1994 and 1995 market shares. Comparison of these market shares shows that some adjustments were agreed for the market shares fixed for 1995 as compared with 1994: AWA's share was reduced, and the shares of Zanders, Sarrió, Koehler and Stora were increased.

(248) Mougeot says in its statement that 'There was some disagreement expressed at this meeting between the leaders on the French carbonless market, as the price increases were not linked to indications of volume.' <sup>(300)</sup> The notes reporting the meeting also shows that the participants exchanged detailed information on their 1993 and 1994 sales volumes on the French market. Comparison of these figures with information on real sales figures confirms that the sales volume information exchanged at the meeting was accurate (see Annex IV). This shows that the carbonless paper producers took the information exchange seriously. Mougeot's statement indicates that the volume information exchanged was used to verify whether there were important changes in market shares, which might be due to a failure to comply with the price increase agreements.

(249) Confidential information on sales volumes was exchanged also in the Portuguese market meeting of 9 February 1994. The purpose of this meeting was to increase carbonless paper prices in Portugal. The meeting report <sup>(301)</sup> shows that in preparing the price increases participating companies' (AWA, Koehler, Sappi, Stora and Torraspapel) sales volumes on 1992 and 1993 and prices in 1993 were collected and compared. Account was also taken of a comparison of the sales volumes of Binda, Zanders and Copigraph. Concerning the source of the individual items of information in the report of the meeting, [an Unipapel employee]\* confirmed in his oral explanations that 'the data in question was drawn up to serve as a basis for the exchange of information between the participating companies and was discussed at these meetings' <sup>(302)</sup>. Concerning the sales volume information exchanged at the meeting the report says, 'All the presents ~~agreed that~~

~~there was~~ <sup>(303)</sup> a decrease on the consumption of 2,8 % in reels and 9,2 % in sheets from 1992 to 1993' <sup>(304)</sup>. In spite of the clear decrease in consumption the producers pressed ahead with price increases.

(250) There are indications that the sales volumes and market shares were also on the agenda of the general cartel meetings. The following sentences in the minutes of the general cartel meeting of 2 February 1995 indicate that the participants discussed volumes and market shares: 'Mougeot needs market share. AWA will propose giving certain tonnage. Separate meeting, Paris TBA [to be agreed] <sup>(305)</sup>.' An internal Mougeot 'Note de Service' dated 15 March 1995 indicates that Mougeot had problems with insufficient sales on the French market at least, which seems to give meaning to the above phrases <sup>(306)</sup>.

(251) Mougeot has confirmed that it had a bilateral discussion with AWA on sales volumes the morning before the official AEMCP meeting of 2 February, but says that this was concerned only with AWA's breach of an agreement to buy certain volumes per year from Mougeot <sup>(307)</sup>. Although Mougeot claims that it was not present at the general cartel meeting, it is clear from the minutes that Mougeot's need for market share was discussed there, and that it was decided that AWA would be the one to reduce its sales for Mougeot's benefit. This type of decision can not be explained if Mougeot was not participating in the price agreement reached in the meeting of 2 February 1995.

#### 1.4.5. ASSESSMENT OF THE FACTUAL EVIDENCE

##### 1.4.5.1. *The evidence relating to the cartel as a whole*

(252) The Commission has been able to establish that the undertakings concerned had been engaged for years in an overall anti-competitive plan agreed upon at least in 1992, by means of secret-price fixing arrangements which they have, at least on some occasions, complemented with sales quota and market-sharing arrangements and exchanges of information. The Commission relies in particular on the following evidence (this list is not exhaustive):

<sup>(299)</sup> File pp. 7652-7653 and pp. 7657-7658.

<sup>(300)</sup> Original in French: 'Cette réunion donna également lieu à l'expression de dissensions entre les leaders du marché français de l'autocopiant car les hausses de prix n'étaient pas liées à des indications de volume'.

<sup>(301)</sup> File pp. 47-51.

<sup>(302)</sup> File p. 4521. Original in Portuguese: 'os dados aí indicados são estabelecidos com base numa troca de informações entre as empresas participantes e são objecto de discussão nestas reuniões'.

<sup>(303)</sup> The word "is" and the crossing out of words have been added by hand to the document.

<sup>(304)</sup> File p. 47.

<sup>(305)</sup> File p. 7.

<sup>(306)</sup> File p. 1859.

<sup>(307)</sup> File p. 11496.

- the setting up of a system of regular general and national/regional cartel meetings which provided the structure for continuing collusion;
- the statements of Mougeot and Sappi and the evidence provided by AWA on 'improper' meetings in its reply to the Commission request for information;
- the detailed report of the general cartel meeting on 2 February 1995;
- the detailed reports and statements concerning the national/regional cartel meetings obtained from Mougeot and Sappi;
- the price lists and notes on price increases found on the premises of or obtained from AWA, Sappi, Torrassapel and Unipapel (Sappi's agent in Portugal);
- the notes, letters/faxes and statements from several different sources indicating collusive contacts between the competitors;
- the pattern of virtually exact correspondence in the timing, amount and announcement dates of the price increases which each producer implemented on the various national markets, coupled with the documents indicating collusive contacts.

(253) Collusion on prices and the fixing of sales quotas and market shares were inextricably linked aspects of the same overall plan. Consequently, the agreements reached on various occasions, in particular at the meetings identified in the Decision, cannot be considered as separate infringements. The uniform announcements of price increases, of which there is documentary evidence since January 1994 until September 1995 (these being the effective dates of the increases), demonstrate implementation of the overall plan.

(254) At an AEMCP meeting in September 1993 it was decided that the cartel should be restructured by separating the general meetings, at which prices could be fixed for the major European markets, from the official AEMCP meetings (see paragraphs (107) to (109)). This shows that until that time the official meetings had served the same purpose with regard to the collusive conduct as the separate meetings did subsequently.

(255) The period for which the Commission has extensive evidence of regular meetings and contacts of a national or regional character begins in January 1992. The

evidence relates in particular to meetings concerning the Spanish and Portuguese markets. Other meetings and contacts beginning at the same time concern the markets in France, Italy, the Nordic countries and the United Kingdom. Moreover, several parties have admitted in their statements and replies to the Commission request for information (as well as in their replies to the Statement of Objections) their direct participation to the regular collusive meetings that took place at least from the beginning of 1992 onward.

(256) The concurrence of this factual evidence allows the beginning of the cartel to be dated no later than January 1992.

(257) Within the period from January 1992 to September 1995, the available evidence shows not only that there was a framework of collusive contacts and that price agreements were reached within that framework, but that these agreements were in fact implemented, in particular between January 1994 and September 1995.

#### 1.4.5.2. *The evidence on individual participation*

##### (a) **Introduction**

(258) In view of the facts described in chapter , the Commission considers that the agreements and concerted practices which were found to exist formed part of systems of regular meetings and other contacts aimed at price fixing —supported by the fixing of sales quotas, market share allocation, and the exchange of sensitive commercial information— and that all of this behaviour formed part of an overall plan pursuing a common objective of distorting the movement of prices.

(259) The proper approach in a case such as the present one is to demonstrate the existence and operation of the cartel as a whole, and then to link each of the participants to it, showing its participation in the common scheme and for what period each producer participated <sup>(308)</sup>.

<sup>(308)</sup> See the judgment of the Court of First Instance in Case T-1/89 Rhône-Poulenc v Commission [1991] ECR II-867, at paragraph 126.

(260) In order to find that a given producer participated in the cartel, it is not necessary to prove its participation in every manifestation of that cartel. When it has been found that an undertaking has contributed by its own conduct to the common objective of the cartel, it can also be held responsible, throughout the entire period of its participation in that infringement, for conduct engaged in by other undertakings in the context of the same infringement. The Commission must in such cases show that the undertaking in question was aware of the actual conduct planned or put into effect by other undertakings in pursuit of the same objective, or that it could reasonably have foreseen it and that it was prepared to take the risk <sup>(309)</sup>.

(261) According to the case-law of the Court of Justice, as long as the Commission has been able to establish that an undertaking has participated in the meetings at which price initiatives had been decided on, planned and monitored, it is for that undertaking to adduce evidence that it had not subscribed to those initiatives. There must be indeed a presumption that the undertakings participating in concerted arrangements and remaining active on the market take account of the information exchanged with their competitors when determining their conduct on that market. Following the concerted action decided upon at the meetings of the producers, an undertaking is bound to take account, directly or indirectly, of the information obtained during the course of those meetings in determining the policy that it intends to follow on the market. Similarly, its competitors are bound to take into account, directly or indirectly, the information disclosed to them by that undertaking about the course of conduct which it has itself decided upon or which it contemplates adopting on the market <sup>(310)</sup>. It follows that the participation of an undertaking in the collusion may be considered established at least until the date of the last decision to be implemented following a meeting in which that undertaking has participated, unless it has provided evidence that it dissociated itself from decisions reached on agreed action. In this respect, any failure to put the concerted decisions into effect is another matter and does not suffice to refute such participation.

(262) The available evidence shows the participation of each of the producers concerned. It also allows the role of each participant to be identified. In what follows the principal items of evidence (direct or indirect) of participation in the cartel are summarised for each participant.

**(b) AWA, Koehler, Sappi, Stora, Torraspapel and Zanders**

(263) AWA, Koehler, Sappi, Stora, Torraspapel and Zanders were the largest suppliers in the Community and the EEA during the entire period for which there is evidence of continuous cartel activity. All of the six undertakings were selling carbonless paper in all or most of the Member States and also in Norway and Iceland. For all these companies, except Sappi, there is evidence that they were clearly playing leading roles in the cartel.

(264) Starting from at least January 1992 <sup>(311)</sup> and until September 1993 the participation of those six companies in the cartel can be established in the first place by statements from Sappi, Mougeot and AWA as well as by their membership of the AEMCP and regular participation in its meetings. These companies had all been AEMCP members before the year 1992. Until the separation of the cartel and the trade association activities in or after the meeting of 14 September 1993, the AEMCP members used the association's meetings for price-fixing purposes (see paragraphs (107) to (113)).

(265) For the same period there is evidence showing that all six companies also participated in national and/or regional cartel meetings.

(266) Those six companies all participated in the AEMCP meeting of 14 September 1993 where a decision was taken to 'restructure' the cartel, i.e. to separate the cartel and trade association activities (see paragraph (113)). After that meeting each of them continued to participate regularly in national and/or regional cartel meetings. The documentary evidence shows that AWA, Koehler, Stora and Torraspapel participated in all of the national and regional cartel meetings identified, and that Sappi and Zanders participated in most of them (see Annex II).

(267) From the 'restructuring' of the cartel onward, all of them formed part of the cartel at European level, and thus continued to be full members of it. Indeed, they also participated in some or all of the general cartel meetings for which the Commission has found evidence. In particular, they all participated in the general cartel meetings of 22 September 1994 (see paragraphs (117), (121), (124), (125), (189) and (207)).

<sup>(309)</sup> See the judgment of the Court of Justice in Case C-49/92 P Commission v Anic Partecipazioni SpA [1999] ECR I-4125, at paragraphs 82 to 87.

<sup>(310)</sup> See Case C-49/92 P Commission v Anic, at paragraphs 96, 110, 121.

<sup>(311)</sup> The Commission has evidence of member companies' participation in the AEMCP meetings starting from the meeting of 23.1.1992.

- (268) The documentary evidence on price increases agreed at the meetings shows a close relationship between the increases agreed at the general cartel meetings and those agreed at the national/regional cartel meetings. This fact, together with the evidence on participation in the national/regional cartel meetings, confirms that the six producers adhered to the general cartel plan and to the co-ordination of the cartel at the European level.
- (269) Concerning the end of the collusion, although some elements may suggest that the cartel continued afterwards, the Commission limits itself to the period up to September 1995 for the purposes of the present proceedings for the reasons set out in paragraph (75). Indeed, during the general cartel meeting on 2 February 1995, price increases were decided for a period ending in September 1995 (price increases in Italy and the United Kingdom) <sup>(312)</sup>. AWA, Koehler, Sappi, Stora, Torraspapel and Zanders adhered to the agreements reached at this general cartel meeting that included the decision to increase prices in September 1995. Nothing suggests that they distanced themselves from the decisions taken at the meeting held on 2 February 1995.
- (270) AWA admits participation in the cartel from January 1992 until summer 1995, Stora (MHTP) from the end of 1992 to the middle of 1995 and Zanders from 1992 to autumn 1995. Koehler does not contest some of the facts for the period from autumn 1993 to May 1995 (inclusive). Sappi admits participation in the cartel 'from January 1992 until a date prior to its approach to the Commission on 19 September 1996' <sup>(313)</sup>.
- (271) On that basis, the Commission concludes that AWA, Koehler, Sappi, Stora, Torraspapel and Zanders participated as full members in the cartel from at least January 1992 until at least September 1995, i.e. as long as an element of the overall agreement was applicable.
- (272) Mougeot has admitted participation in the cartel from September 1993 until July 1995. Representatives of Mougeot first attended an AEMCP meeting on 26 May 1992, even if Mougeot itself claims that it joined the association only at the end of that year. Mougeot also participated in a French market cartel meeting in spring 1992. That meeting was probably held in April, but as there is no date specified for it the Commission considers that Mougeot was a member of the cartel from at least May 1992.
- (273) Mougeot was an AEMCP member and regularly attended the associations' meetings, which were directly concerned with price fixing until September 1993. Moreover, Mougeot attended the AEMCP meeting of 14 September 1993 where the restructuring of the cartel was agreed. Mougeot has admitted that after that date it participated in one further general cartel meeting held on 22 September 1994. Moreover, it is established that Mougeot adhered to the agreements reached at the general cartel meeting held on 2 February 1995. In addition, it has admitted regular participation in French market cartel meetings and in two other national cartel meetings between October 1993 and summer 1995. Mougeot has also confirmed that even when it did not attend a meeting it received information on the price increases agreed at the meeting from other participants. Since Mougeot adhered to the agreements reached at the general cartel meeting held on 2 February 1995 and this included decision of increasing the prices in the United Kingdom and Italy in September 1995, the Commission concludes that Mougeot adhered to the cartel from May 1992 until at least September 1995.
- (274) Copigraph (Bolloré) was also a member of the AEMCP and regularly attended the association's meetings during the whole period when they were directly concerned with price fixing, i.e. from at least January 1992 to September 1993. During the same period it also participated in national cartel meetings at least concerning the French and Spanish markets.

**(c) Other AEMCP members: Mougeot and Copigraph (Bolloré)**

- (272) Mougeot has admitted participation in the cartel from September 1993 until July 1995. Representatives of Mougeot first attended an AEMCP meeting on 26 May

- (275) Copigraph (Bolloré) attended the AEMCP meeting of 14 September 1993 where the restructuring of the cartel was agreed. There is evidence that Copigraph participated in a considerable number of national cartel meetings after September 1993 until spring 1995. Copigraph admits in its reply to the Statement of Objections its participation in the cartel until summer 1995 <sup>(314)</sup>. In addition, there are no particular circumstances showing that Copigraph has distanced itself from the cartel scheme between spring 1995 and September 1995.

<sup>(312)</sup> See Table 7, paragraph (228).

<sup>(313)</sup> Sappi's reply to the Statement of Objections, file pp. 20602-20603. (See also Sappi's statements, File pp. 9936 and 9944-9945.)

<sup>(314)</sup> Copigraph's reply to the Statement of Objections, file p. 19566.



(276) On that basis, it must be concluded that Copigraph (Bolloré) stood by the other cartel members throughout the whole duration of the infringement and the Commission considers therefore that Copigraph's adherence to the common cartel plan continued until September 1995.

**(d) Non-AEMCP members: Carrs, Divipa and Zicuñaga**

(277) The available evidence does not allow it to be said with certainty when the non-AEMCP companies, Carrs, Divipa and Zicuñaga, began to take part in the cartel.

(278) In its statements, Sappi has confirmed that Carrs attended UK market meetings in 1992, but it has not specified any dates for these meetings. The first meeting date which has been identified for Carrs is 14 January 1993, and its participation in the cartel is accordingly regarded as having started then at the latest. After that date it participated in at least one further meeting, which was held on 9 November 1993. The prices fixed at this meeting were to be applied in February 1994. Carrs admits in its reply to the Statement of Objections that it was active in the collusion relating to the UK market (including the Irish market) as from January 1993. It recalls that its participation was active during 1993 and 1994 and that from the end of 1994, 'although it generally no longer attended meetings, it was kept informed of the conclusions of these meetings by telephone — generally by IDEM [AWA]'. Carrs can not directly confirm on what dates it attended UK market cartel meetings, but it confirms that during its participation there were more meetings than those identified in the Commission Statement of Objections <sup>(315)</sup>.

(279) After February 1994 Carrs regularly announced to customers the price increases for sheets which had been agreed at the general cartel meetings for the UK and Irish markets <sup>(316)</sup>.

(280) As described in paragraph (228), an increase for the UK market to be implemented on 1 September 1995 was

decided at the general cartel meeting of 2 February 1995. It can be concluded that Carrs was informed of the decision taken at this general cartel meeting and adapted its competitive behaviour to that decision. Carrs has not contested its participation in the cartel up to the end of the period subject to the present proceedings.

(281) Even if Carrs was a small player in the European level, it was a much more important actor in the UK market. According to Sappi's estimates, in 1995 Carrs was the fifth largest supplier to the UK market (after AWA, Sappi, Stora and Koehler), with a market share only a little smaller than that of Koehler (both  $\pm 10\%$ ) <sup>(317)</sup>. Carrs has also been an innovator in the carbonless paper market, constantly developing more sophisticated and advanced products. It was thus in its interest to keep carbonless paper prices up in the UK market. Given Carrs' position on the UK market, it is not likely that the cartel could have functioned in that particular area without Carrs' participation.

(282) On that basis, the Commission considers that Carrs participated in the cartel from January 1993 until September 1995.

(283) The first cartel meetings Divipa and Zicuñaga attended were held on 5 March 1992 <sup>(318)</sup> and 19 October 1993 <sup>(319)</sup> respectively, from which dates their participation in the cartel may be said to have started. The last meeting for which there is evidence of participation by Divipa and Zicuñaga was held on 19 October 1994 <sup>(320)</sup>. At that meeting the participants including Divipa and Zicuñaga agreed on price increases and target prices to be implemented in January 1995 <sup>(321)</sup>. The Commission concludes that Divipa and Zicuñaga participated in the cartel at least until January 1995.

