JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
24 October 1991 *

Index

* Language of the case: French.

In Case T-3/89,

Atochem SA, a company incorporated under French law, having its registered office at Puteaux, Hauts de Seine (France), represented by Xavier de Roux and Charles-Henri Léger, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Messrs Elvinger & Hoss, 15 Côte d'Eich,

applicant,

v

Commission of the European Communities, represented by Anthony McClellan, Principal Legal Adviser, acting as Agent, assisted initially by Luc Gyselen, a member of its Legal Service, and subsequently by N. Coutrelis, of the Paris Bar, with an address for service in Luxembourg at the office of R. Hayder, a national civil servant seconded to its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission's decision of 23 April 1986 relating to a proceeding under Article 85 of the EEC Treaty (IV/31.149-Polypropylene, Official Journal 1986 L 230, p. 1),

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES
(First Chamber),

composed of: J. L. Cruz Vilaça, President, R. Schintgen, D. Edward, H. Kirschner and K. Lenaerts, Judges,

Advocate General: B. Vesterdorf,
Registrar: H. Jung,

having regard to the written procedure and further to the hearing held from 10 to 15 December 1990,

after hearing the Opinion of the Advocate General at the sitting on 10 July 1991,

gives the following

Judgment

Facts and background to the action

1 This case concerns a Commission decision fining fifteen producers of polypropylene for infringing Article 85(1) of the EEC Treaty. The product which is the subject-matter of the contested decision (hereinafter referred to as 'the Decision'), polypropylene, is one of the principal bulk thermoplastic polymers. It is sold by the producers to processors for conversion into finished or semi-finished products. The largest producers of polypropylene have a range of more than 100 different grades covering a wide range of end uses. The major basic grades of polypropylene are raffia, homopolymer injection moulding, copolymer injection moulding, high-impact copolymer and film. The undertakings to which the Decision is addressed are all major petrochemical producers.

2 The west European market for polypropylene is supplied almost exclusively from European-based production facilities. Before 1977, that market was supplied by ten producers, namely Montedison (now Montepolimeri SpA), Hoechst AG, Imperial Chemical Industries PLC and Shell International Chemical Company Limited (called 'the big four'), which together account for 64% of the market, Enichem Anic SpA in Italy, Rhône-Poulenc SA in France, Alcudia in Spain, Chemische Werke Hüls and BASF AG in Germany and Chemie Linz AG in Austria. Following the expiry of the controlling patents held by Montedison, seven new producers came on stream in western Europe in 1977: Amoco and Hercules Chemicals N.V. in Belgium, ATO Chimie SA and Solvay et Cie SA in France, SIR in Italy, DSM N.V. in the Netherlands and Taqsa in Spain. Saga Petrokjemi AS & Co, a Norwegian producer, came on stream in the middle of 1978, and Petrofina SA in 1980. The arrival of the new producers, with nameplate capacity of some 480 000 t, brought a substantial increase in installed capacity in western Europe which for several years was not matched by the increase in demand in that market. This led to low rates of utilization of production capacity, which, however, rose progressively between 1977 and 1983, increasing from 60% to 90%. According to the Decision, supply and demand were roughly in balance from 1982. However, during most of the period covered by the investigation (1977-1983), the polypropylene market was reported to be characterized by either low profitability or substantial losses, owing in particular to the extent of the fixed costs and to the increase in the cost of the raw material, propylene. According to the Decision (point 8), in 1983 Montepolimeri SpA held 18% of the European polypropylene market, Imperial Chemical Industries PLC, Shell International

Chemical Company Limited and Hoechst AG each held 11%, Hercules Chemicals N.V. slightly below 6%, ATO Chimie SA, BASF AG, DSM N.V., Chemische Werke Hüls, Chemie Linz AG, Solvay et Cie SA and Saga Petrokjemi AS & Co from 3 to 5% and Petrofina SA about 2%. The Decision states that there was a substantial trade in polypropylene between Member States because each of the then EEC producers supplied the product in most, if not all, Member States.

3 ATO Chimie SA is one of the new producers which appeared on the market in 1977. Its position on the West European market was that of a small producer whose market share was between 3.1% and 3.2%.

4 On 13 and 14 October 1983, Commission officials, acting pursuant to Article 14(3) of Council Regulation No 17 of 6 February 1962, the first regulation implementing Articles 85 and 86 of the Treaty (Official Journal, English Special Edition 1959-1962, p. 87, hereinafter referred to as 'Regulation No 17'), carried out simultaneous investigations at the premises of the following undertakings, producers of polypropylene supplying the Community market:

— ATO Chimie SA, now Atochem ('ATO'),

— BASF AG ('BASF'),

— DSM N.V. ('DSM'),

— Hercules Chemicals N.V. ('Hercules'),

— Hoechst AG ('Hoechst'),

— Chemische Werke Hüls ('Hüls'),

— Imperial Chemical Industries PLC ('ICI'),

— Montepolimeri SpA, now Montedipe ('Monte'),

— Shell International Chemical Company Limited ('Shell'),

— Solvay et Cie SA ('Solvay'),

— BP Chimie ('BP').

No investigations were carried out at the premises of Rhône-Poulenc SA ('Rhône-Poulenc') or at the premises of Enichem Anic SpA.

5 Following the investigations, the Commission addressed requests for information under Article 11 of Regulation No 17 (hereinafter referred to as 'the request for information'), not only to the undertakings mentioned above but also to the following undertakings:

— Amoco,

— Chemie Linz AG ('Linz'),

— Saga Petrokjemi AS & Co, which is now part of Statoil ('Statoil'),

— Petrofina SA ('Petrofina'),

— Enichem Anic SpA ('Anic').

Linz, which is an Austrian undertaking, contested the Commission's jurisdiction and declined to reply to the request for information. In accordance with Article 14(2) of Regulation No 17, the Commission officials then carried out investigations at the premises of Anic and Saga Petrochemicals UK Ltd, the United Kingdom subsidiary of Saga, and of the selling agents of Linz established in the United Kingdom and in the Federal Republic of Germany. No request for information was sent to Rhône-Poulenc.

6 The evidence obtained during the course of those investigations and pursuant to the requests for information led the Commission to form the view that between 1977 and 1983 the producers concerned had, in contravention of Article 85 of the EEC Treaty, by a series of price initiatives, regularly set target prices and developed a system of annual volume control to share out the available market between them according to agreed percentage or tonnage targets. On 30 April 1984, the Commission therefore decided to open the proceedings provided for by Article 3(1) of Regulation No 17 and in May 1984 sent a written statement of objections to the undertakings mentioned above with the exception of Anic and Rhône-Poulenc. All the addressees submitted written answers.

7 On 24 October 1984, the hearing officer appointed by the Commission met the legal advisers of the addressees of the statements of objections in order to agree certain procedural arrangements for the hearing provided for as a part of the administrative procedure, which was to begin on 12 November 1984. At that meeting the Commission announced, as a result of the arguments advanced by the undertakings in their replies to the statement of objections, that it would shortly send them further material complementing the evidence already served on them regarding the implementation of price initiatives. On 31 October 1984, the Commission sent to the legal advisers of the undertakings a bundle of documents consisting of copies of the price instructions given by the producers to their sales offices together with tables summarizing those documents. In order to ensure the protection of business secrets, the sending of that material was made subject to certain conditions; in particular, the documents were not to be made known to the commercial services of the undertakings. The lawyers of a number of undertakings refused to accept those conditions and returned the documentation before the oral hearing.

8 In view of the information supplied in the written replies to the statement of objections, the Commission decided to extend the proceedings to Anic and Rhône-Poulenc. To that end, a statement of objections, similar to the statement of objections addressed to the other fifteen undertakings, was sent to those two undertakings on 25 October 1984.

9 The first session of the oral hearing took place from 12 to 20 November 1984. During that session all the undertakings were heard, with the exception of Shell (which refused to take part in any hearing) and Anic, ICI and Rhône-Poulenc (which considered that they had not had sufficient opportunity to prepare their case).

10 At that session, several undertakings refused to deal with the matters raised in the documentation sent to them on 31 October 1984, asserting that the Commission had completely changed the direction of its case and that at the very least they should have the opportunity to make written observations. Other undertakings claimed that they had had insufficient time to examine the documents in question before the hearing. A joint letter to that effect was sent to the Commission on 28 November 1984 by the lawyers of BASF, DSM, Hercules, Hoechst, ICI, Linz, Monte, Petrofina and Solvay. In a letter of 4 December 1984, Hüls associated itself with the view taken in the joint letter.

11 Consequently, on 29 March 1985 the Commission sent to the undertakings a new set of documentation, setting out price instructions given by the undertakings to their sales offices, accompanied by price tables, as well as a summary of the evidence relating to each price initiative for which documents were available. It requested the undertakings to reply both in writing and at further sessions of the oral hearing and stated that it was removing the original restrictions on disclosure to commercial departments.

12 By another letter of the same date the Commission replied to the argument raised by the lawyers that it had not clearly defined the legal nature of the alleged cartel under Article 85(1) and invited the undertakings to submit written and oral observations.

13 A second session of the oral hearing took place from 8 to 11 July 1985 and on 25 July 1985. Anic, ICI and Rhône-Poulenc submitted their observations and the other undertakings (with the exception of Shell) commented on the matters raised in the Commission's two letters of 29 March 1985.

14 The preliminary draft of the minutes of the oral hearing, together with all other relevant documentation, was given to the Members of the Advisory Committee on Restrictive Practices and Dominant Positions (hereinafter referred to as 'the Advisory Committee') on 19 November 1985 and sent to the applicants on 25 November 1985. The Advisory Committee gave its opinion at its 170th meeting on 5 and 6 December 1985.

15 At the end of that procedure, the Commission adopted the contested decision of 23 April 1986, which has the following operative part:

'Article 1

ANIC SpA, ATO Chemie SA (now Atochem), BASF AG, DSM N. V., Hercules Chemicals N.V., Hoechst AG, Chemische Werke Hüls (now Hüls AG), ICI PLC, Chemische Werke LINZ, Montepolimeri SpA (now Montedipe), Petrofina SA, Rhône-Poulenc SA, Shell International Chemical Co. Ltd, Solvay & Cie and SAGA Petrokjemi AG & Co. (now part of Statoil) have infringed Article 85(1) of the EEC Treaty, by participating:

— in the case of ANIC, from about November 1977 until a date in late 1982 or early 1983,

— in the case of Rhône-Poulenc, from about November 1977 until the end of 1980,

— in the case of Petrofina, from 1980 until at least November 1983,

— in the case of Hoechst, ICI, Montepolimeri and Shell from about mid-1977 until at least November 1983,

— in the case of Hercules, LINZ and SAGA and Solvay from about November 1977 until at least November 1983,

— in the case of ATO, from at least 1978 until at least November 1983,

— in the case of BASF, DSM and Hüls, from some time between 1977 and 1979 until at least November 1983,

in an agreement and concerted practice originating in mid-1977 by which the producers supplying polypropylene in the territory of the EEC:

(a) contacted each other and met regularly (from the beginning of 1981, twice each month) in a series of secret meetings so as to discuss and determine their commercial policies;

(b) set "target" (or minimum) prices from time to time for the sale of the product in each Member State of the EEC;

(c) agreed various measures designed to facilitate the implementation of such target prices, including (principally) temporary restrictions on output, the exchange of detailed information on their deliveries, the holding of local meetings and from late 1982 a system of "account management" designed to implement price rises to individual customers;

(d) introduced simultaneous price increase implementing the said targets;

(e) shared the market by allocating to each producer an annual sales target or "quota" (1979, 1980 and for at least part of 1983) or in default of a definitive agreement covering the whole year by requiring producers to limit their sales in each month by reference to some previous period (1981, 1982).