(284) Carrs maintains that it only participated in cartel meetings concerning the UK and Irish markets and that it had no knowledge or realisation that these meetings were one part of an alleged cartel that covered the

<sup>(315)</sup> Carrs' reply to the Statement of Objections, file p. 20348.

<sup>(316)</sup> For the most part Carrs sells sheets only.

<sup>(317)</sup> File p. 218.

<sup>(318)</sup> See above paragraphs (155) to (158).

<sup>(319)</sup> See above paragraphs (165) and Sappi's reply to Commission request for information, file p. 9939.

<sup>(320)</sup> Mougeot's reply to the Request for Information, file p. 7652.

<sup>(321)</sup> See File, p. 1839.

whole of the EEA. It claims that 'as a producer of sheets, whose primary market was the UK, a country with a unique distribution and pricing structure, Carrs had no interest in any wider arrangements' <sup>(322)</sup>.

- (285) Divipa and Zicuñaga contest in their replies to the Statement of Objections any participation to any collusion neither in Spain nor on other European markets or at European level; contacts, if any, were only with Spanish competitors. Therefore these two companies deny any participation in nor even knowledge of collusion at European level.

- (286) The Commission considers that, although Carrs, Divipa and Zicuñaga have been found to have participated only in national cartel meetings, and only those concerning the UK market (Carrs) or the Spanish market (Divipa and Zicuñaga), they must have understood that the cartel covered the whole territory that became the EEA in 1994.

- (287) The two levels of meetings were indeed closely intertwined and no participants to the national meetings could ignore the fact that the purpose of these meetings was complementary to the general cartel meetings (see paragraphs (89) to (94), and, for example (197), (211), (279), (280)). In addition, all the major carbonless paper producers, who were known to be selling their products throughout the EEA, participated alongside them in the cartel activities on the UK and Spanish markets. Certain of these companies also played leading roles in the cartel with respect to these two markets.

- (288) The Commission has detailed information on sales in the territory that became the EEA in 1994, by country, covering most of the reference period of the cartel, for the following companies: AWA, Divipa, Koehler, Mougeot, Sappi, Stora, Torraspapel, Zanders and Zicuñaga <sup>(323)</sup>. It may be recalled that at the time of the infringement more than 56 % of the carbonless paper companies' aggregate sales in the EEA was outside their respective domestic markets (see paragraph (30)). The reference period of the cartel was also characterised by significant trade flows between the Community and

different EFTA countries. In 1994, substantial quantities of carbonless paper were sold to Austria, Finland and Sweden. From 1994 onwards trade flows also existed with Iceland and Norway.

- (289) Under all these circumstances, Carrs, Divipa and Zicuñaga could not have considered that the national cartel activities they were involved in were lacking any wider dimension. Therefore, they have to be held responsible for the infringement as a whole, and not only with respect to the above-mentioned particular markets <sup>(324)</sup>.

#### 1.4.5.3. *Assessment of the parties' factual arguments*

##### (a) *As to the objectives of the cartel*

- (290) AWA, MHTP (Stora) and Koehler argue that the cartel concerned mainly price-coordination and that sales quotas or market shares were agreed only occasionally. Koehler submits that there was no agreement on sales quotas or market shares at general European level <sup>(325)</sup>.
- (291) MHTP (Stora) and Koehler also argue that there was no general exchange of individual sales figures. They argue that the exchanges referred to by the Commission clearly constitute isolate incidents. Koehler submits that no detailed, individual information about firms' prices and sales volumes at general European level was exchanged. It argues that 'exchanges of past sales volumes was confined to a few specific regional cases' <sup>(326)</sup>.
- (292) The Commission maintains that, while the principal objective of the global anti-competitive plan was to agree price increases, in certain national cartel meetings sales quotas were allocated and market shares were fixed <sup>(327)</sup>. The purpose of these measures was to ensure implementation of the price increases. In addition, the minutes of the general cartel meeting held on 2 February 1995 indicate that the sales volumes and market shares were also on the agenda of the general cartel meetings. The Commission also underlines that

<sup>(324)</sup> See paragraph (325).

<sup>(325)</sup> Replies to the Statement of Objections: AWA file pp. 19730-19731, Koehler file pp. 20725-20726 and MHTP (Stora) file pp. 20406-20407.

<sup>(326)</sup> Replies to the Statement of Objections: MHTP file p. 20405, Koehler file p. 20727 (Original in German: 'Darüber hinaus war das Austausch von Verkaufsmengen vergangener Zeiträume auf regionale Einzelfälle beschränkt').

<sup>(327)</sup> See chapter 1.4.4.3. Allocation of sales quotas and market sharing.

<sup>(322)</sup> Carrs' reply to the Statement of Objections, file p. 20370.

<sup>(323)</sup> For year 1992 the Commission has detailed figures for 6 companies, for 1993 and 1994 for 8 companies and for years 1995-1997 for 9 companies.

several meeting minutes provide evidence on exchange of confidential information in relation to the allocation of sales quotas and fixing of market shares. Finally, it should be noted that in most cases when there are minutes or other reports on the cartel meeting, the documents contain direct evidence or references to allocation of sales quotas, fixing of market shares and/or exchange of sensitive information.

**(b) As to the evidence on cartel meetings**

**(b) (1) AEMCP meetings and general cartel meetings**

(293) Koehler, Mougeot and Copigraph contest the Commission finding on the anti-competitive nature of the AEMCP meetings before September 1993. Koehler argues that the factual description of the cartel does not give any evidence or details of anti-competitive content of the official AEMCP meetings up to September/October 1993<sup>(328)</sup>. Mougeot contests its previous statement by claiming that 'the Statement of Objections does not prove that the AEMCP meetings would have served as a framework for collusive mechanisms before restructuring of the association in September 1993'. Mougeot also claims that it first attended an AEMCP meeting as a member of the association on 9 February 1993 and that before that it was only an observer<sup>(329)</sup>.

(294) Copigraph submits that the whole cartel was launched when [an AWA employee]\* proposed during an AEMCP meeting held in Frankfurt on 14 September 1993 a cartel mechanism for European carbonless paper producers. Copigraph argues that before that, the companies did not exchange within the AEMCP any anti-competitive information<sup>(330)</sup>.

(295) The Commission considers that Sappi, Mougeot and AWA statements read together prove that general cartel meetings were held from at least 1992 onwards.

<sup>(328)</sup> Koehler's reply to the Statement of Objections, file pp. 20704-20705.

<sup>(329)</sup> Original in French: 'la Communication des griefs ne démontre pas que les réunions de l'AEMCP ont servi de cadre à des mécanismes collusoires avant la restructuration de l'association en septembre 1993'. Mougeot's reply to the Statement of Objections, file pp. 19717-19718.

<sup>(330)</sup> Copigraph's reply to the Statement of Objections, file pp. 19560-19561.

Moreover, the evidence from Sappi confirm that before September 1993 collusion took place also in AEMCP meetings or in meetings held at the occasion of these meetings (paragraphs (112), (113)). The fact that Mougeot was not yet an AEMCP member at the time of the first association's meetings it attended, does not excuse it from the collusion that took place in the meetings, as there is evidence that Mougeot participated in collusive contacts during general cartel meetings as from May 1992. As for Copigraph's argument, it must be reminded that the documentary evidence obtained by the Commission clearly shows that the cartel was operating before September 1993 both at national/regional and general level (i.e. European wide level in the context of the AEMCP meetings).

**(b)(2) National or regional cartel meetings**

(296) With regard to the national or regional cartel meetings Copigraph, Koehler and Mougeot contest the evidence received from Sappi and AWA on their participation in the cartel meetings before September 1993. Copigraph, Koehler and Zanders also refute the evidence given by AWA on their participation in the cartel meetings after spring 1995.

(297) Copigraph argues that AWA's evidence concerning the period before September 1993 is nullified by the evidence given by Sappi, because Sappi does not explicitly mention Copigraph among the participants in the French market meetings it has identified for the same period<sup>(331)</sup>.

(298) Koehler claims that the statements and documents from Sappi and AWA are vague, in particular, because they merely state that Koehler is believed to have attended the meetings or that the employee giving the statement is not sure whether Koehler attended. Regarding the content of the meetings, Koehler argues<sup>(332)</sup> that AWA's statement means little and proves nothing when it says that 'at some of these meetings described above, carbonless paper prices were also discussed, including discussions of historical trends, but also extending to an

<sup>(331)</sup> Copigraph's reply to the Statement of Objections, file pp. 19562-19565.

<sup>(332)</sup> Koehler's reply to the Statement of Objections, file p. 20708.

exchange of intentions regarding announcements of price increases' <sup>(333)</sup>. It also claims that none of the documentary evidence concerning national cartel meetings before September/October 1993 gives support to the Commission finding that these meetings involved collusion <sup>(334)</sup>.

(299) Koehler also claims that there can not have been a cartel from January 1992 to around September 1993 in which Koehler was involved because its prices fell — with some fluctuations — during the said period. Koehler argues that 'this alone shows that there was no cartel during this period' <sup>(335)</sup>.

(300) The Spanish companies, Torraspapel, Zicuñaga and Divipa contest in totality the findings made by the Commission in the Statement of Objections. These companies pretend that the Commission has failed to provide direct evidence of any collusion and/or participation of them to these arrangements and misinterpreted the existing documents. In addition, they argue that the statements made by Sappi, Mougeot and AWA can not be held as valid proofs of an infringement and that the statements are even suspect since those are not vouching their authenticity. According to the Spanish companies, the Commission has merely accepted the statements of Sappi, AWA and Mougeot without checking them and carrying out the necessary investigations. Zicuñaga also claims that the documents given by Sappi do not constitute a proof of the cartel because Sappi was not vouching for their authenticity. Furthermore, the Spanish companies claim that Sappi, AWA and Mougeot have an interest in concentrating the Commission's attention on the markets of Spain and Portugal, which are minor compared to those where Sappi, AWA and Mougeot have more important activities (like UK and France) <sup>(336)</sup>.

(301) The Commission does not have any reason to believe that Sappi, AWA and Mougeot would have misrepresented the truth in the statements, documents and replies they have provided. This evidence makes it abundantly clear that they have themselves participated

as full members in the cartel. Their statements and replies are against their own interests and are wholly credible in the light of the documentary evidence available.

(302) The arguments that Mougeot's and Sappi's statements as well as AWA's reply are 'vague' or 'imprecise' and that they therefore prove nothing must also be dismissed. In most cases a considerable amount of time had elapsed between the cartel meetings and the statements or replies. Therefore it is understandable that the persons telling about the cartel have used cautious expressions. The Commission considers that due to this the information may be incomplete in some areas, but there is no reason to believe that something in the statements is incorrect. The Commission believes that the persons and companies giving the statements would not have named other companies even as potential participants in cartel meetings if they were not involved in the cartel during that period. The uncertainties relate only to the question whether certain cartel members participated in an individual meeting, not to their participation in the overall anti-competitive plan. This problematic is comparable to the fact that the companies have found it more easy to identify the period during which meetings with a view to implement the overall cartel strategy were held than to identify the venues of individual cartel meetings. Moreover, there is abundant direct evidence concerning participants in meetings and agreements reached that fits together with the statements made by Mougeot and Sappi.

(303) The Commission must also dismiss Zicuñaga's claim that the documents provided by Sappi do not constitute reliable evidence, because Sappi itself has stated that it can not validate the documents. Only in its initial letter to the Commission, dated 29 September 1996, did Sappi express reservations about the authenticity and validity of the cartel documents provided by its former employee. Sappi has explained that, as the documents were given to it in the context of a compensation negotiation due to dismissal of the person in question, it did not know how the documents should be interpreted. After this initial contact, Sappi launched an internal investigation in the matter and in its subsequent submissions to the Commission no such reservations were made on any of the documents and statements provided to the Commission. This includes Sappi's statement of 11 November 1996 and submission of 18 May 1999 compiling and assessing the main elements of evidence provided to the Commission starting from the first documents given on 29 September 1996.

(304) It should also be noted that the participation of Koehler, Mougeot and Copigraph in the cartel before September

<sup>(333)</sup> AWA's statement, file p. 7829.

<sup>(334)</sup> Koehler's reply to the Statement of Objections, file pp. 20705-20712.

<sup>(335)</sup> Koehler's reply to the Statement of Objections, file pp. 20712 (original in German: 'Allein dies belegt, dass es ein Kartell in diesem Zeitraum nicht gegeben hat').

<sup>(336)</sup> Replies to the Statement of Objections: Torraspapel, file p. 20439, Zicuñaga, file p. 18477 and Divipa, file p. 19597.

1993 and the overall participation of the Spanish companies is in each case proven by more than one statement or document.

## 6. PART II — LEGAL ASSESSMENT

### 2.1. JURISDICTION

- (305) The arrangements between the undertakings concerned applied to the whole territory of the EEA.
- (306) The EEA Agreement, which contains provisions on competition analogous to the EC Treaty, came into force on 1 January 1994. The present Decision therefore includes the application as from that date of the rules on competition of the EEA Agreement (in particular Article 53(1)) to the arrangements to which objection is taken <sup>(337)</sup>.
- (307) In so far as the arrangements affected competition in the common market and trade between Member States of the Community, Article 81 of the Treaty is applicable. In so far as the cartel operations had an effect on trade between Community and EFTA countries or between EFTA countries which were part of the EEA, Article 53 of the EEA Agreement is applicable.
- (308) If an agreement or practice affects only trade between Member States of the Community, the Commission retains competence, and applies Article 81 of the Treaty. On the other hand if an agreement affects trade only between EFTA States, then the EFTA Surveillance Authority (ESA) is alone competent and will apply the EEA competition rules in Article 53 of the EEA Agreement <sup>(338)</sup>.
- (309) In the present case the Commission is the authority competent to apply both Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement, on the basis of Article 56 of the EEA Agreement, since at any rate the cartel had an appreciable effect on trade between EC Member States and competition in the common market.

### 2.2. APPLICATION OF ARTICLE 81 OF THE TREATY AND ARTICLE 53 OF THE EEA AGREEMENT

#### 2.2.1. ARTICLE 81(1) OF THE EC TREATY AND ARTICLE 53(1) OF THE EEA AGREEMENT

- (310) Article 81(1) 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.

- (311) Article 53(1) of the EEA Agreement (which is modelled on Article 81(1) of the Treaty) contains a similar prohibition. However the reference in Article 81(1) 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'.

#### 2.2.2. AGREEMENTS AND CONCERTED PRACTICES

- (312) Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement prohibit agreements, decisions of associations and concerted practices.
- (313) An agreement can be said to exist when the parties adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. It does not have to be made in writing; no formalities are necessary, and no contractual sanctions or enforcement measures are required. The fact of agreement may be express or implicit in the behaviour of the parties.
- (314) In its judgement in Joined Cases T-305/94 etc. *Limburgse Vinyl Maatschappij and Others v Commission* ('PVC II') <sup>(339)</sup>, 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

<sup>(337)</sup> See Final Act of the Agreement on the European Economic Area, OJ L 1, 3.1.1994, p. 3.

<sup>(338)</sup> Pursuant to Article 56(1)(b) of the EEA Agreement, and without prejudice to the competence of the Commission, where trade between Member States of the Community is affected, the ESA is also competent on cases where the turnover of the undertakings concerned in the territory of the EFTA States equals 33 % or more of their turnover in the territory of the EEA.

<sup>(339)</sup> Joined Cases T-305/94 etc. *Limburgse Vinyl Maatschappij N.V. and others v Commission* (PVC II), [1999] ECR II-931, at paragraph 715.

[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' <sup>(340)</sup>.

(315) Article 81 of the Treaty <sup>(341)</sup> draws a distinction between the concept of 'concerted practices' and that of 'agreements between undertakings' or of 'decisions by associations of undertakings'; the object is to bring within the prohibition of that Article a form of co-ordination between undertakings which, without having reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical co-operation between them for the risks of competition <sup>(342)</sup>.

(316) The criteria of co-ordination and co-operation 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 he 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 whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market <sup>(343)</sup>.

(317) Thus conduct may fall under Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement as a 'concerted practice' even where the parties have not subscribed to a common plan defining their action in the market but knowingly adopt or adhere to collusive devices which facilitate the co-ordination of their commercial behaviour <sup>(344)</sup>.

<sup>(340)</sup> The case law of the Court of Justice and the Court of First Instance in relation to the interpretation of Article 81 EC applies equally to Article 53 EEA. See recitals No 4 and 15 as well as Article 6 of the EEA Agreement, Article 3(2) of the EFTA Surveillance and Court Agreement as well as Case W-1/94 of 16.12.1994, paragraphs 32-35.

<sup>(341)</sup> The case law of the Court of Justice and Court of First Instance analysed below in relation to the interpretation of Article 81 EC expresses principles well established before the signature of the EEA Agreement. It therefore applies equally to Article 53 EEA.

<sup>(342)</sup> Case 48/69 Imperial Chemical Industries v Commission [1972] ECR 619, paragraph 64.

<sup>(343)</sup> Joined Cases 40-48/73 etc. *Suiker Unie and Others v Commission* [1975] ECR 1663.

<sup>(344)</sup> See also the judgment of the Court of First Instance in Case T-7/89 *Hercules v Commission* [1991] ECR II-1711, paragraph 256.

(318) Although in terms of Article 81(1) 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 a 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. Such a concerted practice is caught by Article 81(1) even in the absence of anti-competitive effects on the market <sup>(345)</sup>.

(319) It is not necessary, particularly in the case of a complex infringement of long duration, for the Commission to characterise it as exclusively one or other of these forms of illegal behaviour. The concepts of agreement and concerted practice are fluid and may overlap. Indeed, it may not even be possible realistically to make any such distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while considered in isolation some of its manifestations could accurately be described as one rather than the other. It would however be artificial analytically to sub-divide what is clearly a continuing common enterprise having one and the same overall objective into several discrete forms of infringement. A cartel may therefore be an agreement and a concerted practice at the same time. Article 81 lays down no specific category for a complex infringement of the present type <sup>(346)</sup>.

(320) In its PVC II judgement <sup>(347)</sup> the Court of First Instance stated that '[i]n 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'.

(321) An 'agreement' for the purposes of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement does not require the same certainty as would be necessary for the enforcement of a commercial contract at civil law.

<sup>(345)</sup> See the judgment of the Court of Justice in Case C-199/92P *Hüls v Commission*, [1999] ECR I-4287, paragraphs 158—166.

<sup>(346)</sup> Case T-7/89 *Hercules v Commission*, *ibid.*, paragraph 264.

<sup>(347)</sup> Cases T-305/94 etc. *Limburgse Vinyl Maatschappij N.V. v. Commission*, *ibid.*, paragraph 696.

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.

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 <sup>(349)</sup>.

### 2.2.3. SINGLE, CONTINUOUS INFRINGEMENT

(322) As the Court of Justice (upholding the judgement of the Court of First Instance) has confirmed in Case C-49/92 P *Commission v Anic*, <sup>(348)</sup> 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.

(323) A complex cartel may thus properly be viewed as a single continuing infringement for the time frame in which it existed. The agreement may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. The validity of this assessment is 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 and Article 53(1) of the EEA Agreement.

(324) 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 or ringleaders. Internal conflicts and rivalries or even cheating may occur, but will not prevent the arrangement from constituting an agreement or concerted practice for the purposes of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement where there is a single common and continuing objective.

(325) 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 anti-competitive effect. An undertaking which takes part in the common unlawful enterprise by actions which contribute to the realisation of the shared objective is equally responsible, for the whole period of its adherence to the common scheme, for the acts of the other participants pursuant to the same infringement. This is certainly the case where it is established that the undertaking in question was aware

(326) The statements and documentation given by Sappi show that there have been collusive contacts between European carbonless paper producers at least since the mid-1980s. However, neither documentary evidence nor statements from the other cartel participants are available to enable the Commission to assess the nature of this behaviour in terms of Article 81 of the Treaty during the period from the mid-1980s to 1992.

(327) From the beginning of 1992, however, there is ample evidence to show the existence of a single and continuous collusion inside the territory that became the EEA in 1994. The agreement to enter into this global plan with a view to restrict competition can therefore be dated back at least to the beginning of 1992. This collusion was in pursuit of a single anti-competitive economic aim: increasing carbonless paper prices in the whole territory that became the EEA in 1994.

(328) It results from the evidence collected by the Commission and in particular from Mougeot's statement and the evidence from Sappi and AWA that there was a general cartel plan for the whole EEA aiming at increasing carbonless paper prices. It is indeed clear that the undertakings used AEMCP meetings to carry out this plan up to September 1993 and implemented it subsequently through non-AEMCP meetings. The working out of the plan via regular meetings and frequent price increases is not to be seen as a set of separate agreements but rather as the implementation of the same overall and illegal scheme under various different operational arrangements. The types of conduct in question can be regarded as constituent elements of a single infringement because they formed part of an overall plan pursuing a common objective <sup>(350)</sup>.

(329) The Commission collected evidence of collusion between competitors during all the period from the beginning of 1992 to September 1995.

<sup>(348)</sup> See the judgment of the Court of Justice in Case C-49/92 P *Commission v Anic Partecipazioni SpA*, [1999] ECR I-4125, at paragraph 81.

<sup>(349)</sup> Ibid., paragraph 83.

<sup>(350)</sup> See Case T-1/89 *Rhône-Poulenc v Commission* [1991] ECR II-867 paragraph 126; Joined Cases T-25/95 and al., 15 March 2000, paragraph 4027.

- (330) This plan, which was subscribed to by all the AEMCP member companies — AWA, Binda, Copigraph, Koehler, Sappi, Stora, Torraspapel, Zanders and Mougeot, which joined the AEMCP in 1992 — and also by the non-AEMCP companies Carrs, Divipa and Zicuñaga, was implemented over a period of more than three and a half years employing the same mechanisms and pursuing the same common purpose of eliminating competition. The participants in these unlawful conducts knew, or ought to have known, that it was part of an overall plan in pursuit of that common unlawful object <sup>(351)</sup>.
- (331) Given the common design and common objective of eliminating competition in the carbonless paper industry, which the producers pursued steadily, in spite of the suspension period in the cartel, the Commission considers that the conduct in question constituted a single continuing infringement of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement.
- 2.2.4. RESTRICTION OF COMPETITION
- (332) The complex of arrangements in the present case had the **object and effect** of restricting competition in the Community and EEA.
- (333) Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement expressly mention as restrictive of competition agreements and concerted practices which:
- directly or indirectly fix prices or any other trading conditions;
  - limit or control production or markets;
  - share markets or sources of supply.
- (334) The cartel has to be considered as a whole and in the light of the totality of the circumstances. The principal aspects of the complex of agreements and arrangements in this cartel which can be characterised as restrictions of competition within the meaning of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement are:
- agreeing concerted price increases;
  - allocating sales quotas and fixing market shares (mainly in some national cartel meetings);
  - devising and applying a monitoring system to ensure the implementation of the restrictive agreements;
  - adapting their individual conduct and pricing in order to ensure the implementation of the restrictive agreements;
  - participating in regular meetings and other forms of contact in order to agree those restrictions and to implement or modify them as required.
- (335) Those kinds of arrangements have as their **object** the restriction of competition within the meaning of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement. The arrangements are described in detail in Part I of this Decision. This description is supported by widespread and clear evidence, systematically referred to throughout the text.
- (336) Whilst the competition-restricting object of the agreements and concerted practices is sufficient to conclude that Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement apply, the competition-restricting effects of the arrangements in question have nonetheless also been established (see paragraphs to (382) to (387)).
- 2.2.5. EFFECT UPON TRADE BETWEEN MEMBER STATES OF THE COMMUNITY AND BETWEEN EEA CONTRACTING PARTIES
- (337) The continuing agreement between the producers had an appreciable effect upon trade between Member States of the Community and between Contracting Parties of the EEA Agreement.
- (338) Article 81(1) of the Treaty is aimed at agreements which might harm the attainment of a single market between the Member States of the Community, whether by partitioning national markets or by affecting the structure of competition within the common market. Similarly, Article 53(1) of the EEA Agreement is directed at agreements that undermine the realisation of a homogeneous European Economic Area.
- (339) As demonstrated in the section on Inter-state trade (paragraphs (29) to (31)), the carbonless paper market is one which is characterised by a substantial volume of trade between Member States of the Community. There is also a considerable volume of trade between the Community and EFTA countries which are members of the EEA. All those EFTA countries, including Austria, Finland and Sweden prior to their accession to the Union, import all their requirements of carbonless paper.

<sup>(351)</sup> See Cement Cases (T-25/95 and al.), 15 March 2000, paragraph 2430.



(340) The application of Article 81(1) of the Treaty and Article 53(1) 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 <sup>(352)</sup>.

(341) In the present case, the cartel arrangements covered virtually all trade throughout the Community and EEA. The existence of price-fixing, allocation of sales quotas and market shares must have resulted, or was likely to result, in the automatic diversion of trade patterns from the course they would otherwise have followed <sup>(353)</sup>.

#### 2.2.6. PROVISIONS OF COMPETITION RULES APPLICABLE TO AUSTRIA, FINLAND, ICELAND, LIECHTENSTEIN, NORWAY AND SWEDEN

(342) The EEA Agreement entered into force on 1 January 1994. For the period prior to that date during which the cartel operated, the only provision applicable to the present proceedings is Article 81 of the Treaty; in so far as the cartel arrangements within that period restricted competition in Austria, Finland, Iceland, Liechtenstein, Norway and Sweden (then EFTA Member States), they were not caught by that provision.

(343) In the period 1 January to 31 December 1994, the provisions of the EEA agreement applied to the six EFTA Member States, which had joined the EEA; the cartel thus constituted a violation of Article 53(1) of the EEA Agreement as well as of Article 81(1) of the Treaty, and the Commission is competent to apply both provisions. The restriction of competition in these six EFTA states during this one-year period falls under Article 53(1) of the EEA Agreement.

(344) After the accession of Austria, Finland and Sweden to the Union on 1 January 1995, Article 81(1) of the Treaty became applicable to the cartel insofar as it affected competition in those markets. The operation of the cartel in Norway, Iceland and Liechtenstein remained in violation of Article 53(1) of the EEA Agreement.

(345) In practice, it follows that insofar as the cartel operated in Austria, Finland, Norway, Sweden, Iceland and Liechtenstein it constituted a violation of the EEA and/or Community competition rules as from 1 January 1994.

<sup>(352)</sup> See the judgment of the Court of First Instance in Case T-13/89 Imperial Chemical Industries v Commission [1992] ECR II-1021, at paragraph 304.

<sup>(353)</sup> 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.

#### 2.2.7. DURATION OF THE INFRINGEMENT

(346) Although Sappi's statements indicate that there were collusive contacts between carbonless paper producers from at least the mid-1980s, the Commission will in the present case limit its assessment under Article 81 of the Treaty and Article 53 of the EEA Agreement and the application of any fines to the period from January 1992 onward. This is the moment from which the Commission has evidence of regular collusive contacts between carbonless paper producers. It should of course be noted that in so far as the cartel affected Austria, Finland, Norway, Sweden, Iceland and Liechtenstein this does not constitute an infringement of the competition rules before 1 January 1994, when the EEA Agreement came into effect.

(347) The participation in the infringement of most of the addressees of this Decision is established from that date or a date close to it. Most of the addressees were already AEMCP members and many of them had been so since the AEMCP was set up in 1981.

(348) No date at which the cartel itself ceased to exist can be established but the Commission has a strong body of documentary evidence up to September 1995. It cannot be excluded that the collusion continued after that. However, for the purposes of assessing fines, the Commission will proceed on the basis that the cartel ended in September 1995.

(349) On that basis and the summary of the factual evidence concerning the participation of each company in the cartel, presented in paragraphs (263) to (288), the duration of the infringement established for each of them is as follows:

AWA	from January 1992 until September 1995
Copigraph (Bolloré)	from January 1992 until September 1995
Carrs	from January 1993 until September 1995
Divipa	from March 1992 until January 1995
Sora (MHTP)	from January 1992 until September 1995
Zicuñaga	from October 1993 until January 1995
Mougeot	from May 1992 until September 1995

Koehler	from January 1992 until September 1995
Sappi	from January 1992 until September 1995
Torraspapel	from January 1992 until September 1995
Zanders	from January 1992 until September 1995

Copigraph had complete economic autonomy. According to Bolloré this autonomy stems from the following: the management structures of Copigraph and Bolloré were strictly separate; Copigraph had its own infrastructure and Copigraph's commercial policy was independent because it acquired almost 35 % of its raw-material requirement from outside the Bolloré group, one of the sources being a competitor <sup>(355)</sup>.

### 2.3. LIABILITY FOR THE INFRINGEMENT

- (350) It is established by the facts that throughout the specified periods Carrs, Divipa, Mougeot and Koehler participated directly and autonomously in the cartel. They are not, and were not at any material time, subsidiaries of other companies and will consequently be addressees of the present Decision.
- (351) The question of the appropriate addressees of this Decision arises in the remaining cases, where the issue of the attribution of the liability to the subsidiary or to its parent company must be discussed or where a question of succession arises.

#### 2.3.1. ARJO WIGGINS APPLETON

- (352) Over the entire period of reference Arjo Wiggins Appleton plc, the parent company of the Arjo Wiggins group, participated directly and autonomously in the cartel through its division Arjo Wiggins Carbonless Paper Operation. Arjo Wiggins Appleton Limited (new name of Arjo Wiggins Appleton plc since 29 November 2001) will thus be an addressee of this Decision. The fact that AWA plc was taken over on 27 July 2000 (the very day of the adoption of the Statement of Objections) by the French undertaking Compagnie Worms & Cie (itself a subsidiary of the Agnelli Group) does not modify the choice of the Commission to address this Decision to AWA.

#### 2.3.2. COPIGRAPH AND BOLLORÉ

- (353) Copigraph SA was a wholly owned subsidiary of Bolloré SA (formerly known as Bolloré Technologies SA) during the time of the infringement and was acquired by AWA in November 1998. Copigraph ceased activity on 2 February 2000 with effect from 30 December 2000 <sup>(354)</sup>. Bolloré claims that it cannot be held responsible for Copigraph's behaviour, because

- (354) Copigraph belonged to Bolloré's special papers division and the then head of division, [...]\*, was simultaneously the Managing Director of Copigraph <sup>(356)</sup>. In addition, the then Commercial Director of Copigraph, [...]\*, had also held a sales position at the Thonon mill since 1994 <sup>(357)</sup>. Consequently, Bolloré SA was necessarily informed of its subsidiary's participation in the cartel.

- (355) There is also evidence implicating the parent company, Bolloré SA directly in the cartel activities. Bolloré was a member of the AEMCP, whose official meetings also served as cartel meetings from January 1992 until September 1993. Bolloré's representative, the head of its special papers division [...]\*, attended these cartel meetings together with the Commercial Director of Copigraph. The head of Bolloré's special papers division also participated in the French market cartel meeting of 1 October 1993. In all subsequent cartel meetings where individual representatives of Copigraph are identified the meeting was attended by the Commercial Director of Copigraph. All these meetings took place in 1994 and, as mentioned, the Commercial Director of Copigraph also held simultaneously a sales position in Bolloré.

- (356) On that basis, the Commission concludes that Bolloré should be held responsible not only for its own conduct but also for the conduct of Copigraph in relation to the cartel, for the whole of the specified period.

#### 2.3.3. SAPPI

- (357) Sappi's carbonless paper business in Europe was managed at the time of the infringement by Sappi (UK) Limited and Sappi Europe SA. The individuals participating in the meetings between competitors and implementation of the decisions taken during these meetings were employed by these two subsidiaries of Sappi Limited. Sappi (UK) Limited was a subsidiary

<sup>(354)</sup> Bolloré's reply to the Statement of Objections, file p. 19938.

<sup>(355)</sup> Bolloré's reply to the Statement of Objections, file pp. 19939-19946.

<sup>(356)</sup> [...] was also the Directeur Général (Managing Director) of Bolloré's Thonon mill.

<sup>(357)</sup> File p. 13352-13354. He held his position at Copigraph from 1992 until 1997.

reporting directly to the parent company of the group Sappi Limited and, after May 1995, a wholly owned subsidiary of Sappi Europe Limited, itself a wholly owned subsidiary of Sappi Limited. Sappi Europe SA was a joint venture of Sappi UK Limited and another Sappi Limited wholly owned subsidiary reporting to the ultimate parent company (see paragraph (42)). Moreover, under the said circumstances, the participation of more than one subsidiary confirms that the participation in the cartel was a policy effectively decided by the parent company.

- (358) The correspondence with the Commission prior to the Statement of Objections was made on behalf of Sappi Limited, Sappi Europe Limited and Sappi UK Limited. It is true that the reply to the Statement of Objections sent by the Commission to Sappi Limited alone was given on behalf of Sappi Europe Limited and Sappi (UK) Limited. The reply claimed that the Statement had been addressed to the wrong party without however giving any reason for this claim.
- (359) The Commission maintains that Sappi Limited should be held responsible for the infringement and this Decision will be addressed to it.

#### 2.3.4. STORA

- (360) During the time of the infringement the Stora group carried on its carbonless activity through Stora Feldmühle AG and Stora Carbonless Paper GmbH. Until the end of 1992 the carbonless paper operations of the group were carried on directly by Stora Feldmühle AG. At the beginning of 1993 this business was confined to a new subsidiary of Stora Feldmühle AG, which was named Stora Carbonless Paper GmbH (SCP) <sup>(358)</sup>.
- (361) A concentration between Stora Kopparbergs Bergslags AB and Enso Oyj was cleared by the Commission in 1998 <sup>(359)</sup>. As a result, Stora Enso Oyj became the new parent company of the group at the end of December 1998. On 31 December 1998, Stora Enso Oyj sold a majority holding in SCP to Mitsubishi Paper Mills Ltd. After the acquisition SCP's name was changed to Mitsubishi HiTech Paper Bielefeld GmbH.
- (362) On that basis, the Commission finds that Mitsubishi HiTech Paper Bielefeld GmbH should be held responsible for the conduct throughout the

infringement period. In particular, SCP (now renamed Mitsubishi HiTech Paper Bielefeld GmbH) was for the purposes of the present proceedings the economic successor to Stora Feldmühle AG, having taken over its carbonless paper business within the group at the beginning of 1993. This Decision will therefore be addressed to Mitsubishi HiTech Paper Bielefeld GmbH.

#### 2.3.5. TORRASPAPEL

- (363) Sarriopapel y Celulosa SA (Sarrió) was at all material times (and still is) a wholly owned subsidiary of Torraspapel SA (Torraspapel). There is also evidence implicating the parent company directly in the cartel activities. In particular, persons from both Sarrió and Torraspapel participated in cartel meetings such as the AEMCP meeting on 14 September 1993, where the decision to separate the cartel and the trade association functions was taken. In addition, Torraspapel SA, addressee of the Statement of Objections, has not denied responsibility for the behaviour of Sarriopapel. Consequently, the present Decision will be addressed to Torraspapel SA.

#### 2.3.6. ZANDERS

- (364) Although International Paper had a majority shareholding in Zanders Feinpapiere, there is no indication that International Paper knew about the participation of Zanders to the cartel or was otherwise involved in it. Under these circumstances, the present Decision should be addressed to Zanders.

#### 2.3.7. ZICUÑAGA

- (365) Papelera Guipuzcoana de Zicuñaga SA became a subsidiary of Iberpapel Gestión S.A only in 1997. Zicuñaga claims, in its reply to the Statement of Objections, not to have been the carbonless paper producer, but a processor and distributor client of its French subsidiary 'Papeteries de l'Atlantique SA'. Nevertheless the evidence relating to the Spanish and Portuguese markets show the participation of 'Zicuñaga'. In addition, during the Oral Hearing, Zicuñaga confirmed that it is responsible for setting price policies for all paper products of the group and consequently, takes all price decisions also concerning Papeteries de l'Atlantique products. Therefore this Decision will be addressed to Papelera Guipuzcoana de Zicuñaga SA.
- (366) On the basis of those considerations, this Decision will be addressed to the following:

— Arjo Wiggins Appleton Limited,

— Bolloré SA,

<sup>(358)</sup> MHTP's (Stora) reply to the Statement of Objections, file p. 20405.