Article 2

The undertakings named in Article 1 shall forthwith bring the said infringement to an end (if they have not already done so) and shall henceforth refrain in relation to their polypropylene operations from any agreement or concerted practice which may have the same or similar object or effect, including any exchange of information of the kind normally covered by business secrecy by which the participants are directly or indirectly informed of the output, deliveries, stock levels, selling prices, costs or investment plans of other individual producers, or by which they might be able to monitor adherence to any express or tacit agreement or to any concerned practice covering prices or market sharing inside the EEC. Any scheme for the exchange of general information to which the producers subscribe (such as Fides) shall be so conducted as to exclude any information from which the behaviour of individual producers can be identified and in particular the undertakings shall refrain from exchanging between themselves any additional information of competitive significance not covered by such a system.

Article 3

The following fines are hereby imposed on the undertakings named herein in respect of the infringement found in Article 1:

(i) ANIC SpA, a fine of ECU 750 000, or LIT 1 103 692 500;

(ii) Atochem, a fine of ECU 1 750 000, or FF 11 973 325;

(iii) BASF AG, a fine of ECU 2 500 000, or DM 5 362 225;

(iv) DSM N.V., a fine of ECU 2 750 000, or HFL 6 657 640;

(v) Hercules Chemicals N.V., a fine of ECU 2 750 000, or BFR 120 569 620;

(vi) Hoechst AG, a fine of ECU 9 000 000, or DM 19 304 010;

(vii) Hüls AG, a fine of ECU 2 750 000, or DM 5 898 447.50;

(viii) ICI PLC, a fine of ECU 10 000 000, or UKL 6 447 970;

(ix) Chemische Werke LINZ, a fine of ECU 1 000 000, or LIT 1 471 590 000;

(x) Montedipe, a fine of ECU 11 000 000, or LIT 16 187 490 000;

(xi) Petrofina S. A., a fine of ECU 600 000, or BFR 26 306 100;

(xii) Rhône-Poulenc S. A., a fine of ECU 500 000, or FF 3 420 950;

(xiii) Shell International Chemical Co. Ltd, a fine of ECU 9 000 000, or UKL 5 803 173;

(xiv) Solvay & Cie, a fine of ECU 2 500 000, or BFR 109 608 750;

(xv) Statoil Den Norske Stats Oljeselskap AS (now incorporating SAGA Petrokjemi), a fine of ECU 1 000 000 or UKL 644 797.

Article 4

...

Article 5

...'

16 On 8 July 1986, the definitive minutes of the hearings, incorporating the textual corrections, additions and deletions requested by the applicants, was sent to them.

Procedure

17 These are the circumstances in which, by application lodged at the Registry of the Court of Justice on 31 July 1986, the applicant brought this action seeking annulment of the Decision. Thirteen of the fourteen other addressees of the Decision have also brought actions for its annulment (Cases T-1/89, T-2/89, T-4/89 and T-6/89 to T-15/89).

18 The written procedure took place entirely before the Court of Justice.

19 By order of 15 November 1989, the Court of Justice referred this case and the thirteen other cases to the Court of First Instance, pursuant to Article 14 of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities (hereinafter referred to as 'the Council Decision of 24 October 1988').

20 Pursuant to Article 2(3) of the Council Decision of 24 October 1988, an Advocate General was designated by the President of the Court of First Instance.

21 By letter of 3 May 1990, the Registrar of the Court of First Instance invited the parties to an informal meeting in order to determine the arrangements for the oral procedure. That meeting took place on 28 June 1990.

22 By letter of 9 July 1990, the Registrar of the Court of First Instance requested the parties to submit their observations on the possible joinder of Cases T-1/89 to T-4/89 and T-6/89 to T-15/89 for the purposes of the oral procedure. No party had any objection on this point.

23 By order of 25 September 1990, the Court joined the abovementioned cases for the purposes of the oral procedure, on account of the connection between them, in accordance with Article 43 of the Rules of Procedure, then applicable *mutatis*

mutandis to the procedure before the Court of First Instance by virtue of the third paragraph of Article 11 of the Council Decision of 24 October 1988.

24 By order of 15 November 1990 the Court adjudicated on the requests for confidential treatment lodged by the applicants in Cases T-2/89, T-3/89, T-9/89, T-11/89, T-12/89 and T-13/89 and granted them in part.

25 By letters lodged at the Registry of the Court between 9 October and 29 November 1990, the parties replied to the questions put to them by the Court in a letter sent to them by the Registrar on 19 July 1990.

26 In the light of the answers provided to its questions, on hearing the report of the Judge Rapporteur and after hearing the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

27 The parties presented oral argument and answered questions from the Court at the hearing which took place from 10 to 15 December 1990.

28 The Advocate General delivered his Opinion at the sitting on 10 July 1991.

Forms of order sought by the parties

29 Atochem SA claims that the Court should:

1. declare that Atochem has not breached Article 85(1) of the EEC Treaty;

2. annul the Commission decision of 23 April 1986 in so far as it found the applicant guilty of unlawful conduct and imposed a fine on it;

3. in the unlikely event that the Court should consider that Atochem's conduct falls within the scope of Article 85(1) and hold that in the absence of notification Article 85(3) cannot be applied to it, substantially reduce the fine, having regard to the facts put forward by the applicant;

The Commission claims that the Court should:

1. dismiss the application;

2. order the applicant to pay the costs.

Substance

30 It is necessary to examine, *first*, the applicant's grounds of challenge relating to a breach of the rights of the defence allegedly committed by the Commission in so far as it based the Decision on unreliable evidence; *secondly*, the grounds of challenge relating to proof of the infringement concerning (1) the findings of fact made by the Commission and (2) the application of Article 85(1) of the EEC Treaty; *thirdly*, the grounds of challenge relating to the reasoning of the Decision, impugning (1) the fact that it is common to several undertakings and (2) the insufficiency of the reasoning; and, *fourthly*, the grounds of challenge relating to the determination of the fine, which is alleged to be disproportionate to the gravity of the alleged infringement.

The rights of the defence

31 The applicant submits that the internal documents seized at the premises of ICI, on which the Commission based its entire case, have no evidentiary force in its regard. The alleged notes of meetings of polypropylene producers are handwritten documents which are hard to decipher and are the personal notes of an unknown author. Those documents cannot be treated as objective minutes of meetings reflecting the actual positions taken by participants. The Commission's assumption that the documents provided an accurate record of the meetings places the

producers in the impossible position of having to prove a negative, that is to say to show that certain statements were not made and certain agreements were not entered into.

32 The Commission states that it had no serious grounds to doubt the veracity of the documents seized at the premises of ICI. Furthermore, the Commission points out that ATO does not deny that other documents found at the premises of other producers, including ATO itself, confirm the contents of ICI's notes, although the Commission challenged ATO to dispute them.

33 The Commission adds that in order not to impair its argument that it is the victim of a sort of presumption of guilt the applicant disregards a number of pieces of evidence adduced by the Commission and analyses the Decision in an incomplete, selective and incorrect manner.

34 The Commission concludes that in accordance with the case-law of the Court of Justice (judgment in Joined Cases 29 and 30/83 *CRAM and Rheinzink* v *Commission* [1984] ECR 1679, paragraph 16) it is for ATO to provide 'another explanation of the facts', to be substituted for the more coherent and likely one given by the Commission on the basis of the large body of evidence which it discovered.

35 The Court notes first of all that the identity of the authors of most of the reports of meetings originating from ICI is known since ICI identified them in its reply to the request for information, which is attached to the main statement of objections as Appendix 8.

36 Next, the content of those reports is confirmed by various documents, such as a number of tables relating to the sales volumes of the various producers (some of which were found at the premises of the applicant) and price instructions matching in their amount and their date of entry into force the price targets mentioned in those meeting reports. Similarly, the replies of various producers to the requests

for information addressed to them by the Commission corroborate as a whole the content of those reports.

37 Consequently, the Commission could take the view that the meeting reports found at the premises of ICI reflected the matters discussed at the meetings fairly objectively. These meetings were chaired by different members of ICI's staff, which made it even more necessary for them to prepare written reports on them so as to give members of ICI's staff not attending particular meetings accurate information about the matters discussed at them.

38 In those circumstances, the burden is on the applicant to provide a different explanation of what occurred at the meetings it attended by advancing exact information, such as the notes it itself took during the meetings in which it took part or the testimony of members of its staff who attended the meetings. The applicant has not put forward, or even offered to put forward, any such evidence before the Court.

39 The question whether the Commission proceeded on the basis of a general presumption of guilt is indissociable from the question whether the findings of fact made by the Commission in the Decision are supported by the evidence which it has produced. Since this is a question of substance related to proof of the infringement, it must be examined at a later stage together with the other questions relating to proof of the infringement.

Proof of the infringement

40 According to the Decision (point 80, first paragraph), from 1977 onwards the polypropylene producers supplying the EEC had been party to a whole complex of schemes, arrangements and measures decided on in the framework of a system of regular meetings and continuous contact. The Decision (point 80, second paragraph) goes on to state that the overall plan of the producers was to meet and reach agreement upon specific matters.

41 It is therefore necessary to verify first of all whether the Commission has established to the requisite legal standard its findings of fact relating to (A) the system of regular meetings, (B) the price initiatives, (C) the measures designed to facilitate the implementation of the price initiatives and (D) the fixing of target tonnages and quotas, taking into account (a) the contested decision, (b) the arguments of the parties, before going on to (c) an assessment of them; it will then be necessary to review the application of Article 85(1) of the EEC Treaty to those facts.

1. *The findings of fact*

A — The system of regular meetings

(a) The contested decision

42 The Decision (point 18, first and third paragraphs) accuses ATO of having participated in the system of regular meetings of polypropylene producers by regularly attending the meetings held from 1978 until the end of September 1983 at least (point 105, fourth paragraph). It relies on ATO's reply to the request for information, in which it admits having attended the meetings from 1978 onwards (point 78, fourth paragraph, note 1).

43 In point 21 the Decision states that the purposes of the regular meetings of polypropylene producers were, in particular, the fixing of target prices and sales volumes and the monitoring of their observance by the producers.

(b) Arguments of the parties

44 The applicant does not deny having participated in the meetings, but considers that its participation did not have the significance attributed to it by the Commission, inasmuch as it had no anti-competitive intention, as is attested by its competitive behaviour on the market in terms both of price and of sales volume. It states that although it participated in the meetings under discussion it did so simply in order to permit an exchange of information with a view to obtaining better knowledge of likely market trends.

45 The Commission states that the applicant's attendance at producers' meetings whose purpose was anti-competitive has been established.

46 It states that ATO's position as regards the purpose of the meetings has varied in the course of the proceedings. The applicant initially indicated that the meetings were simply intended for the exchange of statistical and technical information. It then indicated that the discussions concerned the possibility of defining optimal quantitative objectives, which were never achieved. Finally, in its application to the Court, the applicant now claims that the producers did not attempt to agree on anything whatsoever but merely informed each other gratuitously of their future conduct on the market. According to the Commission, the terms which appear in the evidentiary documents which it has assembled are clear and demonstrate the existence of a cartel.