<sup>(359)</sup> Commission Decision 1999/641/EC of 25 November 1998, case IV/M.1225.

- Carrs Paper Ltd,
- Distribuidora Vizcaina de Papeles S.L.,
- Mitsubishi HiTech Paper Bielefeld GmbH,
- Papelera Guipuzoana de Zicuñaga SA,
- Papeteries Mougeot SA,
- Papierfabrik August Koehler AG,
- Sappi Limited,
- Torraspapel SA,
- Zanders Feinpapiere AG.

preceding business year of each of the undertakings participating in the infringement where, either intentionally or negligently, they infringe Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement.

(370) 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.

(371) 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 mitigating circumstances and will apply, as appropriate, the Notice on the non-imposition or reduction of fines in cartel cases <sup>(361)</sup>.

## 2.4. REMEDIES

### 2.4.1. ARTICLE 3 OF REGULATION NO 17

- (367) Where the Commission finds there is an infringement of Article 81(1) of the Treaty or Article 53(1) of the EEA Agreement, it may require the undertakings concerned to bring such infringement to an end in accordance with Article 3 of Regulation No 17 <sup>(360)</sup>.
- (368) In the present case the participants in the cartel went to considerable lengths to conceal their unlawful conduct. Virtually all documentary traces of the activities of the cartel were suppressed: almost no minutes, records, lists of participants or invitations survived. In these circumstances it is not possible to declare with absolute certainty that all the participants have put an end to the infringement. It is therefore necessary for the Commission to require the undertakings to which this Decision is addressed to bring the infringement to an end (if they have not already done so) and henceforth to refrain from any agreement, concerted practice or decision of an association which might have the same or a similar object or effect.

### 2.4.2.2. *The amount of the fines*

(372) The cartel constituted a deliberate infringement of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement: with full knowledge of the restrictive character of their actions and, moreover, of their illegality, the leading producers combined to set up a secret and institutionalised system designed to restrict competition in a significant industrial sector.

(373) The amount of the fines is determined by the calculation of a basic amount that will be increased to take into account of aggravating circumstances or reduced to take account of attenuating circumstances.

#### (a) *The basic amount*

(374) The basic amount is determined according to the gravity and duration of the infringement.

### 2.4.2. ARTICLE 15(2) OF REGULATION NO 17

#### 2.4.2.1. *General considerations*

- (369) Under Article 15(2) of Regulation No 17, the Commission may by decision impose upon undertakings fines of from EUR 1 000 to EUR 1 million, or a sum in excess thereof not exceeding 10 % of the turnover in the

#### (a)(1) *Gravity of the infringement*

(375) In its assessment of the gravity of the infringement, the Commission takes account of its nature, its actual impact on the market, where this can be measured, and the size of the relevant geographic market. It will also take into account the economic capacity of the offender to cause significant damage to other operators, in particular consumers, and the need to set the fine at a level that ensures that it has a sufficiently deterrent effect.

<sup>(360)</sup> Under Article 5 of Council Regulation (EC) No 2894/94 of 28.11.1994 concerning arrangements of implementing the Agreement on the European Economic Area 'the Community rules giving effect to the principles set out in Articles 85 and 86 [now Articles 81 and 82] of the EC Treaty ... shall apply mutatis mutandis' (OJ L 305, 30.11.1994, p. 6).

<sup>(361)</sup> OJ C 207, 18.7.1996, p. 4.

## (a)(1)(i) Nature of the infringement

(376) It follows from the facts described in Part I that the present infringement consisted of price fixing market sharing practices, which are by their very nature the worst kind of violations of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement.

(377) The cartel arrangements involved all major operators in the EEA and were conceived, directed and encouraged at high levels in each participating company. By its very nature, the implementation of that type of cartel leads automatically to an important distortion of competition, which is of exclusive benefit to the producers participating in the cartel and is highly detrimental to customers and, ultimately, to the general public.

(378) The Commission therefore considers that the present infringement constitutes by its nature a very serious infringement of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement.

(379) AWA requests the Commission to take into account in setting the fines that in the present case the cartel was very limited in the scope, because there was no clear institutional structure, the cartel was essentially limited to price co-ordination, there was no effective monitoring and the carbonless paper producers continued to compete with each other. According to AWA, a distinction should be made between the present case which concerns 'not a fully institutionalised cartel' and 'strong' cartels with clear institutional structures like for instance the Cement cartel <sup>(362)</sup>.

(380) Sappi also compares the present case to the Cement cartel case. Sappi argues that in accordance with the Cement case, the maximum figure for any fines should be set by reference to the European turnover in the product concerned. In addition, Sappi pleads that price fixing and market sharing are the only serious infringements <sup>(363)</sup>.

(381) The Commission rejects AWA's and Sappi's arguments. Firstly it is clear that price-fixing and market sharing cartels by their nature jeopardise the proper functioning of the single market. Secondly, the structure established by the cartel participants has indeed sufficed to achieve the objectives of the overall plan. Moreover, the Court

of First Instance has rejected in the Cement case <sup>(364)</sup> the parties' argument that some particular institutional structures were required to achieve a cartel agreement: 'The infringement constitutes a single agreement by virtue of the identical nature of the objective pursued by each participant in the [...] agreement, not by virtue of the methods of implementing that agreement'. Methods of implementing must only be proportionate to the objective of the agreement, and this is the case in the present proceedings. Finally, in the present case there is evidence that the cartel involved monitoring of the agreements' implementation and that this was mainly done by AWA itself (see also paragraphs (418) to (423)).

## (a)(1)(ii) The actual impact of the infringement

(382) The Commission considers that the infringement, committed by undertakings which during the period covered by this Decision accounted for about 85-90 % of the supply of carbonless paper to the EEA, had an actual impact on the carbonless paper market (both regarding reels and sheets) in the EEA. The Commission has a large amount of evidence on implementation of the price agreements. Occasional quota and market sharing agreements have also occurred and appear to have been respected to at least a certain extent (see paragraph (244)), which shows that the cartel inevitably had an impact on the behaviour of the market participants and, thus, on the market.

(383) Concerted price increases formed the corner stone of the cartel. The Commission collected during the investigations carbonless paper producers' own documents on price increases. This information was complemented by a request for the producers to provide information on all price increases of general application (in percentage form) that each of them had announced since 1 January 1992. Even if the information provided by the companies did not cover the whole period and in some cases it was in a disparate form, these documents together show that the price increases agreed between producers were to large extent actually announced to customers (to printers and/or merchants). In certain cases where no price increase letters were available, the Commission has found documents reporting on internal decisions to implement the price increases.

(384) In particular, the documentary evidence shows that most of the price increases agreed at the general and national/regional cartel meetings for the period from

<sup>(362)</sup> See OJ L 343, 30.12.1994, p. 1; AWA's reply to the Statement of Objections, file pp. 19730-19733 and 19751.

<sup>(363)</sup> Sappi's reply to the Statement of Objections, file p. 20623.

<sup>(364)</sup> Joint Cases T-25/95 and al., 15 March 2000, par. 4126-4127.

January 1994 to September 1995 were actually announced to customers. The agreed or concerted increases thus served as a reference point in individual negotiations on transaction prices with customers.

(385) The members of the cartel accounted for almost the entire supply of carbonless paper on the EEA carbonless paper market. As a result of the collusive price increase initiatives, customers were faced with uniform price increases announcements, with hardly any possibility of obtaining supplies from a producer not involved in the cartel.

(386) There is also evidence that the implementation of agreed price increases was monitored and that failure to implement them would be discussed at the national or regional cartel meetings (see for instance paragraphs (97) to (106)). This strengthens the conclusion on actual impact of the cartel.

(387) The Commission has also found evidence that at least in some national meetings the parties agreed on the allocation of sales quantities and fixing of market shares as well as exchanged confidential information on their sales volumes. Comparison of the sales quotas agreed and the volume information exchanged in those meetings with the information received from the producers on their real sales figures shows a close correlation (see paragraphs to (241) to (251)). This demonstrates that the information exchange and the quota agreements had an impact on the sales volumes of the producers.

(388) AWA, Carrs, MHTP (Stora), Koehler, Sappi and Zanders claim that the actual impact of the cartel on the carbonless paper market in the EEA was very limited or that the cartel had no negative impact at all. In this respect, they concentrate on arguing that there was limited or no impact on prices, because the prices actually realised on the market were lower than the agreed or announced increases. According to these cartel participants, this shows that the agreed price increases were not implemented in practice. They have put forward many arguments to support this assertion, which include in particular the following claims: prices and producers' margins have fallen substantially; carbonless paper prices essentially reflect changes in pulp costs and demand, and during the later phases of the cartel the capacity constraints; competition between the producers continued; and producers had to negotiate price increases with customers on individual basis.

(389) AWA, MHTP (Stora), Koehler and Sappi refer to the unfavourable development of the carbonless paper

prices for the producers and to the decreasing producer margins. AWA submits that over the 1990s carbonless paper prices have fallen substantially. AWA also argues that its margins have fallen even more than carbonless prices, which it claims, shows that the cartel was limited in scope and that carbonless paper consumers have been able to appropriate much of the benefit of cost reductions achieved by AWA. Also Sappi argues that due to rapid discounting of prices and losses in its business, it is unclear that paper buyers suffered any, or any significant, loss. MHTP (Stora) states that in 1992 and 1993 carbonless paper prices fell substantially, but that prices improved in autumn 1993 and until autumn 1995. A graph in AWA's reply shows a similar development. According to MHTP (Stora) this recovery only returned prices to the 1992 level and the increase occurred in parallel with pulp prices, which were rising steeply <sup>(365)</sup>.

(390) AWA has submitted an expert report <sup>(366)</sup>, the main purpose of which is to demonstrate that although concertation did take place during the period from 1992 to mid 1995, it was not effective in raising prices above levels that would have prevailed in the absence of any cartel meetings.

— The characteristics of the carbonless paper market make successful price fixing very difficult. The report underlines in this respect the lack of sufficient concentration on the supply side, disparity in size of firms, low barriers to entry and high fixed costs.

— In the period 1994-1997 there is little relationship between the price increases announced and the actual prices obtained. To a large degree realised prices moved in line with the price of pulp.

— Identical price increases can be explained by economic theory, and do not necessarily signify concerted behaviour.

— The fluctuations in AWA's market shares in different countries shows that no effective concerted behaviour took place.

<sup>(365)</sup> Replies to the Statement of Objections: AWA file p. 19738-19739, MHTP (Stora) file p. 20420, Sappi file p. 20624.

<sup>(366)</sup> AWA's reply to the Statement of Objections, Annex 1: 'An economic assessment of the effectiveness of concertation in the carbonless paper market', NERA, December 2000, file p. 19766-19806.

— Excerpts from AWA's business plans for the period 1993-1997, each of which provide commentary on market outcomes in the previous year, indicate that competition between carbonless producers continued to be vigorous with customers being won and lost.

and increasing demand <sup>(368)</sup>. AWA, which has submitted an expert report to support its argument on limited impact of the cartel, claims that the carbonless paper prices are strictly linked to changes in the cost of pulp. AWA's expert report argues that during the period from early 1994 to mid 1995 carbonless paper producers could increase prices only by the same amount as the actual change in the cost of pulp <sup>(369)</sup>.

(391) Koehler submits that it felt compelled to counteract the dramatic losses it had experienced in 1992 and 1993 (due to falling carbonless prices) by joining the cartel. As Koehler did not manage to keep its carbonless paper business profitable in spite of participation in the cartel, it claims that the cartel could not have had any negative impact on the market. Koehler concludes that the price agreements had no negative impact on the customers, because customers were not supplied at fair market prices but at prices below-cost <sup>(367)</sup>.

(394) Both AWA and MHTP (Stora) claim that the competition between producers continued and, as a result, announced price increases were frequently not passed on to customers <sup>(370)</sup>. AWA submits that carbonless producers continued to make competitive aggressive approaches to each other's customers, offering particularly favourable prices and also competing on service levels and that, as a result, there were considerable customer switching between suppliers, and variations of market shares at national level (while at European level there were no dramatic variations). AWA also submits that the fall in prices was the result of continued competition.

(392) The Commission must dismiss AWA's, MHTP's (Stora), Koehler's and Sappi's arguments. Above all, the mere fact that price announcements were made in amount and timing following concertation suffices to show an impact on the market. During the period covered by this Decision the carbonless paper market was declining; there was large structural over-capacity and demand was decreasing. There were short, temporary increases in demand only due to customers' stock-building. Moreover, several parties to the cartel have reported in their replies to the Statement of Objections on large and persistent losses during the period concerned. Some confirm that these losses were a reason for them to join the cartel. Minutes of the official AEMCP meetings even record that, faced with these difficulties, the parties were considering the sending of a crisis cartel exemption application to the Commission. The Commission accepts that in such a market situation the prices can be expected to decrease, but considers that this does not exclude that the cartel managed to control or limit the price decrease. Consequently, the cartel may have impeded the production capacity to adjust naturally to the demand by maintaining inefficient competitors in the market longer than they would have stayed under normal conditions of competition.

(395) MHTP (Stora) argues that the Statement of Objections provides numerous illustrations of differences of opinion between the members of the cartel and of failure to implement agreements. MHTP (Stora) concludes that the cartel did not have any real success because of disagreement within the group of participants. Zanders refers to four documents annexed to the Statement of Objections, which it says show that attempted price and quota agreements were not implemented <sup>(371)</sup>.

(396) The Commission dismisses the arguments of AWA, MHTP (Stora) and Zanders. Regarding AWA's arguments

(393) MHTP (Stora) submits that carbonless paper prices could be increased only when that was made possible by economic circumstances, in particular rising pulp prices

<sup>(368)</sup> MHTP (Stora) reply to the Statement of Objections, file pp. 20420-20421.

<sup>(369)</sup> This conclusion is based on comparison of AWA's net realised prices in local currency in three countries, France, UK and Spain with the agreed price increases and with the cost of pulp for AWA. The report assumes that AWA's realised prices provide a good approximation for overall market prices and that the pulp prices paid by AWA also represent the general level paid in this industry. The expert report presents a comparison of development of the pulp prices AWA has paid and its carbonless paper prices in Europe during the period 1992-1998. The report concludes that there is a strong correlation between changes in pulp prices and carbonless paper prices. AWA's reply to the Statement of Objections, Annex 1: 'An economic assessment of the effectiveness of concertation in the carbonless paper market', NERA, December 2000, file pp. 16-26.

<sup>(370)</sup> Replies to the Statement of Objections: AWA, file pp. 19730-19733, MHTP (Stora), file pp. 20421-40424.

<sup>(371)</sup> Zanders' reply to the Statement of Objections, file pp. 20506-20507.

<sup>(367)</sup> Koehler's reply to the Statement of Objections, file pp. 20728-20729.

on customer allocation and agreements to limit competition on service levels, these do not appear to be constitutive elements of the overall anti-competitive plan. Therefore, even if the participants would have continued to compete on these factors, it does not prove as such that the cartel could not have had any effect or could only have had a limited effect on the pricing of carbonless paper.

(397) As for the examples that MHTP (Stora) and Zanders have extracted from the Statement of Objections, the Commission notes that for the most part those examples do not show any complete failure to implement the agreements. The evidence on the meetings and price increases (see Chapters and ) shows that occasionally the agreed increases were postponed to later dates, somewhat smaller increases were implemented (e.g. 6 or 7,5 % instead of 10 %) or further meetings were arranged to revise the agreement. The cartel thus had an impact on the pricing policies of the cartel members even if the implemented increases occasionally fell short of the agreed levels or they were implemented later.

(398) AWA claims that with respect to prices, the cartel was necessarily limited in scope and effectiveness because the producers had to negotiate price increases with customers on an individual basis. According to AWA, this made deliberate disregard for agreements with competitors both easy and frequent. AWA submits that 'any price increases announced by agreement with competitors served merely as an opening position for subsequent negotiations with customers on prices' <sup>(372)</sup>.

(399) Carrs submits that the meetings and other collusive contacts in which it participated concerned movements in so called 'List Prices', which are prices quoted on the price lists issued by producers, and that its participation in discussions on 'List Prices' for sheets had very limited market effects. According to Carrs, this is due to the fact that the sheets are sold through merchants with which the producer has to negotiate in order to get List Price increases passed on to printers. In the sheets business suppliers use heavy discounts and other promotional schemes to arrive at the price to printers, which is called 'Net Price'.

(400) According to Carrs, the price collusion had considerable importance to reels manufactures, but limited or no significance to sheet manufacturers, because the pricing of sheets is fundamentally different from the reel market

where the customer is generally the printer, not a merchant. Carrs submits that, as reels are mostly sold directly to final customers, reels prices are not generally quoted as List Prices and Net Prices and, therefore, any agreement to change prices for reels would directly affect final customer prices <sup>(373)</sup>.

(401) In the light of the Court of First Instance's judgements in the 'Cartonboard' case <sup>(374)</sup>, the fact that the undertakings actually announced the agreed price increases and that the prices so announced served as basis for fixing individual transaction prices suffices in itself for a finding that the collusion on prices had both as its object and effect a restriction of competition. As already concluded, this has been proven in the present case. Therefore, it is not necessary to analyse whether the changes in the realised transaction prices followed those in announced prices in order to show that the cartel had an actual impact on the EEA carbonless paper market.

(402) Finally, the Commission concludes that it is inconceivable that the parties would have repeatedly agreed to meet in locations across Europe to fix price increases, and in some cases also to allocate sales quotas, over such a long period, having regard inter alia to the risks involved, if they had perceived the cartel as having no impact or only a limited impact on the carbonless paper market in the EEA.

(a)(1)(iii) The size of the relevant geographic market

(403) The cartel covered the whole of the common market and, following its creation the whole of the EEA. Every part of the common market, and later the EEA was under the influence of the collusion. For the purposes of assessing the gravity of the infringement as a whole, the Commission therefore considers the entirety of the Community and, following its creation, the EEA, to have been affected by the cartel.

(a)(1)(iv) Conclusion of the Commission on the gravity of the infringement as a whole

(404) Taking into account the nature of the behaviour under scrutiny, its actual impact on the carbonless paper market and the fact that it covered the whole of the common market and, following its creation, the whole

<sup>(372)</sup> AWA's reply to the Statement of Objections, file pp. 19730-19731.

<sup>(373)</sup> Carrs' reply to the Statement of Objections, file pp. 20344-20346 and 20356.