47 The Commission takes the view that the applicant's submission that it had no anti-competitive intention in participating in the meetings is irrelevant since the simple fact that foreseeable or desirable prices and quotas were discussed among competitors at the meetings in which the applicant participated constitutes at the very least concerted action intended to restrict competition.

(c) Assessment by the Court

48 The Court observes that in both its reply to the request for information (particular objections addressed to ATO, Appendix 1) and its written pleadings submitted to the Court the applicant stated that it had 'participated between 1978 and 1983 in a number of meetings with other producers' and that in ICI's reply to the request for information (main statement of objections, Appendix 8) the applicant is included among the regular participants in the meetings. The Commission was entitled to conclude from the combination of those pieces of evidence that the applicant was present at the meetings which the Decision alleges to have been held since 1978 (see in particular points 18 and 29 and Table 3).

49 The Commission was fully entitled to take the view, on the basis of the evidence provided by ICI in its reply to the request for information, which is borne out by numerous notes of meetings, that the purpose of the meetings was, in particular, to fix target prices and sales volumes. That reply contains the following passages: 'Generally speaking, however, the concept of recommending "Target Prices" was developed during the early meetings which took place in 1978'; '"Target prices" for the basic grade of each principal category of polypropylene as proposed by producers from time to time since 1 January 1979 are set forth in Schedule . . . '; and 'A number of proposals for the volume of individual producers were discussed at meetings'.

50 In addition, in explaining the organization of marketing 'experts" meetings as well as 'bosses" meetings from the end of 1978 or the beginning of 1979, ICI's reply to the request for information reveals that the discussions about the fixing of target prices and sales volumes became increasingly concrete and precise whereas in 1978 the 'bosses' had confined themselves to developing the actual concept of target prices.

51 Besides the foregoing passages, the following statement appears in ICI's reply to the request for information: 'Only "Bosses" and "Experts" meetings came to be held on a monthly basis'. The Commission was fully entitled to deduce from that reply, as well as from the identical nature and purpose of the meetings, that they were part of a system of regular meetings.

52 As regards the applicant's argument that its participation in the meetings was without anti-competitive intention, it should be observed that since it has been established that the applicant took part in those meetings and that their purpose was *inter alia* to fix price and sales volume targets the applicant at least gave its competitors the impression that it was participating in the meeting in the same spirit.

53 In those circumstances it is for the applicant to adduce evidence to show that its participation in the meetings was without anti-competitive intention by showing that its competitors knew that it was participating in the meetings in a spirit which was different from theirs.

54 It must be observed that the applicant's arguments based on its conduct on the market, intended to show that its participation in the meetings had the sole purpose of enabling it to obtain information on foreseeable market trends, is not evidence of such a kind as to prove that it had no anti-competitive intention, since the applicant puts forward no evidence capable of proving that its competitors knew that its conduct on the market would not be governed by what occurred at the meetings. Even if its competitors had known that, the mere fact of obtaining information which an independent operator keeps strictly secret as confidential business information is sufficient to demonstrate that it had an anti-competitive intention.

55 It follows that the Commission has established to the requisite legal standard that the applicant participated in the system of regular meetings of polypropylene producers between 1978 and September 1983, that the purpose of those meetings was, in particular, to fix price and sales volume targets, that they were part of a system and that the applicant's participation in those meetings was not without anti-competitive intention.

B — The price initiatives

(a) The contested decision

56 According to the Decision (points 28 to 51), a system for fixing price targets was implemented through price initiatives of which six could be identified, the first lasting from July to December 1979, the second from January to May 1981, the third from August to December 1981, the fourth from June to July 1982, the fifth from September to November 1982 and the sixth from July to November 1983.

57 With regard to the first of those price initiatives, the Commission (Decision, point 29) states that it has no detailed evidence of any meetings held or price initiatives undertaken in the first part of 1979. However, a note of a meeting held on 26 and 27 September 1979 shows that a price initiative had been planned based on a raffia grade price of DM 1.90/kg applicable from 1 July and DM 2.05/kg from 1 September. The Commission has price instructions from certain producers, including ATO, which show that those producers had given orders to national sales offices to apply that price level or its equivalent in national currency from 1 September, in most cases before the announcement of the planned increase in the trade press (Decision, point 30).

58 However, since it was difficult to get further price increases, the producers decided at the meeting held on 26 and 27 September 1979 to postpone the date for implementing the target by several months until 1 December 1979, the new plan being to 'hold' the existing levels over October with the possibility of an immediate step increase to DM 1.90 or 1.95/kg in November (Decision, point 31, first and second paragraphs).

59 As regards the second price initiative, the Commission, whilst admitting (in point 32 of the Decision) that no meeting notes were found for 1980, states that at least seven producers' meetings were held in that year (reference is made to Table 3 of the Decision). Although at the beginning of the year producers were reported in the trade press as favouring a strong price push during 1980, a substantial fall occurred in market prices to a level of DM 1.20/kg or less before they began to stabilize in about September of that year. Price instructions issued by a number of producers — DSM, Hoechst, Linz, Monte, Saga and ICI — indicated that in order to re-establish price levels targets were set for December 1980 — January 1981 based on raffia at DM 1.50/kg, homopolymer at DM 1.70/kg and copolymer DM 1.95 to 2.00/kg. A Solvay internal document includes a table comparing 'achieved prices' for October and November 1980 with what are referred to as 'list prices' for January 1981 of DM 1.50/1.70/2.00. The original plan was to apply these levels from 1 December 1980 (a meeting was held in Zurich on 13 to 15 October) but this initiative was postponed to 1 January 1981.

60 In the Decision (point 33) it is stated that ATO took part in two meetings held in January 1981, at which it was decided that a price increase, fixed in December 1980 for 1 February 1981, was required in two stages on the basis of DM 1.75/kg for raffia: the 1 February target was to remain at DM 1.75/kg and a target of DM 2.00/kg was to be introduced 'without exception' from 1 March. A table was drawn up in six national currencies of the target prices for six principal grades, to come into effect on 1 February and 1 March 1981.

61 According to the Decision (point 34), the plan to move to DM 2.00/kg on 1 March does not, however, appear to have succeeded. The producers modified their expectations and now hoped to reach the DM 1.75/kg level by March. An experts' meeting, of which no record survives, was held in Amsterdam on 25 March 1981 but immediately afterwards at least BASF, DSM, ICI, Monte and Shell gave instructions to raise target (or 'list') prices to the equivalent of DM 2.15/kg for raffia, effective on 1 May. Hoechst gave identical instructions for 1 May but was some four weeks behind the others in doing so. Some of the producers allowed their sales offices flexibility to apply 'minimum' or 'rock bottom' prices somewhat below the agreed targets. During the first part of 1981 there was a strong upward movement in prices, but despite the fact that the 1 May increase was strongly promoted by the producers momentum was not maintained. By mid-year the producers anticipated either a stabilizing of price levels or even some downward movement as demand fell during the summer.

62 As regards the third price initiative, the Decision (point 35) states that Shell and ICI had already foreseen a further price initiative in September/October 1981 in June of that year when the slowing down of the first-quarter price rise had become apparent. Shell, ICI and Monte met on 15 June 1981 to discuss methods of implementing higher prices in the market. Within a few days of this meeting both ICI and Shell instructed their sales offices to prepare the market place for a major rise in September based on a plan to move the raffia price to DM 2.30/kg. Solvay also reminded its Benelux sales office on 17 July 1981 to warn customers of a substantial price increase due to take effect on 1 September, the exact amount of which was to be decided in the last week of July, when an experts' meeting was planned for 28 July 1981. The original plan to go for DM 2.30/kg in September 1981 was revised, probably at this meeting, with the planned level for August back

to DM 2.00/kg for raffia. The September price was to be DM 2.20/kg. A hand-written note obtained at the premises of Hercules and dated 29 July 1981 (the day after the meeting, which Hercules probably did not attend) lists these prices as the 'official' prices for August and September and refers in cryptic terms to the source of the information. More meetings were held in Geneva on 4 August and in Vienna on 21 August 1981. Following these sessions, new instructions were given by producers to go for a price of DM 2.30/kg on 1 October. BASF, DSM, Hoechst, ICI, Monte and Shell gave virtually identical price instructions to implement these prices in September and October.

63 According to the Decision (point 36), the plan now was to move during September and October 1981 to a 'base price' level of 2.20 to DM 2.30/kg for raffia. A Shell document indicates that originally a further step increase to DM 2.50/kg on 1 November had been mooted but was abandoned. Reports from the various producers showed that during September prices increased and the initiative continued into October 1981, reaching achieved market prices of some 2.00 to DM 2.10/kg for raffia. A Hercules note shows that during December 1981 the target of DM 2.30/kg was revised downwards to a more realistic DM 2.15/kg, but reports that 'general determination got prices up to DM 2.05, the closest ever to published (sic) target prices'. By the end of 1981, the trade press was reporting polypropylene market prices as raffia 1.95 to DM 2.10/kg, some 20 pfennig below the producers' targets. Capacity utilization was said to be running at a 'healthy' 80%.

64 The fourth price initiative of June to July 1982 took place as supply and demand returned into balance on the market. That initiative was decided upon at the producers' meeting of 13 May 1982, at which ATO participated and during which a detailed table of price targets for 1 June was drawn up for various grades of polypropylene in various national currencies (DM 2.00/kg for raffia) (Decision, points 37, 38 and 39, first paragraph).

65 The meeting of 13 May 1982 was followed by price instructions from ATO, BASF, Hoechst, Hercules, Hüls, ICI, Linz, Monte and Shell, corresponding, with a few insignificant exceptions, to the target prices set at the meeting (Decision, point 39, second paragraph). At the meeting on 9 June 1982, the producers were able to announce only modest increases.

66 According to the Decision (paragraph 40), the applicant also participated in the fifth price initiative of September-November 1982 decided upon at the meeting on 20 and 21 July 1982, the aim of which was to achieve a price of DM 2.00/kg by 1 September and DM 2.10/kg by 1 October, since it was present at the majority if not all of the meetings held between July and November 1982 in which this initiative was planned and monitored (Decision, point 45). At the meeting on 20 August 1982, the increase planned for 1 September was postponed until 1 October, and that decision was confirmed at the meeting on 2 September 1982 (Decision, point 41).

67 Following the meetings of 20 August and 2 September 1982, ATO, DSM, Hercules, Hoechst, Hüls, ICI, Linz, Monte and Shell gave price instructions in accordance with the price target set at those meetings (Decision, point 43).

68 According to the Decision (point 44), at the meeting on 21 September 1982, in which the applicant participated, an examination of the measures taken to achieve the target previously set was undertaken and the undertakings expressed general support for a proposal to raise the price to DM 2.10/kg by November-December 1982. That increase was confirmed at the meeting on 6 October 1982.

69 Following the meeting on 6 October 1982, BASF, DSM, Hercules, Hoechst, Hüls, ICI, Linz, Monte, Shell and Saga gave price instructions applying the increase decided upon (Decision, point 44, second paragraph).

70 Like BASF, DSM, Hercules, Hoechst, Hüls, ICI, Linz, Monte and Saga, the applicant supplied the Commission with price instructions issued to its local sales offices, which corresponded not only with each other in terms of amount and timing but also with the target-price table attached to ICI's account of the experts' meeting held on 2 September 1982 (Decision, point 45, second paragraph).