<sup>(374)</sup> See e.g. the judgement of the Court of First Instance in Case T-354/94 Stora Kopparbergs Bergslags AB vs. Commission ('Cartonboard') [1998] ECR II-2111, paragraph 170.



EEA, the Commission considers that the undertakings concerned by this Decision have committed an infringement of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement, which was very serious.

- (405) Within the category of very serious infringements, the proposed scale of likely fines makes it possible to apply differential treatment to undertakings in order to take account of the effective capacity of the offenders to cause significant damage to competition and to set the fine at a level which ensures it has sufficient deterrent effect. The Commission notes that this exercise seems particularly necessary where, as in the present case, there is considerable disparity in the size of the undertakings participating in the infringement.

— Classification of cartel participants

- (406) 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 in principle be divided into four categories established according to their relative importance in the market concerned, subject to adjustment where appropriate to take account of other factors and especially the need to ensure effective deterrence.

- (407) As the basis for the comparison of the relative importance of an undertaking in the market concerned, the Commission considers it appropriate to take in the present case the EEA-wide product turnover. This approach is supported by the fact that this is an EEA-wide cartel, the principal object of which was *inter alia* to agree concerted price increases throughout the EEA. The comparison is made on the basis of the EEA-wide product turnovers in year 1995. Table 1(b) in paragraph (18) provides the relevant figures.

- (408) AWA is by far the largest carbonless paper producer in the EEA and, therefore, it will be placed alone in the first category. MHTP, Zanders and Koehler, which are (or were) the medium-sized operators in the carbonless paper market in EEA, will constitute the second category. Torraspapel and Bolloré, which had significantly lower relative market shares in the EEA level, are placed in the third category. Sappi and Mougeot, which are significantly smaller in the EEA, are placed in the fourth category. Divipa, Zicuñaga and Carrs, which had sales mainly in one or a few EEA countries, are placed in the fifth category.

- (409) On that basis, the Commission sets the amounts of the fines determined for gravity as follows:

- AWA: EUR 70 million,
- MHTP, Zanders, Koehler: EUR 24,5 million,
- Torraspapel, Bolloré: EUR 10,5 million,
- Sappi, Mougeot: EUR 5,6 million,
- Divipa, Zicuñaga, Carrs: EUR 1,4 million.
- Sufficient deterrence.

- (410) In order to ensure that the fine has a sufficient deterrent effect, the Commission will further determine whether any adjustment of the starting amount is needed for any firm.

- (411) In the cases of AWA, Sappi and Bolloré the Commission considers that the appropriate starting amount for a fine resulting from the criterion of the relative importance in the market concerned requires further upward adjustment to take account of their size and their overall resources.

- (412) On that basis, the Commission considers that the need for deterrence requires that the starting amount for the fines determined under paragraph (409) should be increased by 100 % to EUR 140 million as regards AWA, to EUR 21 million as regards Bolloré and to EUR 11,2 million as regards Sappi.

#### (a)(2) Duration of the infringement

- (413) The Commission has found that AWA, Copigraph (Bolloré), Koehler, Sappi, MHTP (Stora), Torraspapel and Zanders infringed Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement from January 1992 until September 1995. Mougeot committed the same infringement from May 1992 until September 1995, Carrs from January 1993 until September 1995, Divipa from March 1992 until January 1995 and Zicuñaga from October 1993 until January 1995.

- (414) The Commission concludes that the infringement was of medium duration (one to five years) for every undertaking involved.

- (415) AWA, Copigraph (Bolloré), Koehler, Sappi, MHTP (Stora), Torraspapel and Zanders committed an infringement of three years and nine months. The starting amounts of the fines determined for gravity (see paragraph (409)) are therefore increased for each of them by 35 % in total.

- (416) In the case of Mougeot, Carrs, Divipa and Zicuñaga, the duration of the infringement varied between one year and four months and three years and five months. The starting amounts of the fines determined for gravity are therefore increased by 30 % for Mougeot, by 25 % for Carrs, by 25 % for Divipa and by 10 % for Zicuñaga.

AWA will lead the announcements of the price increases agreed at the meeting <sup>(375)</sup>. Indeed, the documentary evidence on price increase announcements show that AWA was often the first to announce the price increases to the market, and that other competitors 'followed' those announcements <sup>(376)</sup>.

(a)(3) *Conclusion on the basic amount*

- (417) The Commission accordingly sets the basic amounts of the fines as follows:

Arjo Wiggins Appleton Limited	EUR 189 million
Bolloré SA	EUR 28,35 million
Carrs Paper Ltd	EUR 1,75 million
Distribuidora Vizcaína de Papeles S.L	EUR 1,75 million
Mitsubishi HiTech Paper Bielefeld GmbH	EUR 33,075 million
Papelera Guipuzcoana de Zicuñaga SA	EUR 1,54 million
Papeteries Mougeot SA	EUR 7,28 million
Papierfabrik August Koehler AG	EUR 33,075 million
Sappi Limited	EUR 15,12 million
Torraspapel SA	EUR 14,175 million
Zanders Feinpapiere AG	EUR 33,075 million

(b) **Aggravating circumstances: role of leader in the infringement**

- (418) There is no doubt that AWA, which is the leading producer of carbonless paper in Europe, was the principal leader of the cartel throughout the EEA. The factual evidence on meetings presented in Part I shows that several cartel meetings were convened and conducted by representatives of AWA. AWA was also the instigator of the restructuring of the cartel.

- (419) There are also indications that the price increases agreed by at least two general cartel meetings and several national meetings originated from AWA, and that AWA demanded that the other participants make the same increases. AWA's position as the cartel leader is further corroborated by the minutes of the general cartel meeting of 2 February 1995, which state explicitly that

- (420) AWA claims that there was no principal leader, but that 'cartel meetings were held as a result of mutual agreement on the need for a meeting'. According to AWA cartel meetings 'were "convened" by any single company, although clearly one of the companies involved had to take responsibility for arranging a room for the meeting'. AWA submits that, in addition to itself and Torraspapel, at least Koehler, Mougeot and Stora reserved meeting rooms <sup>(377)</sup>.

- (421) AWA argues that the concertation between carbonless producers took place by mutual consent and did not require threats or sanctions. AWA refutes Mougeot's statements and argues that the wordings used by Mougeot reflect its own attitude rather than objective facts about AWA. AWA also alleges that it is in Mougeot's financial interests today to portray itself as the victim of coercion. AWA argues that it was smaller than Stora and International Paper (the then owner of Zanders) and in the same league as Bolloré (the then owner of Copigraph) and Sappi.

- (422) AWA also disagrees with the Commission finding that at least some price increases originated from AWA and that it demanded the others to follow its increases. AWA accepts that on various occasions it made particular suggestions as to price announcements that it might make, but claims that other companies made such suggestions too. It stresses that carbonless producers acted out of a common view of their mutual interests and that cartel meetings involved a genuine exchange of views and suggestions from all those present.

- (423) The Commission rejects AWA's arguments. A coherent set of evidence shows that AWA, which had an economic leadership in the carbonless paper market and was in a position to exercise pressure on its competitors due to the fact that it acquired or distributed <sup>(378)</sup> large proportions of some small producers output, had also a

<sup>(375)</sup> File p. 7.

<sup>(376)</sup> See for instance file pp. 2510, 2719 and 4607.

<sup>(377)</sup> AWA's reply to the Statement of Objections, file pp. 19744-9745.

<sup>(378)</sup> Either itself or through distributors belonging to AWA group.

key role in monitoring and ensuring the compliance with the agreements <sup>(379)</sup>. On this point, Mougeot's declarations, which themselves form part of a presentation generally in line with the rest of the evidence, fits with these indications on AWA's role in the cartel. Moreover, it should be noted that AWA does not contest Mougeot's statement that AWA audited Sarrió's sales volume information.

have informed the competent authorities, including the Commission, of the illegal behaviour of their competitors in order to put an end to it.

(c)(2) *Termination of the infringement*

- (424) With regard to this aggravating factor, it is appropriate to increase the basic amount of the fine by 50 % for AWA.

- (428) MHTP claims that the cartel came to an end by autumn 1995 and thus before the first inspections were carried out. According to MHTP, this should be regarded as an attenuating circumstance when setting the fines <sup>(381)</sup>.

(c) **Attenuating circumstances**

(c)(1) *An exclusively passive or 'follow-my-leader' role*

- (425) Carrs, Copigraph and Torraspapel claim that they played an exclusively passive role in the infringement and that they were forced to participate in the cartel due to the pressure exercised on them by the cartel leader AWA. Koehler also submits that threats by AWA were a factor pushing it to take part in the collusion <sup>(380)</sup>.

- (429) However, the Commission has taken into account for the assessment of this infringement only the limited period of time for which it considered to have sufficient evidence. Since this is an obvious infringement, the claim of MHTP to have early termination considered as an attenuating circumstance must be rejected.

(c)(3) *Other attenuating circumstances*

- (426) The Commission rejects those arguments. Firstly, the Commission notes that in a cartel and for the purpose of determining the appropriate fine there can be three categories of cartel members: leaders, active members and passive members. In the present case, AWA was the overall cartel leader. The Commission considers that all the other cartel members, including Carrs and Copigraph (Bolloré), were active members. Carrs and Copigraph participated regularly in the cartel meetings on their national markets. Carrs has even stated that it participated in a larger number of UK and Irish market meetings than identified in the Statement of Objections. Copigraph (Bolloré), which had more sales outside its home market than Carrs, was also a regular participant in the general cartel meetings. There is also large amount evidence on their participation in the price increase initiatives showing that they regularly announced to the customers the agreed or concerted price increases.

- (430) AWA argues that the critical situation in the European carbonless paper sector should be in itself viewed as an attenuating circumstance. AWA submits that the sector was in crisis and long-term decline and that the Commission has in recent decisions concerning Alloy surcharges and Seamless steel tubes cartels <sup>(382)</sup> taken account of such matters <sup>(383)</sup>. Copigraph (Bolloré), Koehler and Mougeot plead that the Commission should take into account as a mitigating factor that their carbonless businesses made losses during the period covered by the present decision <sup>(384)</sup>. Copigraph (Bolloré) refer in this respect to the Court of First Instance's judgement in the Enichem Anic SpA case <sup>(385)</sup>.

- (427) Secondly, the Commission considers that the threats (in this case from the cartel leader) cannot justify infringements of the Community and EEA competition rules. Instead of joining the cartel, the companies should

<sup>(381)</sup> MHTP's (Stora) reply to the Statement of Objections, file pp. 20424-20425.

<sup>(382)</sup> Commission Decision 98/247/ECSC of 21 January 1998 in case IV/35.814 — Alloy surcharge, OJ L 100, 1.4.1998, p. 55, at paragraphs 83-84 and Commission decision of 8 December 1999 in case IV/E-1/35.860 — Seamless steel tubes, paragraphs 168 and 169, not yet published.

<sup>(383)</sup> AWA's reply to the Statement of Objections, file pp. 19734.

<sup>(384)</sup> Replies to the Statement of Objections: AWA file pp. 19740-19741, Koehler file pp. 20680-20681 and 20731, Mougeot file pp. 19724. All competitors pleading on losses, except AWA, have provided some annual data on the result of their carbonless paper businesses starting from 1992 until years 1997, 1998 or 1999. The figures, while showing significant variation from year to year, show that these producers made also profits during the relevant period.

<sup>(385)</sup> Replies to the Statement of Objections: Copigraph file pp. 19570-19571 and Bolloré pp. 19946-19947. See also Case T-6/89 Enichem Anic SpA v Commission, ECR [1991] II-1623, at paragraphs 290-291.

<sup>(379)</sup> See paragraphs (104), (109), (120), (143), (217) and (228).

<sup>(380)</sup> Replies to the Statement of Objections: Carrs file p. 20371, Copigraph file p. 19566, Torraspapel file p. 20477, and Koehler file p. 20728.

(431) The Commission does not consider that, in general, the lack of benefit from a cartel constitutes an attenuating circumstance in the fixing of the fine, or that there would be a right of the undertakings to a reduction in such a case. In addition, the information received in the replies to the Statement of Objections and the MHA report commissioned by the AEMCP <sup>(386)</sup> does not support the conclusion that the carbonless paper sector was in a serious crisis comparable to the sectors concerned in the previous cartel cases mentioned by the undertakings, during the infringement period 1992-1995.

(c)(4) *Conclusion on the attenuating circumstances*

(432) The Commission concludes that in the present case there are no attenuating circumstances.

(d) **Conclusion on the amounts of fines prior to any application of the Commission notice on the non-imposition or reduction of fines in cartel cases**

(433) The Commission accordingly sets the amounts of the fines prior to any application of the Commission notice on the non-imposition or reduction of fines in cartel cases ('Leniency Notice') as follows:

Arjo Wiggins Appleton Limited	EUR 283,5 million
Bolloré SA	EUR 28,35 million
Carrs Paper Ltd	EUR 1,75 million
Distribuidora Vizcaína de Papeles S.L	EUR 1,75 million
Mitsubishi HiTech Paper Bielefeld GmbH	EUR 33,075 million
Papelera Guipuzcoana de Zicuñaga SA	EUR 1,54 million
Papeteries Mougeot SA	EUR 7,28 million
Papierfabrik August Koehler AG	EUR 33,075 million
Sappi Limited	EUR 15,12 million
Torraspapel SA	EUR 14,175 million
Zanders Feinpapiere AG	EUR 33,075 million

(434) However, since the final amounts calculated according to that method may not in any case exceed 10 % of the world-wide turnover of the addressees (as laid down by Article 15(2) of Regulation No 17), the fines will be set as follows:

Arjo Wiggins Appleton Limited	EUR 283,5 million
Bolloré SA	EUR 28,35 million
Carrs Paper Ltd	EUR 1,75 million
Distribuidora Vizcaína de Papeles S.L	EUR 1,75 million
Mitsubishi HiTech Paper Bielefeld GmbH	EUR 23,6 million
Papelera Guipuzcoana de Zicuñaga SA	EUR 1,54 million
Papeteries Mougeot SA	EUR 7,28 million
Papierfabrik August Koehler AG	EUR 33,075 million
Sappi Limited	EUR 15,12 million
Torraspapel SA	EUR 14,175 million
Zanders Feinpapiere AG	EUR 33,075 million

(e) **Application of the Commission's Leniency Notice**

(435) Some of the addressees of this Decision have cooperated with the Commission at different stages of the investigation and in relation to different periods of the infringement covered by this Decision for the purpose of receiving favourable treatment as set out in the Leniency Notice. In order to meet the legitimate expectations of the undertakings concerned as to the non-imposition or reduction of the fines on the basis of their cooperation, it is necessary to examine whether the parties concerned satisfied the conditions set out in the Leniency Notice.

(e)(1) *Non-imposition of a fine or a very substantial reduction in its amount*

(436) Sappi submits that it is entitled to total exemption from any fine levied in respect of the cartel agreements covered by this Decision <sup>(387)</sup>.

<sup>(386)</sup> Refer to footnote 10.

<sup>(387)</sup> Sappi's reply to the Statement of Objections, file pp. 20602 and 20620-20622.

(437) The Commission acknowledges that Sappi submitted to the Commission information about the cartel covered by this Decision before the Commission had undertaken any investigation. The Commission also acknowledges that when on 11 November 1996 Sappi submitted a written statement regarding its participation in the cartel, the Commission did not have sufficient information to establish the existence of the alleged cartel.

(438) Sappi was the first of the cartel members to adduce evidence of the cartel's existence. After its initial submission to the Commission, Sappi provided further information and documents on the cartel in several submissions from 1996 to 1999. The evidence provided by Sappi consists essentially of minutes of cartel meetings, minutes of AEMCP meetings, employee statements on functioning of the cartel (including descriptions of cartel meetings, persons present and agreements reached), documentation on price increases and information on the market and the association AEMCP.

(439) The information provided by Sappi enabled the Commission to establish existence, content and participants of several cartel meetings and existence of collusive contacts during the period subject to the present proceedings. The Commission concludes that the evidence provided by Sappi, even if it does not cover all aspects of the cartel, has given decisive proof on existence of the cartel. The Commission also considers that Sappi has maintained continuous and complete cooperation throughout the investigation.

(440) Sappi submits that it put a complete end to any cartel activity from the date at which it disclosed it to the Commission. It also submits that it even decided not to participate in the following AEMCP meetings, in order to avoid even the appearance of any opportunity for collusive contact with competitors and to underline that it was not going to be party to any collusive action in the future <sup>(388)</sup>.

(441) The Commission acknowledges that Sappi had put an end to its participation into the operation of the cartel at the date of its first approach to the Commission on 19 September 1996 and of its written submission on 11 November 1996.

(442) Finally, Sappi has not compelled any other enterprise to take part in the cartel and it has not acted as an instigator in the cartel nor has it been the ringleader.

<sup>(388)</sup> Sappi's reply to the Statement of Objections, file pp. 20604-20606 and 20615-20616.

(443) The Commission considers that this allows Sappi to benefit from section B of the Leniency Notice. Accordingly, the Commission grants Sappi a 100 % reduction of the fine that would have imposed if it had not cooperated with the Commission.

*(e)(2) Substantial reduction in a fine*

(444) Mougeot was the second cartel member to adduce evidence of the cartel. On 14 April 1999, after the Commission had undertaken investigations ordered by decision and sent a request for information to Mougeot, Mougeot provided to the Commission a statement and documents relevant to the case.

(445) The Commission considers that at the time when Mougeot started to co-operate with it, Sappi had already submitted sufficient information to establish the existence of the cartel. Consequently, the Commission concludes that Mougeot's co-operation does not meet the conditions laid down in point (b) of Section B of the Leniency Notice and that it does not, therefore, qualify for a substantial reduction in the fine pursuant to Section C of the Leniency Notice.

*(e)(3) Significant reduction in a fine*

*(e)(3)(i) Evidence provided to the Commission before the Statement of Objections*

(446) Before the Commission adopted its Statement of Objections, Mougeot, AWA, MHTP (Stora) and Copigraph provided the Commission with information and/or documents. There are, however, considerable differences in the extent and quality of their co-operation.

(447) Mougeot voluntarily provided statements and documents giving detailed information on cartel meetings (mainly concerning its home market France), including information on dates of the meetings, participants, contents of the meetings and agreements reached.