71 According to the Decision (point 46, second paragraph), the December 1982 meeting resulted in an agreement that the level planned for November-December was to be established by the end of January 1983.

72 Finally, according to the Decision (point 47), the applicant participated in the sixth price initiative of July-November 1983. At the meeting on 3 May 1983, it was agreed that the producers would try to apply a price target of DM 2.00/kg in June 1983. However, at the meeting on 20 May 1983, the target previously set was postponed until September and an intermediate target was fixed for 1 July (DM 1.85/kg). Subsequently, at a meeting on 1 June 1983, the producers present, including ATO, reaffirmed complete commitment to the DM 1.85/kg increase. On that occasion, it was agreed that Shell would lead publicly in a specialized trade journal, European Chemical News (ECN).

73 The Decision (point 49) states that after the meeting of 20 May 1983, ICI, DSM, BASF, Hoechst, Linz, Shell, Hercules, ATO, Petrofina and Solvay issued instructions to their sales offices to apply from 1 July a price table based on DM 1.85/kg for raffia. It goes on to state that only fragmented price instructions were obtained from ATO and Petrofina but these confirmed that these producers were implementing the new price levels, somewhat belatedly in the case of Petrofina and Solvay. The Decision concludes that, with the exception of Hüls, for which the Commission found no price instructions for July 1983, all the producers which had attended the meetings or had promised support for the new price target of DM 1.85/kg are shown to have given instructions to implement the new price.

74 The Decision (point 50) also points out that further meetings, in which all the regular participants took part, took place on 16 June, 6 and 21 July, 10 and 23 August and 5, 15 and 29 September 1983. At the end of July and beginning of August 1983, BASF, DSM, Hercules, Hoechst, Hüls, ICI, Linz, Solvay, Monte and Saga all issued price instructions to their various national sales offices for application from 1 September based on raffia at DM 2.00/kg, whilst a Shell internal note of 11 August, relating to its prices in the United Kingdom, indicated that its United Kingdom subsidiary was 'promoting' basic prices to be in force on 1 September corresponding to the targets fixed by the other producers. By the end of the month, however, Shell was instructing the United Kingdom sales office to postpone the full increase until the other producers had established the desired basic level. The Decision states that, with minor exceptions, those instructions were identical by grade and currency.

75 According to the Decision (point 50, last paragraph), the instructions obtained from the producers show that it was later decided to maintain the impetus of the September move with further steps based on raffia at DM 2.10/kg on 1 October, rising to DM 2.25/kg on 1 November. It is further stated (point 51, first paragraph) that BASF, Hoechst, Hüls, ICI, Linz, Monte and Solvay each sent instructions to their sales offices setting identical prices for October and November, with Hercules initially fixing slightly lower prices.

76 The Decision (point 51, second and third paragraphs) states that ATO and Petrofina attended all relevant meetings, but that they claim that if any internal price instructions were given for the period covering the July-November 1983 price initiative they were by word of mouth. However, an internal note obtained at the premises of ATO and dated 28 September 1983 shows a table headed 'Rappel du prix de cota (sic)' giving for various countries prices for September and October for the three main grades of polypropylene which are identical to those of BASF, DSM, Hoechst, Hüls, ICI, Linz, Monte and Solvay. During the investigation at the premises of ATO in October 1983 the representatives of the undertaking confirmed that these prices were communicated to sales offices.

77 According to the Decision (point 105, fourth paragraph), whatever the date of the last meeting, the infringement lasted until November 1983, since the agreement continued to produce its effects at least until that time, November being the last month for which it is known that target prices were agreed and price instructions issued.

78 Finally, the Decision (point 51, last paragraph) points out that, according to the trade press, by the end of 1983 polypropylene prices had 'firmed' to reach a raffia market price of DM 2.08 to 2.15/kg (compared with the reported target of DM 2.25/kg).

(b) Arguments of the parties

79 The applicant submits in general that the target prices were not objectives which the producers set themselves but forecasts which they made of the price levels likely to prevail on the market on the date in question, having regard to market conditions and foreseeable movements in the cost of factors of production. Those forecasts were particularly necessary inasmuch as the producers were in a position of weakness in relation to their customers, since supply exceeded demand. In the applicant's view those attempts at forecasts cannot be treated as price-fixing. It concludes that it never committed itself to charging a particular price and that the meetings which it attended never had, for it, such a purpose.

80 It states that between 1979 and 1981 the Decision identifies three price initiatives but that ATO is accused of being involved only in one of them, namely the July-December 1979 initiative.

81 The applicant goes on to argue in relation to that price initiative that on 29 August 1979 it decided, in an entirely legitimate manner, to increase its prices from 1 September 1979 on the basis of public information, which had appeared in the trade press on 6 August 1979, that the main producers, Monte and ICI, were preparing to increase their prices. It also points out that the Commission does not allege that it took part in any producers' meeting at that time and that it

acknowledged in the Decision (point 29) that it did not know the purpose of the meetings held by producers at that time.

82 As regards the June-July 1982 price initiative, it states that it was as a result of news in the trade press on 24 May 1982 (annex 5 to its application) that it decided to increase its prices from 1 June 1982, thus following an increase by the major producers and taking into account an increase in the price of the raw material. Moreover, its prices were higher than those of its competitors for homopolymer and copolymer (Appendix ATO F1 to the Commission's letter of 29 March 1985).

83 As regards the September-November 1982 price initiative, the Commission relies on a telex message sent by ATO to its sales office in the Federal Republic of Germany on 17 September 1982 (letter of 29 March 1985, Appendix ATO G2), but that telex, far from calling for a price increase, contains an instruction to maintain existing prices and review market trends. Furthermore, the Commission has treated an official polypropylene price list from ICI (main statement of objections, Appendix 29) as the target prices for that period although there is no indication that it was the subject of any discussion among producers.

84 As regards the July-November 1983 price initiative, the applicant argues that the telex message which it sent on 14 June 1983 to its agent in Great Britain (letter of 29 March 1985, Appendix ATO H1) does not justify the inference that there was any agreement on prices since it indicated the desired price level for July 1983 'subject to any downward movement in the market' and the price instructions of the various undertakings are staggered from 17 May to 26 July 1983. It submits that those price instructions could equally be the result of a common assessment by different producers of the prevailing market trend. As regards the final stage of that initiative, the Commission relies on the fact that ATO's prices were identical to the market prices on 28 September 1983, although those prices had already been announced publicly in July and August 1983 by other producers.

85 The Commission considers that in describing the so-called 'target' prices as simple individual forecasts the applicant is indulging in a purely semantic game intended to justify *a posteriori* conduct contrary to Article 85 of the EEC Treaty. It explains that since, as ATO indicates, the producers were in a position of weakness in relation to their customers, they tried to take control of price levels and increase them by presenting a united front to customers. That did not, of course, eliminate all possibility of individual negotiations with customers, but those negotiations took place on the basis of the prices agreed upon at the producers' meetings.

86 The Commission maintains that the price instruction issued by ATO on 29 August 1979 (letter of 29 March 1985, Appendix ATO A1) shows that it participated in the first price initiative. It acknowledges that that price instruction was issued after the appearance in ECN on 30 July and 6 August 1979 (annex 4 to the application) of Monte's announcement of a price increase, but considers that to be unimportant since other producers issued their price instructions before Monte's announcement, which shows that there was prior agreement, which must have been made at one of the meetings which took place at the time and in which the applicant participated.

87 It adds that it is established that the polypropylene producers, including ATO, met regularly at the time and that those meetings already concerned the setting of target prices, as ICI indicated in its reply to the request for information (main statement of objections, Appendix 8).

88 The Commission points out that the note of the meeting of 26 and 27 September 1979 (main statement of objections, Appendix 12) indicates that DM 2.05/kg 'remains the target', and deduces that the target had therefore been fixed previously. It concludes that the simultaneous price increase of July-August 1979 is the result of concerted action among the producers.

89 It adds that although it does not have evidence that ATO took part in the second or third price initiatives, it knows that ATO was present at the meetings at which those initiatives were agreed upon.

90 As regards the fourth price initiative, of June-July 1982, the Commission submits that the note of the meeting of 13 May 1982 (main statement of objections, Appendix 24) shows that the price target of DM 2.00/kg for 1 June 1982 was fixed at that meeting, before the publication of that price in ECN on 24 May 1982, and that it is therefore irrelevant that ATO's price instruction was issued on 27 May 1982, that is to say after the appearance of ECN.

91 As regards the fifth price initiative, of September-November 1982, it points out that the telex message of 17 September 1982 cited by ATO followed another telex message sent some days earlier, on 7 September 1982 (letter of 29 March 1985, Appendix ATO G1), after a producers' meeting held on 2 September 1982, and that the prices set in that telex message corresponded to those in the list drawn up by ICI after that meeting (main statement of objections, Appendix 29).

92 As regards the sixth price initiative, of July-November 1983, the Commission points out that the note of the meeting of 3 May 1983 (main statement of objections, Appendix 38) establishes that it was agreed that the producers would charge the maximum price authorized by the French price control authorities (ATO stated that it might be possible to obtain authorization to increase prices by 4%) and that a target price of DM 2.00/kg for June 1983 was agreed upon.

93 It adds that an ICI internal note, made following a producers' meeting on 20 May 1983 (main statement of objections, Appendix 39), indicates that ICI was seeking to attain a price of DM 2.00/kg for September but that it would obviously be impossible to do that in one step, so that it would be necessary to carry out an intermediate increase in June at the latest. At the meeting of 1 June 1983 that intermediate step was referred to, and it appears from the note of that meeting (main statement of objections, Appendix 40) that that step had been agreed upon among the producers and that Shell was to initiate it by announcing an increase publicly in ECN. From those various pieces of evidence the Commission concludes that it seems reasonable to believe that that agreement was reached at the meeting of 20 May 1983. The Commission points out that the prices communicated by ATO to its British agent in its telex message of 14 June 1983 are similar to those of its competitors.

94 The Commission submits, finally, that the ATO internal note of 28 September 1983 headed 'Rappel des prix du cota (sic)' indicates prices for four countries for the period of October and November 1983 and for the main grades of polypropylene which are identical to those of its competitors, and that during the investigation carried out in October 1983 representatives of the undertaking confirmed that those prices had been communicated to the sales offices.

(c) Assessment by the Court

95 With regard to the nature of the price targets, which the applicant describes as 'forecasts', the Court observes that at the hearing the applicant was not able to reply to a question put to it by the Court, which wished to know why those 'forecasts' made by the producers systematically predicted a price increase in relation to the level attained on the market at the time of the forecast, although since supply exceeded demand the producers were in a position of weakness in relation to their customers, as the applicant has not denied, and could therefore have foreseen falling prices.

96 Consequently, the price targets set at the meetings were not mere forecasts of price levels likely to prevail on a given date but price levels which the producers would seek to achieve together on a specific date (Decision, point 21(a)) and were to serve as a common basis for price negotiations with their respective customers (Decision, point 74, second paragraph, *in fine*).

97 The Court finds that the records of the regular meetings of polypropylene producers show that the producers which participated in those meetings agreed to the price initiatives mentioned in the Decision. For example, the note of the meeting on 13 May 1982 (main statement of objections, Appendix 24) states:

'everyone felt that there was a very good opportunity to get a price rise through before the holidays + after some debate settled on DM 2.00 from 1st June (UK 14th June). Individual country figures are shown in the attached table'.

98 Since it has been established to the requisite legal standard that the applicant participated in those meetings, the applicant cannot assert that it did not support the price initiatives which were decided on, planned and monitored at those meetings, without providing any evidence to corroborate that assertion. In the absence of such evidence, there is no reason to believe that the applicant would not have supported those initiatives, unlike other participants at the meetings.

99 In this regard, it must be noted that the applicant has raised two arguments to show in general that it did not, at the regular meetings of polypropylene producers, subscribe to the price initiatives agreed upon. It argues first that its participation in the meetings was not anti-competitive in intention and, secondly, that it took no account of the outcome of the meetings in determining its conduct on the market as regards prices.

100 Neither of those arguments can be accepted as evidence capable of corroborating the applicant's assertion that it did not subscribe to the agreed price initiatives. The Court must point out that the Commission has proved to the requisite legal standard that the applicant's participation in the meetings was not without anti-competitive intention, so that the first argument put forward by the applicant is not founded in fact. As regards the second argument, it must be observed that even if it were supported by the facts it would not gainsay the applicant's participation in the fixing of target prices at the meetings but would at most tend to show that the applicant did not put into effect the results of those meetings. Indeed, the Decision in no way asserts that the applicant charged prices which always corresponded to the price targets agreed upon at the meetings, which shows that the contested decision does not rely on the applicant's implementation of the outcome of meetings in order to establish that it participated in the fixing of those price targets.

101 The Court must now examine the evidence put forward by the applicant to show that it did not participate in the various price initiatives.

102 As regards the applicant's participation in the July-December 1979 price initiative, it must be pointed out first that, contrary to the applicant's assertions, the Decision (point 29) does allege that producers' meetings were held during the first half of 1979 and, secondly, that the Court has already held that the Commission has proved to the requisite legal standard the participation of the applicant in those meetings. It follows, moreover, from the corresponding price instructions issued by the applicant, BASF, Hoechst, ICI, Linz and Shell that the initiative intended to achieve DM 2.05/kg on 1 September 1979 had been decided upon and announced at the end of July. The existence of that initiative and its postponement to 1 December 1979 are established by the note of the meeting of 26 and 27 September 1979 (main statement of objections, Appendix 12), which states: '2.05 remains the target. Clearly 2.05 not achievable in Oct., nor in Nov. Plan now is 2.05 on 1/12'.

103 It follows that the Commission has established to the requisite legal standard that the September 1979 price increase was not the result of a form of 'price leadership' by one producer followed independently by the applicant but the result of the fixing of price targets by the applicant and the other producers for the period from July to December 1979.

104 The Court further holds that in participating in the meetings held during 1980 and the meetings of January 1981 at which the price initiative for early 1981 was decided on, planned and monitored the applicant took part in that price initiative.

105 Similarly, the Court holds that in participating in the meetings at which the August-December 1981 price initiative was decided on, planned and monitored the applicant took part in that price initiative.

106 As regards the June-July 1982 price initiative, the Court notes that it appears from the note of the meeting of 13 May 1982 (main statement of objections, Appendix 24) that that initiative was decided upon at that meeting, which the applicant attended. It is therefore irrelevant that following that meeting the applicant issued its price instructions only after the price initiative had been made public in ECN.

107 As regards the September-November 1982 price initiative, the Court observes that the telex message which is said to be incriminating in relation to that initiative is that of 7 September 1982 (letter of 29 March 1985, Appendix ATO G1), which is merely confirmed by that of 17 September (letter of 29 March 1985, Appendix G2), indicating a price corresponding to that contained in an ICI note attached to the note of the meeting of 2 September 1982 (main statement of objections, Appendix 29), in which the applicant participated. It may therefore be concluded that that telex message was the implementation of the price initiative agreed upon by the applicant and other producers.

108 It follows from the note of the meeting of 1 June 1983 (main statement of objections, Appendix 40), in which the applicant participated, which is corroborated by an ICI internal note made on 23 May 1983 following a meeting held on 20 May 1983 (main statement of objections, Appendix 39), that a price initiative was agreed upon at those meetings for the month of September 1983 and that the applicant duly informed its sales department in Great Britain on 14 June 1983 (letter of 29 March 1985, Appendix ATO H1).

109 The applicant's arguments based on the identical nature of the constraints faced by the various producers cannot explain the fact that their price instructions, expressed in different national currencies, were identical, since the identical nature of those constraints was restricted to certain factors of production, such as the price of raw materials, and did not relate to general expenses, wage costs or tax rates, which meant that the profitability threshold for the various producers was significantly different. That is shown, for example, by the note of the meeting of the 'European Association for Textile Polyolefins' of 22 November 1977 (main statement of objections, Appendix 6), in which the applicant did not participate, according to which in order to reach the profitability threshold Hoechst sought a price of DM 1.85/kg, ICI a price of DM 1.60/kg, Rhône-Poulenc a price of FF 3.50 and Shell a price of DM 1.50/kg.

110 As regards the last stage of the July-December 1983 price initiative, the Court considers that the applicant cannot rely on the public announcement of prices in ECN to explain the fact that its price instructions were identical to those of its competitors for 28 September 1983, since it is clear from the note of the meeting of 1 June 1983 that at that time when a price initiative was decided on it was announced in the trade press. That note states: 'Shell was reported to have committed themselves to the move and would lead publicly in ECN'.

111 The manner in which the price instructions issued by different producers correspond permits the conclusion that those price initiatives were implemented by the producers.

112 Furthermore, the Commission was fully entitled to deduce from ICI's reply to the request for information (main statement of objections, Appendix 8), in which it is stated that '"Target prices" for the basic grade of each principal category of polypropylene as proposed by producers from time to time since 1 January 1979 are set forth in Schedule . . . ', that those initiatives were part of a system of fixing target prices.

113 It follows that the Commission has established to the requisite legal standard that the applicant was one of the polypropylene producers amongst whom there emerged common intentions concerning the price initiatives mentioned in the Decision and that those initiatives were part of a system.

C — The measures designed to facilitate the implementation of the price initiatives

(a) The contested decision

114 In the Decision (Article 1(c) and point 27; see also point 42) the Commission asserts that the applicant agreed with the other producers various measures

designed to facilitate the implementation of target prices, such as temporary restrictions on output, exchanges of detailed information on their deliveries, the holding of local meetings and, from the end of September 1982, a system of 'account management' designed to implement price rises to individual customers.

115 As regards the system of 'account management', whose later more refined form, 'account leadership', dates from December 1982, the applicant, like all the producers, was nominated coordinator or 'leader' for at least one major customer, in respect of whom it was charged with secretly coordinating its dealings with suppliers. Under that system, customers were identified in Belgium, Italy, Germany and the United Kingdom and a 'coordinator' was nominated for each of them. In December 1982, a more general adoption of the system was proposed, with an account leader named for each major customer who would guide, discuss and organize price moves. Other producers which had regular dealings with the customer were known as 'contenders' and would cooperate with the account leader in quoting prices to the customer in question. In order to 'protect' the account leader and the contenders, any other producers approached by the customers were to quote prices higher than the desired target. Despite ICI's assertions, according to which the scheme collapsed after only a few months of partial and ineffective operation, the Commission states in the Decision that a full note of the meeting held on 3 May 1983 shows that at that time detailed discussions took place on individual customers, on the prices offered or to be offered to them by each producer, and on the volumes supplied or on order.

116 The Decision (point 20) also asserts that ATO attended local meetings held to discuss implementation on a national level of arrangements agreed in the full sessions.

(b) Arguments of the parties

117 The applicant denies that it took any measures to ensure observance of the price targets, for the simple reason that it did not have a common price policy with the other producers. It points out, moreover, that in the Decision the Commission restricts itself to setting out a list of accusations made against unidentified

producers in respect of their conduct on dates which are generally not specified. In any event, the Commission has adduced no evidence of ATO's participation in such actions.

118 It denies having ordered its sales offices to give up certain sales volumes rather than giving way on prices, having exerted pressure on other producers to adopt an alleged common price policy, having diverted supplies towards overseas markets or having exchanged information on plant closures.

119 In relation to the allegation of giving up certain sales volumes the applicant states that on any market where prices are falling every seller has the choice of maintaining his prices while sacrificing sales volume or maintaining sales volume while sacrificing prices, and that the Commission cannot regard the choice of one of those strategies as the consequence of participation in a cartel.

120 As regards its alleged participation in a system of 'account management' or 'account leadership', the applicant claims that the Commission's objections are unfounded, first because it could not have been named 'account leader' for BIHR, which had not been its customer for years and with which it could not, therefore, negotiate prices, and secondly because the note of a meeting in spring 1983 (main statement of objections, Appendix 37), to which the Commission refers in accusing ATO of participating in an 'account leadership' system in Italy, is not conclusive since it is simply an *a posteriori* record of two specific sales.

121 The Commission states that the applicant accepted at the meeting of 2 September 1982 that in order to achieve the price targets agreed upon it would be necessary to give up certain sales volumes. It refers in that regard to the note of that meeting (main statement of objections, Appendix 29), in which it is stated:

'The ground rules were restated and the meaning of commitment to the proposals clarified. It was made clear that companies should be prepared to lose business rather than break the prices.'

122 According to the Commission, the note of the meeting of 2 December 1982 (main statement of objections, Appendix 33) establishes the participation of ATO in the 'account leadership' system, where it appears along with Shell as the 'account leader' for BIHR. The Commission explains the fact that ATO's name appears in parentheses on the basis that ATO's role was probably to assist Shell with its particular knowledge of the structure of the French market and the French price legislation. That is confirmed by the note of the meeting of 3 May 1983 drawn up by ICI (main statement of objections, Appendix 38), which mentions ICI's role in showing the 'account leadership' could be made to operate in the context of the French price control system.

123 The Commission further considers that the note of a meeting held in spring 1983 (main statement of objections, Appendix 37) proves ATO's participation in the 'account leadership' system and its cooperation in that system in Italy. ATO was allocated certain volumes to be supplied to two customers whose 'account leader' was Monte at a specific price for the month of April. It thus acted as a 'contender' in relation to those two undertakings.

124 Finally, it argues that a system of 'account leadership' such as that created by the polypropylene producers could only operate effectively if everyone cooperated.

(c) Assessment by the Court

125 The Court considers that point 27 of the Decision is to be interpreted in the light of the second paragraph of point 26, not as contending that each of the producers committed itself individually to adopt all the measures mentioned there but as asserting that at various times those producers adopted at those meetings together with the other producers a set of measures mentioned in the Decision and designed to bring about conditions favourable to an increase in prices, in particular

by artificially reducing the supply of polypropylene, and that the implementation of the various measures involved was by common agreement shared between the various producers according to their specific situation.

126 It must be concluded that in participating in the meetings during which that set of measures was adopted (in particular those of 13 May, 2 and 21 September 1982 (main statement of objections, Appendices 24, 29, 30], the applicant subscribed to it, since it has not adduced any evidence to prove the contrary. In this regard, the adoption of the system of 'account leadership' is clear from the following passage appearing in the record of the meeting of 2 September 1982:

'about the dangers of everyone quoting exactly DM 2.00 A.'s point was accepted but rather than go below DM 2.00 it was suggested & generally agreed that others than the major producers at individual accounts should quote a few pfs higher. Whilst customer tourism was clearly to be avoided for the next month or two it was accepted that it would be very difficult for companies to refuse to quote at all when, as was likely, customers tried to avoid paying higher prices to the regular suppliers. In such cases producers would quote but at above the minimum levels for October'.