(448) AWA voluntarily submitted to the Commission information on cartel meetings detailing the periods during which in various Member States of the Community such meeting were held and listing

participating companies. On the contents of the meetings AWA stated that 'at some of these meetings ... carbonless paper prices were discussed ... extending to an exchange of intentions regarding announcements of price increases' <sup>(389)</sup>.

(449) In addition to strictly replying to the request for information, Copigraph admitted that one of its executives had attended two or three meetings between competitors in 1993—1994 where price increases were agreed and listed other participants to these meetings.

(450) MHTP (Stora)'s reply was the most obscure; it admitted discussions between competitors on prices, but claimed that no agreement on increases was reached. This vague and unsubstantiated indication cannot be qualified as information or documents that contributed to establishing the existence of the infringement and therefore does not justify any reduction on fine.

(451) In addition, Koehler argues that it is entitled to a significant reduction in the fine because it gave a detailed reply in response to the Commission's request for information. The Commission observes that undertakings have an obligation to supply the information requested by the Commission under Article 11 of Regulation No 17. Regulation No 17 imposes on undertakings an obligation to cooperate actively, which implies that they must make available to the Commission all information relating to the subject matter of the investigation <sup>(390)</sup>. Cooperation which falls under such an obligation does not justify any reduction of fines.

(452) Those considerations and the facts set out in paragraph (70) justify a reduction of the fines by 50 % for Mougeot, by 35 % for AWA and by 20 % for Bolloré (Copigraph).

(e)(3)(ii) Non-contesting the facts after receiving the Statement of Objections

(453) After receiving the Commission's Statement of Objections, Carrs, Koehler, MHTP and Zanders pleaded for a significant reduction in fines for not contesting the facts.

(454) Carrs admits existence of the cartel and its participation in it for the whole duration specified in this Decision.

(455) Zanders submits that it does not contest the thrust of the Commission's comments in the Statement of Objection for the period from 1992 to autumn 1995.

(456) MHTP states that it does not contest the facts on which the finding of an infringement from 1992 to mid-1995 is based.

(457) Koehler states that it does not contest some of the facts set out in the Statement of Objections. However, Koehler contests substantial parts of the factual evidence on its participation in the cartel throughout the whole period. In particular, Koehler contests the description made by the Commission of agreements on sales quotas and market shares and the existence of a monitoring system <sup>(391)</sup>. The Commission concludes therefore that there is no effective cooperation on the part of Koehler.

(458) The Commission grants Carrs, MHTP and Zanders a 10 % reduction for not substantially contesting the facts.

(f) Ability to pay

(459) Carrs has presented arguments relating to its ability to pay in a specific social context. This social context relates primarily to the company's current level of debt repayments and its low profitability level.

(460) In order to consider this argument, the Commission requested detailed information on the company's financial position <sup>(392)</sup>. After examining the company's confidential presentation during the Oral Hearing and the reply of 8 October 2001 as well as the further submissions made on 10, 13 and 14 December 2001 <sup>(393)</sup>, the Commission concludes that it is not appropriate to adjust the amount of the fine in the present case. To take account of the mere fact of an undertaking's difficult financial situation due to general market conditions would be tantamount to conferring an unjustified competitive advantage on an undertaking.

<sup>(391)</sup> File pp. 20725-20729.

<sup>(392)</sup> Commission's request for information pursuant to Article 11 of Regulation No 17 dated 5 September 2001, File pp. 21338-;21340.

<sup>(393)</sup> File pp. 21350-21486, 21512-21540.

<sup>(389)</sup> File p. 7829.

<sup>(390)</sup> See Judgement of the Court of 18 October 1989 in Case Orkem v Commission [1989] ECR 3283, at para. 20 et al.

**(g) The final amounts of the fines imposed in the present proceedings**

(461) In conclusion, the fines to be imposed, pursuant to Article 15(2)(a) of Regulation No 17, should be as follows:

Arjo Wiggins Appleton Limited EUR 184,27 million

Bolloré SA EUR 22,68 million

Carrs Paper Ltd EUR 1,57 million

Distribuidora Vizcaína de Papeles S.L. EUR 1,75 million

Mitsubishi HiTech Paper Bielefeld GmbH EUR 21,24 million

Papelera Guipuzcoana de Zicuñaga SA EUR 1,54 million

Papeteries Mougeot SA EUR 3,64 million

Papierfabrik August Koehler AG EUR 33,07 million

Sappi Limited EUR 0

Torraspapel SA EUR 14,17 million

Zanders Feinpapiere AG EUR 29,76 million

Distribuidora Vizcaína de Papeles S.L.

from March 1992 until January 1995

Mitsubishi HiTech Paper Bielefeld GmbH

from January 1992 until September 1995

Papelera Guipuzcoana de Zicuñaga SA

from October 1993 until January 1995

Papeteries Mougeot SA

from May 1992 until September 1995

Papierfabrik August Koehler AG

from January 1992 until September 1995

Sappi Limited

from January 1992 until September 1995

Torraspapel SA

from January 1992 until September 1995

Zanders Feinpapiere AG

from January 1992 until September 1995

*Article 2*

The undertakings referred to in Article 1 shall forthwith bring the infringement referred to therein to an end, if they have not already done so. They shall refrain from any agreements or concerted practices in relation to their activities in carbonless paper which may have the same or a similar object or effect as the infringement.

HAS ADOPTED THIS DECISION:

*Article 3*

*Article 1*

Arjo Wiggins Appleton Limited, Bolloré SA, Carrs Paper Ltd, Distribuidora Vizcaína de Papeles S.L., Mitsubishi HiTech Paper Bielefeld GmbH, Papelera Guipuzcoana de Zicuñaga SA, Papeteries Mougeot SA, Papierfabrik August Koehler AG, Sappi Limited, Torraspapel SA and Zanders Feinpapiere AG have infringed Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement by participating in a complex of agreements and concerted practices in the sector of carbonless paper.

The duration of the infringement was as follows :

Arjo Wiggins Appleton Limited from January 1992 until September 1995

Bolloré SA from January 1992 until September 1995

Carrs Paper Ltd from January 1993 until September 1995

The following fines are imposed on the undertakings referred to in Article 1 in respect of the infringement referred to therein:

Arjo Wiggins Appleton Limited EUR 184,27 million

Bolloré SA EUR 22,68 million

Carrs Paper Ltd EUR 1,57 million

Distribuidora Vizcaína de Papeles S.L. EUR 1,75 million

Mitsubishi HiTech Paper Bielefeld GmbH EUR 21,24 million

Papelera Guipuzcoana de Zicuñaga SA EUR 1,54 million

Papeteries Mougeot SA EUR 3,64 million

Papierfabrik  
August Koehler AG  
EUR 33,07 million

Sappi Limited  
EUR 0

Torraspapel SA  
EUR 14,17 million

Zanders Feinpapiere AG  
EUR 29,76 million

Distribuidora Vizcaína de Papeles S.L  
Poligono Industrial Neinver  
Barrio Astince n 12-14  
48160 Derio, Vizcaya  
España

Mitsubishi HiTech Paper Bielefeld GmbH  
Niedernholz 23  
33699 Bielefeld  
Deutschland

The fines shall be paid within three months of the date of the notification of this Decision into

Bank Account N° 642-0029000-95 (Code SWIFT: BBVABEBB — code IBAN BE76 6420 0290 0095) of the European Commission with

Banco Bilbao Vizcaya Argentaria (BBVA) S.A.,  
Avenue des Arts, 43,  
B-1040 Bruxelles/Brussel

After expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3,5 percentage points, namely 6,77 %.

#### Article 4

This Decision is addressed to:

Arjo Wiggins Appleton Limited  
St Clement House  
Alençon Link  
Basingstoke  
Hampshire RG21 7SB  
United Kingdom

Bolloré SA  
Tour Bolloré  
31-32, quai de Dion-Bouton  
92811 Puteaux cedex  
France

Carrs Paper Ltd  
Cranmore Boulevard  
Shirley, Solihull  
West Midlands B90 4LJ  
United Kingdom

Papelera Guipuzoana de Zicuñaga SA  
Barrio Zicuñaga  
20120 Hernani, Guipúzcoa  
España

Papeteries Mougeot SA  
34, Rue Maurice Mougeot  
88600 Laval sur Vologne  
France

Papierfabrik August  
Koehler AG  
Hauptstraße 2-4  
77704 Oberkirch  
Deutschland

Sappi Limited  
Sappi House  
48 Ameshoff Street  
2001 Braamfontein  
Johannesburg  
Republic of South Africa

Torraspapel SA  
Gran Via de les Corts Catalanes 678  
08010 Barcelona  
España

Zanders Feinpapiere AG  
An der Gohrsmühle  
51465 Bergisch Gladbach  
Deutschland

This Decision shall be enforceable pursuant to Article 256 of the Treaty.

Done at Brussels, 20 December 2001.

*For the Commission*

Mario MONTI

*Member of the Commission*



## ANNEX I

## AEMCP MEETINGS AND GENERAL CARTEL MEETINGS

Table A

Official AEMCP meetings since January 1992 and general cartel meetings since September 1993

YEAR	OFFICIAL AEMCP MEETINGS	GENERAL CARTEL MEETINGS
1992	23 January, Zurich	
	27 March, Zurich	
	26 May, Zurich	
	10 September, Zurich	
	25 November, Zurich	
1993	9 February, Zurich	
	26 April, Zurich	
	7 July, Zurich	
	14 September, Frankfurt	14 September, Frankfurt
	18 November, Brussels	
1994	19 January, Paris	19 January, Paris
	21 April, Nice	
	21 June, Frankfurt	21 June, Frankfurt
	22 September, Frankfurt	22 September, Frankfurt
	10 November, Frankfurt	
1995	2 February, Frankfurt	2 February, Frankfurt
	21 April, Frankfurt	
	28 June, Frankfurt	(foreseen) 28 June, Frankfurt
	29 September, Frankfurt	(foreseen) 29 September, Frankfurt

Table B

**Participation in the official AEMCP meetings**

Meeting dates	AWA	Binda	Copigraph	Koehler	Mougeot	Sappi	Stora	Torras- papel	Zanders
23.1.1992, Zurich	X	X	X	X			X	X	X
27.3.1992, Zurich	X	X		X		X	X	X	X
26.5.1992, Zurich	X	X	X	X	X	X	X	X	X
10.9.1992, Zurich	X	X		X	X	X	X	X	X
25.11.1992, Zurich	X	X	X	X	X		X	X	X
9.2.1993, Zurich	X	X	X	X	X	X	X	X	X
26.4.1993, Zurich	X		X	X	X	X	X	X	X
7.7.1993, Zurich	X			X	X	X	X	X	X
14.9.1993, Frankfurt	X		X	X	X	X	X	X	X
18.11.1993, Brussels	X		X	X	X	X	X	X	X
19.1.1994, Paris	X		X	X	X	X	X	X	X
21.4.1994, Nice	X		X	X	X	X	X	X	X
21.6.1994, Frankfurt	X		X	X	X	X	X	X	X
22.9.1994, Frankfurt	X		X	X	X	X	X	X	X
10.11.1994, Frankfurt	X			X	X	X	X	X	X
2.2.1995, Frankfurt	X			X	X	X	X	X	X
21.4.1995, Frankfurt	X			X	X	X	X	X	X
28.6.1995, Frankfurt	X		X	X	X	X	X	X	X
29.9.1995, Frankfurt	X		X	X	X	X	X	X	X

## ANNEX II

## NATIONAL AND REGIONAL CARTEL MEETINGS: DATES , PARTICIPANTS AND MARKETS

Meeting dates	AWA	Binda	Carrs	Copigraph	Divipa	Koehler	Mougeot	Sappi	Stora	Torraspapel	Zanders	Zicuñaga
17.2.1992 Spanish market						X <sup>(1)</sup>		X <sup>(2)</sup>		X <sup>(3)</sup>		
5.3.1992 Spanish market	[two AWA employees] * <sup>(4)</sup>	X <sup>(5)</sup>			X <sup>(6)</sup>	X <sup>(7)</sup>		[two Sappi employees] * <sup>(8)</sup>	X <sup>(9)</sup>	X <sup>(10)</sup>		
Spring 92 (probably April) French market	[an AWA employee] * <sup>(11)</sup>			X <sup>(12)</sup>		X <sup>(13)</sup>	X <sup>(14)</sup>	[a Sappi employee] *, X <sup>(15)</sup>	X <sup>(16)</sup>	Sales manager in France <sup>(17)</sup>	[Zanders agent] * <sup>(18)</sup>	
16.7.1992 Spanish + Portuguese markets	[two AWA employees] * <sup>(19)</sup>					[a Koehler employee] * <sup>(20)</sup>		[a Unipapel employee] * <sup>(21)</sup>	X <sup>(22)</sup>	X <sup>(23)</sup>		
14.1.1993 UK + Irish markets	[two AWA employees] * <sup>(24)</sup>	[a Binda employee] * <sup>(25)</sup>	[a Carrs employee] * <sup>(26)</sup>			[two Koehler employees] * <sup>(27)</sup>		X <sup>(28)</sup>	[two Stora employees] * <sup>(29)</sup>			
Spring 93 (probably April) French market	[an AWA employee] * <sup>(30)</sup>			X <sup>(31)</sup>		X [a Koehler employee] * <sup>(32)</sup>	X <sup>(33)</sup>	[a Sappi employee] *, X <sup>(34)</sup>	X [a Stora employee] * <sup>(35)</sup>	Sales manager in France <sup>(36)</sup>	[Zanders agent] * <sup>(37)</sup>	
30.9.1993 Spanish market	X <sup>(38)</sup>	X <sup>(39)</sup>		X <sup>(40)</sup>	X <sup>(41)</sup>	[Koehler's agent] * <sup>(42)</sup>		[a Sappi employee] * <sup>(43)</sup>	X <sup>(44)</sup>	X <sup>(45)</sup>	X <sup>(46)</sup>	
1.10.1993 French market	[four AWA employees] * <sup>(47)</sup>			[two Copigraph employees] * <sup>(48)</sup>		[a Koehler employee] * <sup>(49)</sup>	[three Mougeot employees] * <sup>(50)</sup>	[a Sappi employee] * <sup>(51)</sup>	[two Stora employees] * <sup>(52)</sup>	X <sup>(53)</sup>	[two Zanders employees] * <sup>(54)</sup>	

Meeting dates	AWA	Binda	Carrs	Copigraph	Divipa	Koehler	Mougeot	Sappi	Stora	Torraspapel	Zanders	Zicuñaga
19.10.1993 Spanish market	X <sup>(55)</sup>				X <sup>(56)</sup>	X <sup>(57)</sup>		[a Sappi employee] *, X <sup>(58)</sup>	X <sup>(59)</sup>	X <sup>(60)</sup>	X <sup>(61)</sup>	X <sup>(62)</sup>
9.11.1993 UK + Irish markets	[three AWA employees] * <sup>(65)</sup>		[a Carrs employee] * <sup>(64)</sup>			[a Koehler employee] * <sup>(65)</sup>	[three Mougeot employees] * <sup>(66)</sup>	[two Sappi employees] * <sup>(67)</sup>	[two Stora employees] * <sup>(68)</sup>	[aTorraspapel employee] * <sup>(69)</sup>		
20.1.1994 French market	[two AWA employees] * <sup>(70)</sup>			[a Copigraph employee] * <sup>(71)</sup>		[a Koehler employee] * <sup>(72)</sup>	[a Mougeot employee] * <sup>(73)</sup>		[a Stora employee] * <sup>(74)</sup>			
9.2.1994 Portuguese market	[an AWA employee] * <sup>(75)</sup>					[a Koehler employee] * <sup>(76)</sup>		[a Unipapel employee] * <sup>(77)</sup>	[a Stora employee] * <sup>(78)</sup>	[a Torraspapel employee] * <sup>(79)</sup>		
3.5.1994 Spanish market	[two AWA employees] * <sup>(80)</sup>			X <sup>(81)</sup>	[two Divipa employees] * <sup>(82)</sup>	[two Koehler employees] * [Koehler's agent] * <sup>(83)</sup>		[a Sappi employee] *, X <sup>(84)</sup>	[two Stora employees] * <sup>(85)</sup>	[a Torraspapel employee] * <sup>(86)</sup>	[a Zanders employee] * <sup>(87)</sup>	[a Zicuñaga employee] * <sup>(88)</sup>
May 1994 French market	[two AWA employees] * <sup>(89)</sup>			[a Copigraph employee] * <sup>(90)</sup>		[two Koehler employees] * <sup>(91)</sup>	[two Mougeot employees] * <sup>(92)</sup>		[a Stora employee] * <sup>(93)</sup>	[a Torraspapel employee] * <sup>(94)</sup>		
29.6.1994 Spanish market	[two AWA employees] * <sup>(95)</sup>			X <sup>(96)</sup>	[two Divipa employees] * <sup>(97)</sup>	[Koehler's agent] * [two Koehler employees] * <sup>(98)</sup>		[a Sappi employee] *, X <sup>(99)</sup>	[a Stora employee] * <sup>(100)</sup>	[twoTorraspapel employees] * <sup>(101)</sup>	[a Zanders employee] * <sup>(102)</sup>	[a Zicuñaga employee] * <sup>(103)</sup>
23.9.1994 Spanish market	X <sup>(104)</sup>				X <sup>(105)</sup>	X <sup>(106)</sup>		X <sup>(107)</sup>	X <sup>(108)</sup>	X <sup>(109)</sup>	X <sup>(110)</sup>	X <sup>(111)</sup>

Meeting dates	AWA	Binda	Carrs	Copigraph	Divipa	Koehler	Mougeot	Sappi	Stora	Torraspapel	Zanders	Zicuñaga
19.10.1994 Spanish market	[an AWA employee] * (112)			[a Copigraph employee] * (115)	[a Divipa employee] * (114)	[a Koehler employee] * [Koehler's agent] * (115)	[a Mougeot employee] * (116)		[a Stora employee] * (117)	[a Torraspapel employee] * (118)		[a Zicuñaga employee] * (119)
6.12.1994 French market	[two AWA employees] * (120)			[a Copigraph employee] * (121)		[a Koehler employee] * (122)	[a Mougeot employee] * (123)		[a Stora employee] * (124)	[a Torraspapel employee] * (125)	[a Zanders employee] * (126)	
20.1.1995 French market	[two AWA employees] * (127)			[a Copigraph employee] * (128)		[a Koehler employee] * (129)	[a Mougeot employee] * (130)		[a Stora employee] * (131)	[a Torraspapel employee] * (132)	[a Zanders employee] * (133)	
Spring 1995 French market	X (134)			X (135)		X (136)	X (137)		X (138)	X (139)	X (140)	

\* Information between square brackets marked with an asterisk replace confidential information which has been deleted from the text.

(1) File p. 4588.

(2) File p. 4588.

(3) File p. 4588.

(4) File pp. 4703-4704, 7828.

(5) File p. 7828.

(6) File pp. 4703-4704, 7828.

(7) File pp. 4703-4704.

(8) File pp. 4703-4704, 4589.

(9) File p. 7828.

(10) File pp. 4703-4704.

(11) File pp. 7828 and 34, 223-224, 9940.

(12) File p. 7828.

(13) File pp. 34, 223-224, 9940 and 7828.

(14) File p. 7828.

(15) File pp. 34, 223-224, 9940 and 7828.

(16) File pp. 34, 223-224, 9940 and 7828.

(17) File pp. 34, 223-224, 9940 and 7828.

(18) File pp. 34, 223-224, 9940 and 7828.

(19) File pp. 4484, 7828.

(20) File pp. 4484, 7828.

(21) File pp. 4484, 7828.

(22) File p. 7828.

(23) File pp. 4484, 7828.

(24) File pp. 33-34, 223, 4655, 4657, 7828.

(25) File pp. 33-34, 223.

(26) File pp. 33-34, 7828.

(27) File pp. 33-34, 223, 4655, 4657, 7828.

(28) File pp. 33-34, 223, 4655, 4657, 7828.

- (<sup>29</sup>) File pp. 33-34, 223, 4655, 4657, 7828.  
(<sup>30</sup>) File pp. 34, 223-224, 9940 and 7828.  
(<sup>31</sup>) File p. 7828.  
(<sup>32</sup>) File pp. 5034, 7828.  
(<sup>33</sup>) File p. 7828.  
(<sup>34</sup>) File pp. 34, 223-224, 9940 and 7828.  
(<sup>35</sup>) File pp. 4798-4799, 7828.  
(<sup>36</sup>) File pp. 34, 223-224, 9940 and 7828.  
(<sup>37</sup>) File pp. 34, 223-224, 9940 and 7828.  
(<sup>38</sup>) File pp. 5, 7828.  
(<sup>39</sup>) File pp. 5, 7828.  
(<sup>40</sup>) File pp. 5, 7828.  
(<sup>41</sup>) File pp. 5, 7828.  
(<sup>42</sup>) File pp. 5, 7828.  
(<sup>43</sup>) File pp. 5, 7828.  
(<sup>44</sup>) File pp. 5, 7828.  
(<sup>45</sup>) File pp. 5, 7828.  
(<sup>46</sup>) File pp. 5, 7828.  
(<sup>47</sup>) File pp. 6, 7648, 7828, 9938, 9973.  
(<sup>48</sup>) File pp. 6, 7648, 7828, 9938, 9973.  
(<sup>49</sup>) File pp. 6, 7648, 7828, 9938, 9973 and 5025-5028, 5043.  
(<sup>50</sup>) File pp. 6, 7648, 7828, 9938, 9973.  
(<sup>51</sup>) File pp. 6, 7648, 7828, 9938, 9973.  
(<sup>52</sup>) File pp. 6, 7648, 7828, 9938, 9973.  
(<sup>53</sup>) File pp. 6, 7828, 9938, 9973.  
(<sup>54</sup>) File pp. 6, 7648, 7828, 9938, 9973.  
(<sup>55</sup>) File pp. 4474, 4658, 9939.  
(<sup>56</sup>) File pp. 4474, 4658, 9939.  
(<sup>57</sup>) File pp. 4474, 4658, 9939.  
(<sup>58</sup>) File pp. 4474, 4658, 9939.  
(<sup>59</sup>) File pp. 4474, 4658, 9939.  
(<sup>60</sup>) File pp. 4474, 4658, 9939.  
(<sup>61</sup>) File pp. 4474, 4658, 9939.  
(<sup>62</sup>) File pp. 4474, 4658, 9939.  
(<sup>63</sup>) File pp. 4649-7650, 7828, 9939.  
(<sup>64</sup>) File pp. 4649-7650, 7828, 9939.  
(<sup>65</sup>) File pp. 4649-7650, 7828, 9939.  
(<sup>66</sup>) File pp. 4649-7650, 7828, 9939.  
(<sup>67</sup>) File pp. 4649-7650, 7828, 9939.  
(<sup>68</sup>) File pp. 4649-7650, 7828, 9939.  
(<sup>69</sup>) File pp. 4649-7650, 7828, 9939.  
(<sup>70</sup>) File pp. 7650, 7828.  
(<sup>71</sup>) File pp. 7650, 7828.  
(<sup>72</sup>) File pp. 7650, 7828.  
(<sup>73</sup>) File pp. 7650, 7828.  
(<sup>74</sup>) File pp. 7650, 7828.  
(<sup>75</sup>) File pp. 35-41, 47-51, 4483-4484, 7828, 9939.  
(<sup>76</sup>) File pp. 35-41, 47-51, 4483-4484, 7828, 9939.  
(<sup>77</sup>) File pp. 35-41, 47-51, 4483-4484, 7828, 9939.  
(<sup>78</sup>) File pp. 35-41, 47-51, 4483-4484, 7828, 9939.  
(<sup>79</sup>) File pp. 35-41, 47-51, 4483-4484, 7828, 9939.  
(<sup>80</sup>) File pp. 8, 9938-9939, 9977-9978.  
(<sup>81</sup>) File pp. 8, 9938-9939, 9977-9978.  
(<sup>82</sup>) File pp. 8, 9938-9939, 9977-9978.  
(<sup>83</sup>) File pp. 8, 9938-9939, 9977-9978 and 5052, 5014-015, 5373.  
(<sup>84</sup>) File pp. 8, 9938-9939, 9977-9978.  
(<sup>85</sup>) File pp. 8, 9938-9939, 9977-9978 and 4788-4790, 5009, 5637-5638, 5690-5693.  
(<sup>86</sup>) File pp. 8, 9938-9939, 9977-9978.  
(<sup>87</sup>) File pp. 8, 9938-9939, 9977-9978.  
(<sup>88</sup>) File pp. 8, 9938-9939, 9977-9978.

<sup>(89)</sup> File pp. 7651, 7828.  
<sup>(90)</sup> File pp. 7651, 7828.  
<sup>(91)</sup> File pp. 7651, 7828.  
<sup>(92)</sup> File pp. 7651, 7828.  
<sup>(93)</sup> File pp. 7651, 7828.  
<sup>(94)</sup> File pp. 7651, 7828.  
<sup>(95)</sup> File pp. 4476, 4657-4659, 7828, 9940, 9979-9980.  
<sup>(96)</sup> File pp. 4476, 4657-4659, 7828, 9940, 9979-9980.  
<sup>(97)</sup> File pp. 4476, 4657-4659, 7828, 9940, 9979-9980.  
<sup>(98)</sup> File pp. 4476, 4657-4659, 7828, 9940, 9979-9980 and 5053, 5373-5374.  
<sup>(99)</sup> File pp. 4476, 4657-4659, 7828, 9940, 9979-9980.  
<sup>(100)</sup> File pp. 4476, 4657-4659, 7828, 9940, 9979-9980.  
<sup>(101)</sup> File pp. 4476, 4657-4659, 7828, 9940, 9979-9980.  
<sup>(102)</sup> File pp. 4476, 4657-4659, 7828, 9940, 9979-9980.  
<sup>(103)</sup> File pp. 4476, 4657-4659, 7828, 9940, 9979-9980.  
<sup>(104)</sup> File pp. 4476, 4565, 7828.  
<sup>(105)</sup> File pp. 4476, 4565, 7828.  
<sup>(106)</sup> File pp. 4476, 4565, 7828.  
<sup>(107)</sup> File pp. 4476, 4565, 7828.  
<sup>(108)</sup> File pp. 4476, 4565, 7828.  
<sup>(109)</sup> File pp. 4476, 4565, 7828.  
<sup>(110)</sup> File pp. 4476, 4565, 7828.  
<sup>(111)</sup> File pp. 4476, 4565, 7828.  
<sup>(112)</sup> File pp. 1839, 7652, 7828, 11495.  
<sup>(113)</sup> File pp. 1839, 7652, 7828, 11495.  
<sup>(114)</sup> File pp. 1839, 7652, 7828, 11495.  
<sup>(115)</sup> File pp. 1839, 7652, 7828, 11495.  
<sup>(116)</sup> File pp. 1839, 7652, 7828, 11495.  
<sup>(117)</sup> File pp. 1839, 7652, 7828, 11495.  
<sup>(118)</sup> File pp. 1839, 7652, 7828, 11495.  
<sup>(119)</sup> File pp. 1839, 7652, 7828, 11495.  
<sup>(120)</sup> File pp. 1751, 7652-7653, 7657-7658, 7828, 11493-11495.  
<sup>(121)</sup> File pp. 1751, 7652-7653, 7657-7658, 7828, 11493-11495.  
<sup>(122)</sup> File pp. 1751, 7652-7653, 7657-7658, 7828, 11493-11495.  
<sup>(123)</sup> File pp. 1751, 7652-7653, 7657-7658, 7828, 11493-11495.  
<sup>(124)</sup> File pp. 1751, 7652-7653, 7657-7658, 7828, 11493-11495.  
<sup>(125)</sup> File pp. 1751, 7652-7653, 7657-7658, 7828, 11493-11495.  
<sup>(126)</sup> File pp. 1751, 7652-7653, 7657-7658, 7828, 11493-11495.  
<sup>(127)</sup> File pp. 7653-7654, 7828, 19748.  
<sup>(128)</sup> File pp. 7653-7654, 7828.  
<sup>(129)</sup> File pp. 7653-7654, 7828.  
<sup>(130)</sup> File pp. 7653-7654, 7828.  
<sup>(131)</sup> File pp. 7653-7654, 7828.  
<sup>(132)</sup> File pp. 7653-7654, 7828.  
<sup>(133)</sup> File pp. 7653-7654, 7828.  
<sup>(134)</sup> File pp. 7654, 7828.  
<sup>(135)</sup> File pp. 7654, 7828.  
<sup>(136)</sup> File pp. 7654, 7828.  
<sup>(137)</sup> File pp. 7654, 7828.  
<sup>(138)</sup> File pp. 7654, 7828.  
<sup>(139)</sup> File pp. 7654, 7828.  
<sup>(140)</sup> File pp. 7654, 7828.

## ANNEX III

## SALES QUOTAS AGREED/SALES VOLUME INFORMATION EXCHANGED/REAL SALES

Table A

## Spanish market (Average monthly sales volumes in tonnes)

	1992		1993			
	Meeting 30.9.1993	Replies to the request for information	Meeting 30.9.1993		Replies to the request for information	
			Sales volumes	Q4 1993 Quotas	Sales volumes <sup>(1)</sup>	Monthly averages of Q4 sales
AWA <sup>(2)</sup>	805	778	903	850	887	556
Binda	192	*	150	100	*	*
Copigraph	214	*	265	265	*	*
Sappi <sup>(3)</sup>	108	*	109	120	69	*
Divipa	216	*	280	280	*	*
Stora <sup>(4)</sup>	227	227	168	200	167	152
Koehler <sup>(5)</sup>	915	910	776	850	765	*
Torraspapel <sup>(6)</sup>	1 234	*	1 139	1 200	1 382	*
Zanders <sup>(7)</sup>	230	233	251	140	162	*

(\*) = information not available

Table B

## French market (Sales volumes in tonnes, for 1992 and 1993 volumes are for 8 months January-August)

	1992		1993			
	Meeting 1.10.1993	Replies to the request for information	Meeting 1.10.1993		Replies to the request for information	
			Sales volumes	Q4 1993 Quotas	Sales volumes	Monthly averages of Q4 sales
AWA <sup>(8)</sup>	30 112	19 076	27 702	3 187	27 247	3 183
Koehler	8 712	*	7 475	892	*	*
Stora <sup>(9)</sup>	7 816	8 028	6 417	785	6 417	833
Zanders	11 015	*	9 497	TBA	*	*
Copigraph	11 546	*	11 833	1 289	*	*
Torraspapel	8 672	*	8 940	974	*	*
Mougeot <sup>(10)</sup>	3 166	3 150	3 958	550	3 958	600
Sappi	710	*	620	100	*	*

(\*) = information not available

<sup>(1)</sup> For AWA and Stora this column shows monthly average sales over eight months (January-August). For Sappi, Koehler, Torraspapel and Zanders monthly information was not available. For those companies this column shows the monthly average of total sales in 1993.

<sup>(2)</sup> File pp. 8222-8223, 8224-8225.

<sup>(3)</sup> File p. 9956.

<sup>(4)</sup> File pp. 9268, 9271.

<sup>(5)</sup> File p. 9831.

<sup>(6)</sup> File pp. 8997, 9003.

<sup>(7)</sup> File pp. 8606-8607.

<sup>(8)</sup> File pp. 8222-8223, 8224-8225.

<sup>(9)</sup> File pp. 9268, 9271.

<sup>(10)</sup> File pp. 7773-7774.



## ANNEX IV

**SALES VOLUME INFORMATION EXCHANGED ON 6.12.1994 / VOLUME INFORMATION RECEIVED IN  
RESPONSE TO COMMISSION REQUESTS FOR INFORMATION**

**Sales volumes (in tonnes) in the French market**

	Year 1993 (reels only)		Year 1994			
	Meeting 6.12.1994	Replies to the request for information	Meeting 6.12.1994 REELS	Meeting 6.12.1994 SHEETS	Replies to the request for information REELS	Replies to the request for information SHEETS
AWA <sup>(1)</sup>	33 233	30 133	31 891	13 000	29 628	12 571
Stora <sup>(2)</sup>	7 320	7 323	7 410	3 050 (-93)	7 136	3 052
Zanders <sup>(3)</sup>	10 360	10 126	12 500	2 200	13 234	2 399
Koehler <sup>(4)</sup>	8 930	8 853	9 000	2 700	9 029	2 637
Copigraph	14 600		14 150	3 050		
Torraspapel <sup>(5)</sup>	12 341	12 020	15 670	207	14 708	203
Mougeot <sup>(6)</sup>	5 980	5 943	5 200	0	5 343	
Sappi <sup>(7)</sup>	210	454 <sup>(8)</sup>	315	480	710 <sup>(9)</sup>	

<sup>(1)</sup> File pp. 8224, 8226, 8227.

<sup>(2)</sup> File pp. 9272, 9275, 9276.

<sup>(3)</sup> File pp. 8607, 8608.

<sup>(4)</sup> File p. 9819.

<sup>(5)</sup> File pp. 8997, 8998, 9004.

<sup>(6)</sup> File p. 7772.

<sup>(7)</sup> File pp. 9956-9957.

<sup>(8)</sup> Both reels and sheets.

<sup>(9)</sup> Both reels and sheets.

## ANNEX V

## PRICE INCREASE INITIATIVES FROM JANUARY 1994 TO SEPTEMBER 1995

Key for reading the tables:

a) = date increase effective,

b) = date increase notified to sales network and/or customers or date of other documentation on price increase.

R = reels, S= sheets

Table A

## January-March 1994

Belgium and Luxembourg <sup>(1)</sup>	AWA a) 1.2 b) 22.11/25.11 R, S 5 %	Koehler b) 8.12.1993 5 % for main CLP grades	Sappi a) 1.2 b) 1.12.1993 R, S 5 %			
Denmark <sup>(2)</sup>	AWA a) 1.2 b) 22.12.1993 R 3 %	Sappi a) 1.2 b) 1.12.1993 R 3 %	Stora a) 1.2 b) 13.12.1993 R 3 %			
Germany <sup>(3)</sup>	AWA a) 1.2 b) 22.11.1993 R, S 5 %	Copigraph a) 1.2 — R 8 % b) 16.12.1993 a) 1,3 — S 5 % b) 10.2	Koehler b) 8.12.1993 5 % for main CLP grades	Sappi a) 1.2 b) December 1993 R 8 %, S 5 %	Stora a) 1.2 b) 30.9.1993 R 8 %, S 5 %	Torraspapel a) February 1994 R 8 %
Italy <sup>(4)</sup>	AWA a) 1.2 b) 16.12.1993 R, S 10 %	Koehler a) 1.1 b) 8.12.1993 10 %	Sappi a) 1.2 b) 21.1 R, S 10 %			
The Netherlands <sup>(5)</sup>	AWA a) 1.2 b) 22.11/ 3.12.1993 R 5 %	Koehler b) 8.12 5 % for main CLP grades	Sappi a) 1.2 b) 1.12.1993 R 5 %	Stora a) 1.2 b) 10.12.1993 R 5 %		
Norway <sup>(6)</sup>	AWA a) 1.2 b) 7.12.1993 R 3 %	Sappi a) 1.2 b) 1.12.1993 R 3 %	Stora a) 1.2 b) 13.12.1993 R 3 %			
Sweden <sup>(7)</sup>	Koehler b) 8.12.1993 5 % for main CLP grades	Sappi a) 1.2 b) 1.12.1993 R 5 %	Stora a) 1.2 b) 13.12.1993 R 5 %			
The United Kingdom and Ireland <sup>(8)</sup>	AWA a) 1.2 b) — R 10 %, S 7,5 %	Carrs a) February S 7,5 %	Sappi a) 7.2 b) 21.1 R 10 %, S 7,5 %			

<sup>(1)</sup> File pp. 7834, 7863, 7928-7931; 5310; 2484, 2737, 9947, 10033, 10035-10036.

<sup>(2)</sup> File pp. 7836, 7980; 2484, 2737, 9947, 10033, 10035-10036; 9088, 9115, 9116.

<sup>(3)</sup> File pp. 7863; 13356, 13375-13376; 5310; 2484, 2738, 9947 and 10035-10036; 9050, 9068; 658

<sup>(4)</sup> File pp. 7846, 8059; 5310; 2484, 9947 and 10035-10036.