Similarly, at the meeting of 21 September 1982, in which the applicant participated, it was stated: 'In support of the move, BASF, Hercules and Hoechst said they would be taking plant off line temporarily' and at the meeting of 13 May 1982 Fina stated: 'Plant will be shut down for 20 days in August'.

127 As regards the question of 'account leadership', the Court observes that ATO is mentioned in Table 3 attached to the note of the meeting of 2 December 1982 (main statement of objections, Appendix 33), in which it participated, as 'account leader' for BIHR alongside Shell, even though its name appears in parentheses, and that its name appears in the notes of two meetings in spring 1983 (main statement of objections, Appendices 37 and 38), whose content indicates that they were devoted mainly to the examination of the system of 'account leadership'.

128 It follows from ATO's participation in those meetings and the mention beside its name in the notes of those meetings of the names of other undertakings or quantities sold that the applicant played an active role in the 'account leadership' system, and it is not necessary to specify whether it was as an 'account leader', as a 'contender', as a supplier or simply by providing information regarding its sales or the French price control system that it took part in that system.

129 The Court further notes that the applicant does not dispute that it took part in local meetings for the French market and that the purpose of those meetings is borne out by the note of the meeting of 12 August 1982 (main statement of objections, Appendix 27), which shows that those meetings were intended to ensure the implementation, at local level, of a particular price initiative.

130 It follows from the foregoing that the Commission has established to the requisite legal standard that the applicant was one of the polypropylene producers amongst whom there emerged common intentions concerning the measures designed to facilitate the implementation of the price initiatives mentioned in the Decision.

E — Target tonnages and quotas

(a) The contested decision

131 According to the Decision (point 31, third paragraph), it was 'recognized that a tight quota system [was] essential' at the meeting held on 26 and 27 September 1979, the note of which refers to a scheme proposed or agreed in Zurich to limit

monthly sales to 80% of the average achieved during the first eight months of the year.

132 The Decision (point 52) further points out that before August 1982 various schemes for sharing the market were applied. While percentage shares of the estimated available business had been allocated to each producer, there was not at this stage any systematic limitation in advance of overall production. Thus, estimates of the total market had to be revised on a rolling basis and the sales (in tonnes) of each producer had to be adjusted to fit the percentage entitlement.

133 Volume targets (in tonnes) were set for 1979 based in part at least on sales in the preceding three years. Tables found at the premises of ICI show the 'revised target' for each producer for 1979 compared with actual tonnage sales achieved during that period in Western Europe. The existence of a market-sharing scheme for 1979 is confirmed by documents found at the premises of ATO which show the targets of the four French producers (ATO, Rhône-Poulenc, Solvay and Hoechst France) for each national market (Decision, point 54).

134 By the end of February 1980, volume targets — again expressed in tonnage terms — had been agreed for 1980 by the producers, based on an expected market of 1 390 000 t. According to the Decision (point 55), a number of tables showing the 'agreed targets' for each producer for 1980 were found at the premises of ATO and ICI. The original estimated total market available proved over-optimistic and the quota of each producer had to be revised downwards to fit total consumption during the year of only 1 200 000 t. Except for ICI and DSM, the sales achieved by the various producers were largely in line with their targets.

135 According to the Decision (point 56), the sharing of the market for 1981 was the subject of prolonged and complex negotiations. At the meetings in January 1981, it was agreed that as a temporary measure to help to achieve the February/March price initiative each producer would restrict monthly sales to one-twelfth of 85%

of the 1980 'target'. In preparation for a more permanent scheme, each producer communicated to the meeting the tonnage it hoped to sell during 1981. However, added together, those 'aspirations' largely exceeded total forecast demand. In spite of various compromise schemes put forward by Shell and ICI, no definitive quota agreement was reached for 1981. As a stopgap measure the producers took the previous year's quota of each producer as a theoretical entitlement and reported their actual sales each month to the meeting. In this way actual sales were monitored against a notional split of the available market based on the 1980 quota (Decision, point 57).

136 The Decision (point 58) states that for a 1982 scheme complicated quota proposals were advanced which attempted to reconcile divergent factors such as previous achievements, market aspirations and available capacity. The total market to be divided was estimated at 1 450 000 t. Some producers submitted detailed plans for market sharing while others were content to communicate only their own tonnage aspirations. At the meeting on 10 March 1982 Monte and ICI tried to reach an agreement. The Decision (point 58, last paragraph) states, however, that, as in 1981, no definitive agreement was reached and for the first half of the year the monthly sales for each producer were communicated during the meetings and monitored against its achieved percentage share in the previous year. According to the Decision (point 59), in the August 1982 meeting negotiations for an agreement on quotas for 1983 were held and ICI held bilateral discussions with each of the producers on the new system. However, pending the introduction of such a quota scheme, producers were required in the second part of 1982 to aim to restrict their monthly sales to the same percentage of the overall market which each of them had achieved in the first six months of 1982. Thus, in 1982, the market shares of medium-sized producers such as ATO had reached a relative equilibrium (described by ATO as a 'quasi-consensus') and were stable in comparison with previous years in the case of the majority of producers.

137 According to the Decision (point 60), for 1983 ICI invited each producer to indicate its own quota ambitions and suggestions for what percentage each of the others should be allowed. Monte, Anic, ATO, DSM, Linz, Saga and Solvay, as well as the German producers via BASF, submitted their own detailed proposals. The various proposals were then processed by computer to obtain an average

which was compared with the aspirations of each producer. Those steps enabled ICI to propose guidelines for a new framework agreement for 1983. Those proposals were discussed at the meetings of November and December 1982. A proposal initially restricted to the first quarter of the year was discussed at the meeting on 2 December 1982. The note of that meeting drawn up by ICI shows that ATO, DSM, Hoechst, Hüls, ICI, Monte and Solvay, as well as Hercules, found their allocated quota 'acceptable' (Decision, point 63). Those facts are borne out by the ICI note of a telephone conversation with Hercules of 3 December 1982.

138 The Decision (point 63, third paragraph) states that a document found at the premises of Shell confirms that an agreement was made, since it endeavoured not to exceed its quota. That document also confirms that a volume control scheme was continued into the second quarter of 1983 since, in order to keep its market share in the second quarter close to 11%, national sales companies in the Shell group were ordered to reduce their sales. The existence of that agreement is confirmed by the note of the meeting on 1 June 1983, which, although not mentioning quotas, relates to exchanges of details of the tonnages sold by each producer in the previous month, which would indicate that some quota system was in operation (Decision, point 64).

(b) Arguments of the parties

139 The applicant states as a preliminary point that its participation in quota agreements is belied by the rapid and consistent increase in its market share, which moved from 3.27% in 1979 to 3.35% in 1980, 3.36% in 1981, 3.51% in 1982 and 3.59% in 1983, by the fact that its production capacity was fully used and by the fact that its actual performance was always well above the alleged quotas.

140 It argues that as evidence for its alleged participation in a quota system the Commission relies on tables in respect of which neither the author, the rules for compiling them or the source of the figures appearing in them is known. The

Commission cannot assert that those tables represent market-sharing agreements without adducing evidence that all the producers were agreed that the share of each of them should be limited to a certain level. That level could not in any event be that fixed in the tables at issue, since the total sum of the producers' targets corresponds not to the real market but to an ideal market in which the desires of each of them would be met. The applicant argues that the Commission has in fact confused a simple statistical exercise of observation of market trends carried out at ICI with evidence of an agreement on quotas.

141 More specifically, the applicant is of the view that as regards 1979 the table found at the premises of ICI (main statement of objections, Appendix 55), which sets out opposite the sales volumes of the various producers for 1976 to 1979 their 'revised targets' for 1979, and the indication of the targets set by the French producers in a document found at the premises of ATO (annex to the letter of 3 April 1985) do not constitute evidence of actual sharing of the market since the author, the source of the figures and the use for which the first of those documents was intended are unknown and the second document simply sets out the targets which each of the French producers had set for themselves for 1979.

142 As regards 1980, it argues that the tables produced by the Commission are contradictory because they indicate different values. That cannot be explained by changes in the initial proposals because an agreement could be reached only if the market was first defined. In the event, the total figures for each producer vary in each case. Accordingly, the tables are nothing more than a collation of the individual targets of each producer.

143 As regards 1981, the applicant points out that the Commission has acknowledged the absence of a definitive quota agreement for that year but alleges that the producers exchanged figures representing their 'ambitions', the total of which significantly exceeded total foreseeable demand. In inferring, from the fact that ICI compared the sales made by each producer with its market share in 1980, the existence of a positive measure under which each producer was assigned as a quota a percentage of its market share for the previous year the Commission confuses a

simple exercise of observation of market trends with proof of an agreement on quotas.

144 The applicant specifically stresses that as regards 1982 the Commission itself acknowledges that there was no quota agreement and repeats that the figures exchanged by the producers merely represented their own sales targets.

145 It argues that in respect of 1983 the documents relied on against it by the Commission are not conclusive. The existence at the premises of a third party of a document (main statement of objections, Appendix 85) reflecting the processing by computer of data whose origin and reference are unknown to ATO does not justify the conclusion that the applicant and other producers provided ICI with proposals for producers' quotas. ATO denies having made such proposals. It further states that the link drawn by the Commission between the figure which appears by ATO's name in that document and the figure which appears in an undated and barely legible handwritten note found at ATO's premises (particular objections, ATO, Appendix 17) is unfounded.

146 The applicant considers that the mention of ATO's name in an ICI internal note dated 8 December 1982 (main statement of objections, Appendix 77) whose author speculates whether ATO would accept a specific quota for a quarter in 1983 is no evidence of ATO's agreement to a quota.

147 Finally, it submits that the Shell internal document (main statement of objections, Appendix 90) on which the Commission relies in order to establish that a quota agreement was concluded for the second quarter of 1983 does not mention ATO's name and thus cannot establish its participation in a quota system for that period. Furthermore, the applicant states that the Commission cannot infer from the exchange of information among producers on the sales they had made, which is attested by the note of the meeting of 1 June 1983 (main statement of objections, Appendix 40), that a quota system was applied.

148 The Commission considers that ATO's growth, if any, cannot impugn its conclusion that that undertaking took part in the arrangements for sharing the market fairly among the producers. Such growth might at most, but not necessarily, show that ATO did not commit itself fully to implementing those arrangements. However, the infringement is constituted not by the implementation of any particular quota but by participation in concerted action aimed at sharing the market. In any event, according to figures in the Commission's possession, ATO's market share remained more or less stable from 1979 to 1983, fluctuating between 3.14% and 3.20%.

149 It states that it is by means of a partial and one-sided presentation of the evidentiary documents relating to the allocation of quotas that ATO can maintain that those documents in fact contain only the individual targets of each producer, which correspond not to the real market but to an ideal where the desires of each would be met. Moreover, it is hard to see why a producer, having set its sales target for any given financial year, would feel the need to inform its competitors of it 'gratuitously'.

150 The Commission goes on to state that the applicant's participation in the fixing of quotas for 1979 and 1980 and provisional measures for 1981 may be inferred from the mention of its name in several tables setting out previous sales volumes and quotas for the various producers. Among those documents the Commission refers more specifically to five.