<sup>(5)</sup> File pp. 7848, 7863, 8088-8089; 5310; 2484, 2737, 9947, 10033, 10035-10036; 9128, 9155, 9156.

<sup>(6)</sup> File pp. 7849, 8109; 2484, 2737, 9947, 10033, 10035-10036; 9088, 9117, 9118.

<sup>(7)</sup> File pp. 5310; 2484, 2737, 9947, 10033, 10035-10036; 9088, 9120.

<sup>(8)</sup> File pp. 857; 11477; 2505-2506, 2484, 9947, 10025 and 10035-10036.

Table B  
April-May 1994

Denmark <sup>(1)</sup>	AWA a) 1.5 b) 16.3 R 6 %	Sappi a) 1.4 b) 21.1 R 6 %, S 4 %	Stora a) 1.5 b) 10.3 R 6 %, S 4 %	
France <sup>(2)</sup>	AWA a) 5.4 b) 21.2 R, S 6 %	Koehler a) April b) 20.4 6 %	Mougeot a) 5.4 b) 23.2 R 6 %	Sappi a) 1.4 b) 21.1 R, S 6 %
Germany <sup>(3)</sup>	Copigraph a) 1.5 b) 6.4 R 5 %	Koehler a) May 1995 b) 20.4 R, S (no % given)	Sappi a) 1.5 b) 21.1 R, S 5 %	Stora a) 1.5 b) 18.3 R 5 %
Italy <sup>(4)</sup>	Koehler a) April b) 20.4 10 %	Mougeot a) 1.4 b) 8.12.1993 10 %	Sappi a) 1.5 b) 21.1 R, S 10 %	
Norway <sup>(5)</sup>	AWA a) 1.5 b) 14.3, R 6 % b) 21.2, S 4 %	Sappi a) 1.4 b) 21.1 R 6 %, S 4 %	Stora a) 1.5 b) 10.3 R 6 %, S 4 %	
Sweden <sup>(6)</sup>	AWA a) 1.5 b) 28.2 R 6 %, S 4 %	Sappi a) 1.4 b) 21.1 R 6 %, S 4 %	Stora a) 1.5 b) 10.3 R 6 %, S 4 %	
The United Kingdom and Ireland <sup>(7)</sup>	AWA a) 13.4 b) — R, S 6 %	Carrs a) April S 6 %	Sappi a) 11.4 b) 21.2 R, S 6 %	Torraspapel a) 18.4 b) 22.3 R, S 6 %

<sup>(1)</sup> File pp. 7836, 7981; 9948, 10035-10036; 9088, 9114.

<sup>(2)</sup> File pp. 7838, 7999; 5314; 1894; 9948, 10035-10036.

<sup>(3)</sup> File pp. 13356, 13377; 5314; 9948, 10035-10036; 9050, 9067.

<sup>(4)</sup> File pp. 5314; 1894; 9948, 10035-10036.

<sup>(5)</sup> File pp. 7849, 8110-111; 9948, 10035-10036; 9088, 9112, 9113.

<sup>(6)</sup> File pp. 7855, 8187; 9948, 10035-10036; 9088, 9111.

<sup>(7)</sup> File pp. 7857; 11477; 2505-2506, 9946, 10025, 10026; 679, 680.

Table C  
July 1994

France <sup>(1)</sup>	AWA a) 4.7 b) 20.5 R 6 %	Mougeot a) 4.7 b) 16.5 R 6 %	Sappi a) 1.7 b) 23.6 R 6 % / 7 %
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<sup>(1)</sup> File pp. 7838, 8000; 1893; 2358, 2362, 9949, 10054, 10071.

Table D

## September-October 1994

Denmark <sup>(1)</sup>	AWA a) 1.9 b) 15.7 R 8 %	Sappi a) 1.9 b) 23.6 R 8 %	Stora a) 1.9 b) 27.6 R 8 %			
Finland <sup>(2)</sup>	AWA a) 1.9 b) — R 12 %, S 6 %	Sappi a) 1.9 b) 23.6 R 12 %, S 6 %	Stora a) 1.9 b) 27.6 R 12 %, S 6 %			
France <sup>(3)</sup>	AWA a) 1/3.10 b) 30.6 R 10 %, S 6 %	Copigraph a) 6.10 — R 10 % a) 11.10 — S 6 % b) 5.9	Sappi a) 1.10 b) 23/28.6 R 10 %	Stora a) 1.10 b) 28.7 R 10 %, S 6 %	Torraspapel a) October R 10 %, S 6 %	Zanders a) 1.10 b) 7.9 S 6 % and a) 3.10 b) 29.8 R 10 %
Germany <sup>(4)</sup>	AWA a) 1.9 b) 4.7 R 8 %, S 6 %	Copigraph a) 1.9 b) 25.7 R 8 %	Stora a) 1.9 b) 25.7 R 8 %	Torraspapel a) September R 8 %, S 6 %		
The Netherlands <sup>(5)</sup>	AWA a) 1.9 b) 28.6 R 8 %, S 6 %	Sappi a) 1.9 b) 23/28.6 R 8 %, S 6 %	Stora a) 1.9 b) 6.7 R 8 %, S 6 %			
Norway <sup>(6)</sup>	AWA a) 1.9 b) 24.6 R 8 %	Sappi a) 1.9 b) 23.6 R 8 %	Stora a) 1.9 b) 27.6 R 8 %			
Sweden <sup>(7)</sup>	AWA a) 1.9 b) 22.6 R 8 %	Sappi a) 1.9 b) 23/28.6 R 8 %	Stora a) 1.9 b) 27.6 R 8 %			
The United Kingdom and Ireland <sup>(8)</sup>	AWA a) 1.9/9.9 b) 4.7 R 8 %, S 6 %	Carrs a) September S 6 %	Sappi a) 12.9 b) — R 8 %, S 6 %	Torraspapel a) 12.9 b) 30.8 R 8 % a) 3.10 b) 29.9 S 6 %		

<sup>(1)</sup> File pp. 916, 7836, 7867, 7982; File pp. 2358, 9949, 10053-10054, 9088.<sup>(2)</sup> File pp. 916, 7867, 2358, 10053-10054, 9949; 9088, 9108.<sup>(3)</sup> File pp. 916, 7838, 7867, 8001-8002, 13356, 13365-13366, 2358, 9949, 10053-10054, 10071, 9231, 9243, 691, 8552.<sup>(4)</sup> File pp. 916, 7867, 13356, 13378-13379, 9050, 9066, 691.<sup>(5)</sup> File pp. 916, 7848, 7867, 8090, 2358, 9949, 10053-10054, 10055, 10069, 9128, 9152, 9153.<sup>(6)</sup> File pp. 916, 7849, 7867, 8112, 2358, 9949, 10053-10054, 9088, 9109.<sup>(7)</sup> File pp. 916, 7867, 2358, 9949, 10053-10054, 10076, 9088, 9110.<sup>(8)</sup> File pp. 916, 7857, 7867, 11478, 2358, 9946, 10053-10054, 392, 676-678, 691.

Table E

## December 1994-February 1995

France	AWA <sup>(1)</sup> a) 1.1 b) 26.9 R 10 % S 5 %	Copigraph <sup>(2)</sup> a) 1.1 b) 8.12/ 15.12 R 10 %, S 5 %	Koehler <sup>(3)</sup> a) 1. Qu. 1995 b) 26.4 R 11 % S 6 %	Sappi <sup>(4)</sup> a) 1.1 b) 7.10.1994 R 10 % S 5 %	Stora <sup>(5)</sup> a) 2.1 b) 22.11.1994 R 10 % S 5 %	Torraspapel a) January R 10 % S 5 % <sup>(6)</sup>	Zanders <sup>(7)</sup> a) 2.1 b) 1.12.1994 R 10 %
Germany	AWA <sup>(8)</sup> a) 1.12 b) 29.9 R 6 %	Sappi <sup>(9)</sup> a) 1.12 b) 7.10 R 6 %	Torraspapel a) December R 6 % <sup>(10)</sup>				
Italy	AWA <sup>(11)</sup> a) 2.1 b) 14.11.1994 R, S 15 %	Sappi <sup>(12)</sup> a) 1.1 b) 7.10.1994 R, S 15 %	Torraspapel a) January R, S 15 % <sup>(13)</sup>				
Spain	AWA <sup>(14)</sup> a) 16.1/1.2 b) 27.12.1994 R 10 % S 5 %	Koehler <sup>(15)</sup> a) 1. Qu. 1995 b) 26.4 R 11 % S 6 %	Sappi <sup>(16)</sup> a) 1.2 b) 19.12.1994 R 10 % S 5 %				
The United Kingdom and Ireland	AWA <sup>(17)</sup> a) 3.1.1995 b) — R 10 % S 5 %	Carrs <sup>(18)</sup> a) January 95 S 5 %	Koehler <sup>(19)</sup> a) 1. Qu. 1995 b) 26.4 R 11 % S 6 %	Sappi <sup>(20)</sup> a) 29.11 R 10 %, S 5 %	Torraspapel a) 5.12 b) 28.10 R 10 % S 5 % <sup>(21)</sup>		

<sup>(1)</sup> File pp. 918, 7872, 7873. According to the document on p. 918 the increase came in February.

<sup>(2)</sup> File pp. 13356, 13367-13368.

<sup>(3)</sup> File pp. 5195, 5320, 5322. Price increase in western Europe in January-March 1995.

<sup>(4)</sup> File p. 2494.

<sup>(5)</sup> File pp. 9231, 9242.

<sup>(6)</sup> File p. 691.

<sup>(7)</sup> File p. 8551.

<sup>(8)</sup> File pp. 7841, 7869, 8028.

<sup>(9)</sup> See footnote 4.

<sup>(10)</sup> See footnote 6.

<sup>(11)</sup> File pp. 918 (February 1995), 7846, 7873, 8063-8064.

<sup>(12)</sup> See footnote 4.

<sup>(13)</sup> See footnote 6.

<sup>(14)</sup> File pp. 918, 7853, 7879, 8153-8155. The document on p. 918 shows R 15 % and S 5 % increases for February.

<sup>(15)</sup> See footnote 3.

<sup>(16)</sup> File pp. 4572, 10098.

<sup>(17)</sup> File pp. 918, 7857, 7873. The document on p. 918 shows these increases for February 1995.

<sup>(18)</sup> File pp. 8247.

<sup>(19)</sup> See footnote 3.

<sup>(20)</sup> File pp. 2742, 9946.

<sup>(21)</sup> File pp. 691, 692.

Table F

## March-April 1995

Denmark	AWA <sup>(1)</sup> a) 1.4 b) 27.2 R 8 %	Sappi <sup>(2)</sup> a) 1.4 b) 20.2 R 8 %	Stora <sup>(3)</sup> a) 1.4 b) 8.2 R 8 %		
France	AWA <sup>(4)</sup> a) 3.4 b) 22.2 R 10 % (certain qualities 12,5 %)	Copigraph <sup>(5)</sup> a) 3.4, R 10 % a) 18.4, S 10 % b) 7.3	Sappi <sup>(6)</sup> a) 1.4 b) 20.2 R 10 %	Stora <sup>(7)</sup> a) 1.4 b) 16.2 R 10 %	Zanders <sup>(8)</sup> a) 3.4 b) 27.2 R 10 %
The Netherlands	AWA <sup>(9)</sup> a) 1.3 b) 30.1 R, S 6 %	Sappi <sup>(10)</sup> a) 15.3 b) 20.2 R, S 6 %	Stora <sup>(11)</sup> a) 1.3 b) 6.2 R, S 6 %		
Spain	AWA <sup>(12)</sup> a) 1.3 — R 6 % b) 22.2 a) 1.4 — S 10 %	Sappi <sup>(13)</sup> a) 1.3 — R 6 % a) 1.4 — S 10 % b) 20/16.2	Stora <sup>(14)</sup> a) 1.3 b) 16.2 R 6 %	Torraspapel <sup>(15)</sup> a) 1.3 — R 6 % a) 1.4 — S 10 % b) 8/9.2	
The United Kingdom and Ireland <sup>(16)</sup>	AWA <sup>(17)</sup> a) 1.3/3.3 R 8 %, S 5 %	Carrs <sup>(18)</sup> a) March S 5 %	Sappi <sup>(19)</sup> a) 6.3 R 8 %, S 5 %		

<sup>(1)</sup> File pp. 937, 7836, 7880, 7984.

<sup>(2)</sup> File pp. 2250-2251, 2492-2493, 9951.

<sup>(3)</sup> File pp. 9088, 9106.

<sup>(4)</sup> File pp. 937, 7838, 7879, 8006.

<sup>(5)</sup> File pp. 13356, 13369.

<sup>(6)</sup> File pp. 2250-2251, 2492-2493, 4769, 9951.

<sup>(7)</sup> File pp. 9231, 9241.

<sup>(8)</sup> File p. 8551.

<sup>(9)</sup> File pp. 937, 7880.

<sup>(10)</sup> File pp. 2250-2251, 2492-2493, 4769.

<sup>(11)</sup> File pp. 9128, 9149, 9150, 9151.

<sup>(12)</sup> File pp. 937, 3043, 7853, 7879, 8156-8160. File p. 3043 is a Sappi document dated 16.2.1995, which gives indirect evidence.

<sup>(13)</sup> File pp. 2250-2251, 2492-2493, 3043, 4567-4568 ('Existen varios fabricantes que no aplican el aumento hasta 1 de Marz a sus distribuidores (Feldm. AWA, etc.), como consecuencia de ello, la tarifa Febrero no se aplicará correctamente hasta 1 de Marzo. ... Grupo AWA obligó que la nueva tarifa se aplique 1 de MAYO.' Translation: 'There are various producers who are applying the agreed price increase to their distributors (Feldm. AWA etc.) only from 1 March. Consequently the February tariff will be applied correctly from 1 March ... the AWA group requires that the new tariff be implemented on 1 May.'). 4569, 4571-4575, 9950-9951, 10101, 10102.

<sup>(14)</sup> File p. 3043. Indirect evidence coming from a Sappi document dated 16.2.1995.

<sup>(15)</sup> File pp. 233, 241, 3043.

<sup>(16)</sup> File p. 1378. A document found on the premises of Mougeot and dated 2.2.1995 (the date of the general cartel meeting) includes the following: 'The UK market will increase by 8 % the 6 March so we propose you our best offer.'

<sup>(17)</sup> File pp. 937, 7857, 7879.

<sup>(18)</sup> File pp. 8247.

<sup>(19)</sup> File pp. 2250-2251, 2492-2493, 9946. See also p. 10125: 'UK prices will advance 5 % sheets, 8 % reels on the 6 March 1995.'

Table G  
May-July 1995

Belgium and Luxembourg	AWA <sup>(1)</sup> a) 1.6 b) 30.3 und 3.5 R, S 10 %	Koehler <sup>(2)</sup> a) 1.6/1.7 b) 25.4 10 %	Sappi <sup>(3)</sup> a) 1.6 b) 1.4 R 10 %			
France	AWA <sup>(4)</sup> a) 1.5 — S 10 % a) 1.7 — R 10 % b) 19.5 and a) 3.7 b) 21.5 R 8.7 %-13 % and 10 %	Copigraph <sup>(5)</sup> a) 7.7 b) 12.6 R 10 %	Koehler <sup>(6)</sup> a) 1.6/1.7 b) 25.4 10 %	Sappi <sup>(7)</sup> a) June 10 %	Stora <sup>(8)</sup> a) 2.5 b) 16.2 S 10 %	Zanders <sup>(9)</sup> a) 1.5 b) 14.4 S 10 % and a) 1.7 b) 7.6 R, S 10 %
Germany	AWA <sup>(10)</sup> a) 1.6 b) 3.4 R 10 %	Koehler <sup>(11)</sup> a) 1.6/1.7 b) 25.4 10 %	Sappi <sup>(12)</sup> a) 1.6 b) 1.4 R 10 %	Zanders <sup>(13)</sup> a) 1.6 b) 19/21.4 R 10 %		
The Netherlands	AWA <sup>(14)</sup> a) 1.6 b) 30.3 R 10 %	Koehler <sup>(15)</sup> a) 1.6/1.7 b) 25.4 10 %	Sappi <sup>(16)</sup> a) 1.6 b) 1.4 R 10 %	Stora <sup>(17)</sup> a) 1.6 b) 12.4 R 10 %		
The United Kingdom and Ireland	AWA <sup>(18)</sup> a) 1.5/7.5 b) — R 8 %, S 5 %	Carrs <sup>(19)</sup> a) May S 5 %	Sappi <sup>(20)</sup> a) 9.5 R 8 %, S 5 %			

<sup>(1)</sup> File pp. 7834, 7942-7947.

<sup>(2)</sup> File pp. 5320, 5322.

<sup>(3)</sup> File pp. 2739, 9952, 10114, 10115.

<sup>(4)</sup> File pp. 937, 7839, 7879, 7885-7886, 8007.

<sup>(5)</sup> File pp. 13356, 13370.

<sup>(6)</sup> File pp. 5320, 5322.

<sup>(7)</sup> File p. 4775.

<sup>(8)</sup> File pp. 9231, 9241.

<sup>(9)</sup> File pp. 8551.

<sup>(10)</sup> File pp. 7841, 7886, 8029. File p. 918 shows R 10 %, S 5 % increases for May 95.

<sup>(11)</sup> See footnote 6.

<sup>(12)</sup> File pp. 2739, 9952, 10114.

<sup>(13)</sup> File pp. 8543, 8566, 8567.

<sup>(14)</sup> File pp. 2486, 7848, 8095-8096.

<sup>(15)</sup> See footnote 6.

<sup>(16)</sup> See footnote 12.

<sup>(17)</sup> File pp. 9128, 9146, 9147, 9148.

<sup>(18)</sup> File pp. 7857, 7879, 7885-7886.

<sup>(19)</sup> File p. 8247.

<sup>(20)</sup> File p. 9946.

Table H

**September 1995**

The United Kingdom and Ireland	AWA <sup>(1)</sup> a) 1.9/10.9 b) — R 8 %, S 5 %	Carrs <sup>(2)</sup> a) September S 5 %	Sappi <sup>(3)</sup> a) 11.9 R 8 %, S 5 %
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<sup>(1)</sup> File pp. 7857, 7880, 7885-7886, 7887-7888.

<sup>(2)</sup> File p. 8248.

<sup>(3)</sup> See footnote 20, table G.