151 The first is an undated table found at the premises of ICI (main statement of objections, Appendix 55) headed 'Producers' Sales to West Europe', which sets out for all the polypropylene producers in western Europe the sales figures in kt for 1976, 1977 and 1978 and figures under the headings '1979 actual' and 'revised target'. ATO was allocated a 'revised target' of 38.3 kt. According to the Commission, that document proves ATO's participation in a market-sharing scheme for 1979 since it defines the quotas for each producer for that year.

152 The second is the note of the meeting of 26 and 27 September 1979 (main statement of objections, Appendix 12), which shows that agreement was reached at that meeting on 80% of the quotas initially fixed in the first document.

153 The third document comprises a series of tables found at the premises of ATO (annex, letter of 3 April 1985) setting out the sales figures of the four French producers (ATO, Rhône-Poulenc, Solvay and Hoechst France) in various western European countries for each of the last four months of 1979. Under certain of those tables there is a comparison between the figures achieved and the quotas: '85% of the quotas' or '84.7% of the quotas'. That document proves ATO's participation not only in a market-sharing scheme for 1979 but also in the monitoring of the implementation of that scheme by the four French producers.

154 That evidence is corroborated by a fourth document, a table found at the premises of both ATO and ICI (main statement of objections, Appendices 59 and 61), which compares the sales of all the producers in terms of tonnages and market shares under the following headings: '1979 actual', '1980 target', '[1980] actual' and '1981 aspirations'. The Commission points out that in its reply to the request for information (main statement of objections, Appendix 8) ICI stated in relation to that document that 'the source of information for actual historic figures in this table would have been the producers themselves'.

155 According to the Commission, those documents show that the producers reached agreement on sales volumes for each of them, taking as a basis for negotiation figures reflecting the ambitions of each. The fluctuation in the tonnages attributed to the various producers results from the fact that because of an initially over-optimistic estimate of the market it was necessary to adjust the tonnages corresponding to the quotas agreed in terms of market share to reflect the new estimate of the total market. That conclusion is corroborated by a final document, the note of two meetings in January 1981 (main statement of objections, Appendix 17),

according to which 'compared with target tonnages based on a 1.2 million tonne market in Western Europe in 1980 individual companies performances were reported as follows: . . . ATO: Target (kt) 37.2/Actual (kt) 38.2'.

156 The Commission acknowledges that no quota agreement could be concluded for 1981. However, it considers that provisional measures were taken. The Commission points out that it appears from the note of the abovementioned meetings in January 1981 that the producers compared their actual performances with the targets set, and from a table found at the premises of ICI but originating from an Italian producer (main statement of objections, Appendix 65) that the producers compared their 1981 sales with those in the previous year. It concludes that provisional measures were taken for 1981 in the absence of a general agreement allocating sales volumes for that year.

157 The Commission states that in respect of 1982 various documents from Monte and ICI (main statement of objections, Appendices 69 to 71) show that proposals were made by those producers but were unsuccessful.

158 It states that it appears from the tables attached to the notes of the meetings of 9 June 1982 and 20 August 1982 (main statement of objections, Appendices 25 and 28) that during the first half of 1982 the producers compared their monthly sales with those achieved in 1981. It adds that for the second half of the year it appears from the second of those notes that the producers were asked to restrict their monthly sales to the level of those of the first half. It appears from the tables attached to the notes of the meetings of 6 October, 2 November and 2 December 1982 (main statement of objections, Appendices 31 to 33) that the producers compared their sales in the second half of the year with those in the first.

159 The Commission goes on to state that it has the ambitions and proposals for themselves and other producers which various producers expressed at ICI's request and provided to it with a view to the conclusion of an agreement on quotas for 1983 (main statement of objections, Appendices 74 to 76 and 78 to 84). Those proposals were then processed by computer to obtain an average which was compared with the aspirations of each producer. The resulting document was commented on in an ICI internal note headed 'Polypropylene Framework' (main statement of

objections, Appendix 87), which *inter alia* describes ATO's aspirations as entirely 'unreasonable'. The figure for ATO's aspirations is to be found not only in the computer document but also in a handwritten note from ATO (particular objections, ATO, Appendix 17). To those documents the Commission adds an ICI internal note headed 'Polypropylene framework 1983' (main statement of objections, Appendix 86) in which ICI outlines a future agreement on quotas.

160 It alleges that the note of the meeting of 2 December 1982 (main statement of objections, Appendix 33) shows that the experts examined a proposal on quotas restricted to the first quarter of 1983. Furthermore, an ICI internal note date 8 December 1982 (main statement of objections, Appendix 77) indicates that ATO (among others) finds the quota allocated to it 'acceptable' in spite of the fact that ATO finds the quota too low and would oppose that quarterly quota if it were the basis for an agreement covering the whole year.

161 Finally, the Commission states that it appears from an internal document found at the premises of Shell (main statement of objections, Appendix 90) that a quota agreement was concluded for the second quarter of 1983. According to that document Shell ordered its national sales companies to reduce their sales in order to observe the quota allocated to it. The Commission adds that the note of the meeting of 1 June 1983 (main statement of objections, Appendix 40) shows that information on sales volumes in May was exchanged at that meeting.

(c) Assessment by the Court

162 It has already been found that from 1978 onwards the applicant regularly participated in the regular meetings of polypropylene producers at which discussions relating to the sales volumes of the various producers were held and information exchanged on that subject.

163 Alongside ATO's participation in the meetings, it should be pointed out that its name appears in various tables (main statement of objections, Appendices 55 et seq) whose content clearly indicates that they were intended to be used in setting

sales volume targets. Most of the applicants have admitted in their replies to a written question from the Court that it would not have been possible to draw up the tables found at the premises of ICI, ATO and Hercules on the basis of the statistics available under the Fides data exchange system. In its reply to the request for information (main statement of objections, Appendix 8), ICI stated with reference to one of those tables that 'the source of information for actual historic figures in this table would have been the producers themselves'. The Commission was therefore entitled to take the view that the content of those tables had been provided by ATO in the meetings in which it participated.

164 The terms used in the various documents relating to the years 1979 and 1980 produced by the Commission (such as 'revised target', 'opening suggestions', 'proposed adjustments', 'agreed targets') justify the conclusion that the producers had arrived at a common purpose.

165 As regards the year 1979 in particular, having regard both to the whole of the note of the meeting of 26 and 27 September 1979 (main statement of objections, Appendix 12) and to the undated table taken from the premises of ICI (main statement of objections, Appendix 55) headed 'Producers' Sales to West Europe', which sets out for all the polypropylene producers of western Europe the sales figures in kilotonnes for 1976, 1977 and 1978 and figures under the headings '1979 actual', 'revised target' and '79', it is apparent that the need to tighten the quota system agreed for 1979 for the last three months of that year was recognized at that meeting. The term 'tight', read in conjunction with the restriction to 80% of one-twelfth of planned annual sales, indicates that the scheme originally planned for 1979 had to be made tighter for those last three months. That interpretation of the note is borne out by the abovementioned table because it contains, under the heading '79' in the last column to the right of the column headed 'revised target', figures which must correspond to the quotas initially fixed. These had to be circumscribed because they had been drawn up on the basis of an over-optimistic market evaluation, as was also the case in 1980. The reference in the third paragraph of point 31 of the Decision to a scheme 'proposed or agreed in Zurich to limit monthly sales to 80% of the average achieved during the first eight months of the year' does not tell against these findings. That

reference, read in conjunction with point 54 of the Decision, is to be taken as meaning that sales volume targets had already been set initially for the monthly sales of the first eight months of 1979.

166 In addition, the French producers, the applicant among them, systematically exchanged their sales figures month by month during the last four months of 1979 and compared them with 'quotas' (annex, letter of 3 April 1985). It may be concluded from that that the French producers at the very least tried to monitor observance of the agreed targets.

167 As regards the year 1980, the Court finds that it is clear from the table dated 26 February 1980 found at the premises of ATO (main statement of objections, Appendix 60), which contains a column headed 'agreed targets 1980', and from the note of the January 1981 meetings (main statement of objections, Appendix 17) at which producers, including the applicant, compared the quantities actually sold ('Actual kt') with the targets set ('Target kt'), that sales volume targets were set for the whole of the year. Those documents are further supported by a table dated 8 October 1980 (main statement of objections, Appendix 57) comparing two columns, one setting out the '1980 Nameplate Capacity' and the other the '1980 Quota' for the various producers.

168 As regards the year 1981, the complaint against the producers is that they took part in negotiations in order to reach a quota agreement for that year and that in that context thus communicated their 'aspirations' and, pending such an agreement, agreed as a temporary measure to restrict their monthly sales to one-twelfth of 85% of the 'target' agreed for 1980 during February and March 1981, that they took the previous year's quota as a theoretical entitlement for the rest of the year, that they reported their sales each month to the meetings and, finally, that they monitored whether their sales matched the theoretical quota allocated to them.

169 The existence of negotiations between the producers in order to achieve the establishment of a quota system and the communication of their 'aspirations' during those negotiations are attested by various pieces of evidence such as tables setting out, for each producer, its 'actual' figures and 'targets' for the years 1979 and

1980 and its 'aspirations' for 1981 (main statement of objections, Appendices 59 and 61); a table written in Italian (main statement of objections, Appendix 62) setting out, for each producer, its quota for 1980, the proposals of other producers as to the quota to be allocated to it for 1981 and its own 'aspirations' for 1981, and an ICI internal note (main statement of objections, Appendix 63) describing the progress of those negotiations in which it is stated:

'Taking the various alternatives discussed at yesterday's meeting we would prefer to limit the volume to be shared to no more than the market is expected to reach in 1981, say 1.35 million tonnes. Although there has been no further discussion with Shell, the four majors could set the lead by accepting a reduction in their 1980 target market share of about 0.35% provided the more ambitious smaller producers such as Solvay, Saga, DSM, Chemie Linz, Anic/SIR also tempered their demands. Provided the majors are in agreement the anomalies could be best handled by individual discussions at Senior level, if possible before the meeting in Zurich'.

That document is accompanied by a compromise proposal, supported by figures, which compares the result obtained for each producer in relation to 1980 ('% of 1980 target').

170 The adoption of temporary measures consisting in a reduction of monthly sales to one-twelfth of 85% of the target agreed for the previous year during February and March 1981 is apparent from the note of the meetings of January 1981, in which it is stated:

'In the meantime [February-March] monthly volume would be restricted to 1/12 of 85% of the 1980 target with a freeze on customers'.

171 The fact that the producers each took their previous year's quota as a theoretical entitlement for the rest of the year and monitored whether sales matched that quota by exchanging their sales figures each month is established by the combination of three documents: first, a table dated 21 December 1981 (main statement of objections, Appendix 67) setting out for each producer its sales broken down by month, the last three columns, relating to the months of November and December and the annual total, having been added by hand; secondly, an undated table written in Italian entitled 'Scarti per società' ('Differences company by company') and found at the premises of ICI (main statement of objections, Appendix 65), comparing for each producer for the period January-December 1981 the 'actual' sales figures with the 'theoretic' figures; and finally, an undated table found at the premises of ICI (main statement of objections, Appendix 68) comparing for each producer for the period January-November 1981 sales figures and market shares with those for 1979 and 1980 and making a forward projection to the end of the year.

172 The first table shows that the producers exchanged their monthly sales figures. Combined with the comparisons made between those figures and those achieved in 1980 (comparisons which are made in the two other tables covering the same period — such an exchange of information which an independent operator would keep strictly secret as confidential business information corroborates the conclusions reached in the Decision.

173 The applicant's participation in those various activities is apparent, first, from its participation in the meetings at which those activities took place, in particular the January 1981 meetings, and, secondly, from the fact that its name appears in the various documents mentioned above. Furthermore, in those documents are set out figures with regard to which ICI in fact stated in its reply to a written question from the Court — to which other applicants refer in their own reply — that it would not have been possible to ascertain them on the basis of the statistical data available under the Fides system.

174 As regards 1982, the complaint against the producers is that they took part in negotiations in order to reach an agreement on quotas for that year; that in that connection they communicated their tonnage aspirations; that, failing a definitive agreement, they communicated at meetings their monthly sales figures during the first half of the year, comparing them with the percentage achieved during the previous year and, during the second half of the year, attempting to restrict their monthly sales to the same percentage of the overall market achieved in the first six months of that year.

175 The existence of negotiations between the producers with a view to introducing a quota system and the communication of their aspirations during those negotiations are evidenced, first, by a document entitled 'Scheme for discussions "quota system 1982"' (main statement of objections, Annex 69), which contains, for all the addressees of the Decision with the exception of Hercules, the tonnage to which each producer considered itself entitled and, in addition, for some of them (all the producers except Anic, Linz, Petrofina, Shell and Solvay), the tonnage which in their own view had to be allocated to the other producers; secondly, by an ICI note entitled 'Polypropylene 1982, Guidelines' (main statement of objections, Appendix 70(a)), in which ICI analyses the negotiations in progress; thirdly, by a table dated 17 February 1982 (main statement of objections, Appendix 70(b)), in which various sales-sharing proposals are compared — one of which, entitled 'ICI Original Scheme', has undergone, in another handwritten table, minor adjustments made by Monte in a column entitled 'Milliavacca 27/1/82' (the name is that of a Monte employee) (main statement of objections, Appendix 70(c)) — and, lastly, by a table written in Italian (main statement of objections, Appendix 71) which is a complex proposal (mentioned in the second paragraph *in fine* of point 58 of the Decision).

176 The measures adopted for the first half of the year are established by the note of the meeting on 13 May 1982 (main statement of objections, Appendix 24), which states *inter alia*:

'To support the move a number of other actions are needed (a) limit sales volume to some agreed prop. of normal sales'.

The implementation of those measures is evidenced by the note of the meeting of 9 June 1982 (main statement of objections, Appendix 25), to which is attached a table setting out for each producer the 'actual' figure for its sales for the months from January to April 1982 compared with a figure representing the 'theoretical based on 1981 av[erage] market share', and by the note of the meeting held on 20 and 21 July 1982 (main statement of objections, Appendix 26) as regards the period January-May 1982 and by that of 20 August 1982 (main statement of objections, Appendix 28) as regards the period from January to July 1982.

177 The measures adopted for the second half are proved by the note of the meeting of 6 October 1982 (main statement of objections, Appendix 31), which states: 'In October this would also mean restraining sales to the Jan/June achieved market share of a market estimated at 100 kt' and then 'Performance against target in September was reviewed'. Attached to that note is a table entitled 'September provisional sales versus target (based on Jan-June market share applied to demand est[imated] at 120 Kt)'. The continuation of those measures is confirmed by the note of the meeting of 2 December 1982 (main statement of objections, Appendix 33), to which is attached a table comparing, for November 1982, the 'Actual' sales with the 'Theoretical' figures calculated from the 'J-June % of 125 Kt'.

178 The Court finds that, as regards the year 1981 and the two halves of 1982, the Commission was entitled to conclude from the mutual monitoring, conducted at the regular meetings, of the implementation of a system for restricting monthly sales by reference to a previous period that that system had been adopted by the participants at the meetings.

179 As regards 1983, the Court finds that it is clear from the documents produced by the Commission (main statement of objections, Appendices 33, 77, 85 and 87) that at the end of 1982 and the beginning of 1983 the polypropylene producers discussed a quota system for 1983, that the applicant participated in the meetings at which those discussions took place, that on those occasions it supplied data

relating to its sales, that in the table attached to the note of the meeting of 2 December 1982 the note 'acceptable' appears beside the quota linked with the applicant's name and, finally, that ICI stated in an internal note that the applicant 'feels that the proposed figure is too low. If the intention is to drift from the first quarter into an agreement for the whole year, ATO would not accept' (main statement of objections, Appendix 77).

180 It follows that the applicant participated in the negotiations held with a view to arriving at a quota system for 1983.

181 As regards the question whether those negotiations actually succeeded as far as the first two quarters of 1983 are concerned, as is asserted in the Decision (point 63, third paragraph, and point 64), it is clear from the note of the meeting on 1 June 1983 (main statement of objections, Appendix 40) that the applicant indicated at that meeting its sales figures for May, as did nine other undertakings. Moreover, the following passage appears in the record of an internal meeting of the Shell group on 17 March 1983 (main statement of objections, Appendix 90):

'. . . and would lead to a market share of approaching 12% and well above the agreed Shell target of 11%. Accordingly the following reduced sales targets were set and agreed by the integrated companies'.

The new tonnages are given, after which it is noted that:

'this would be 11.2 Pct of a market of 395 kt. The situation will be monitored carefully and any change from this agreed plan would need to be discussed beforehand with the other PIMS members'.

182 The Court finds in this regard that the Commission was entitled to conclude from the combination of those two documents that the negotiations between the producers had led to the introduction of a quota system. The internal note of the Shell group shows that that undertaking was asking its national sales companies to reduce their sales, not in order to reduce the overall sales volume of the Shell group, but in order to restrict the group's share of the overall market to 11%. Such a restriction expressed in terms of market share can be explained only in connection with a quota system. Furthermore, the note of the meeting on 1 June 1983 constitutes additional evidence of the existence of such a system, since an exchange of information on the monthly sales of the various producers has the primary purpose of monitoring compliance with the commitments made.

183 Finally, the 11% figure for Shell's market share appears not only in the Shell internal note but also in two other documents, namely an ICI internal note in which ICI states that Shell is proposing this figure for itself, Hoechst and ICI (main statement of objections, Appendix 87) and the note drawn up by ICI of a meeting held on 29 November 1982 between ICI and Shell at which the previous proposal was referred to (main statement of objections, Appendix 99).

184 Owing to the identical aim of the various measures for restricting sales volumes — namely to reduce the pressure exerted on prices by excess supply — the Commission was entitled to conclude that those measures were part of a quota system.

185 The arguments put forward by the applicant are not such as to impugn the findings of fact made by the Commission.

186 First of all, the applicant's argument based on the increase in its market share, the fact that its production capacity was fully used and the fact that it exceeded the alleged quotas do not contradict the assertions in the Decision to the effect that sales quotas were agreed upon; it was not asserted that those quotas had been observed. Moreover, the quotas agreed upon were sales quotas and not production quotas. Accordingly, the fact that the applicant's production capacity was fully used is irrelevant.

187 Secondly, as regards the fluctuations in the figures contained in the various tables concerning 1980, it should be observed that these fluctuations are negligible and do not disprove the existence of a quota system. The adjustment of the tonnages corresponding to the market shares allocated to the producers in accordance with the trend in the total market must be regarded as a normal step in a quota system where the participants in the system have incorrectly assessed total demand, as happened in this case in relation to 1980.

188 Thirdly, it is not necessary that the author of each document should be identified and the manner in which each document was drawn up described before the Commission can rely on those documents against a particular undertaking, at least when those documents were prepared in the context of meetings whose purpose has been established to be *inter alia* the setting of price and sales volume targets.

189 Fourthly, the applicant's assertion that the Commission, in its analysis of the evidentiary documents, has confused a simple statistical exercise of observation of market trends with proof of a cartel is not supported by any argument or fact and is lacking in credibility.

190 Fifthly, and finally, the fact that in certain tables the sum of the market shares or quotas allocated to different producers exceeds 100% or the estimate of the total market does not deprive those tables of evidentiary value. That discrepancy does not appear in the tables in which the Commission sees the expression of a common intention ('revised' or 'agreed' targets)(main statement of objections, Appendices

55 and 60), and the fact that it appears in tables which represent intermediate stages of negotiation is perfectly normal, since the producers were expressing their 'ambitions'.

191 Having regard to the foregoing considerations, it must be concluded that the Commission has established to the requisite legal standard that the applicant was one of the polypropylene producers amongst whom common purposes emerged in relation to sales volume targets for 1979, 1980 and the first half of 1983 and to the restriction of their monthly sales by reference to a previous period for the years 1981 and 1982 which are mentioned in the Decision and which formed part of a quota system.

2. *The application of Article 85(1) of the EEC Treaty*

A — The contested decision

192 The Decision (point 89, first paragraph) points out that Article 85(1) of the EEC Treaty expressly mentions as restrictive of competition agreements which directly or indirectly fix selling prices or share markets between producers, which are the essential characteristics of the agreements under consideration in the present case.

193 According to the Decision (point 89, second, third and fourth paragraphs), the basic purpose behind the institution of the system of regular meetings and the continuing collusion of the producers was to achieve price increases by means of a complex of agreements and arrangements. By planning common action on price initiatives with target prices for each grade and national currency effective from an agreed date, the producers aimed to eliminate the risks which would be involved in any unilateral attempt to increase prices. Thus, the various quota systems and other mechanisms designed to accommodate the divergent interests of the established producers and the newcomers all had as their ultimate objective the creation of artificial conditions of stability favourable to price rises.

194 In pursuit of those objectives, the producers were aiming at the organization of the polypropylene market on a basis which substituted for the free operation of competitive forces an institutionalized and systematic collusion between producers which amounted to a cartel (Decision, point 89, fifth paragraph).

195 The Decision states (point 90, first and second paragraphs) that it is not strictly necessary, for the application of Article 85(1) of the EEC Treaty, given the overtly anti-competitive object of the agreement, for an adverse effect upon competition to be demonstrated. However, in the present case, the evidence shows that the agreement did in fact produce an appreciable effect upon competitive conditions.

196 According to the Decision (point 90, third and fourth paragraphs), the agreement in meetings of target prices for each grade and national currency was implemented by the producers all using price instructions to their national sales offices or agents which then had to inform customers of the new price levels. Customers were thus faced with a uniform basic price in each currency for each major grade. Individual customers might benefit from special conditions or discounts, some producers might delay the planned increase or make concessions and some producers might fix their actual prices for some grades or in some countries slightly below the targets while still determining such prices in the context of a general move by all the other producers. However, the setting of a particular price level which was then presented to the market as 'the list price' or 'the official price' meant that the opportunities for customers to negotiate with producers were already circumscribed and they were deprived of many of the benefits which would otherwise be available from the free play of competitive forces.

197 In the last paragraph of point 90 the Decision states that the documentary evidence, including the market reports of the producers themselves, shows the existence in the marketplace of concerted price initiatives involving all producers and the close link between these initiatives and the system of regular meetings.

198 Whilst it is conceded (in the first paragraph of point 91 of the Decision) that the achieved price level generally lagged behind the 'targets' and that price initiatives tended to run out of momentum, sometimes eventually resulting in a sharp drop in prices, it is pointed out that the graphs relied upon by the producers themselves show a regular pattern over the years of close parallel movement of target and actual levels. During the period covered by known price initiatives, the price achieved each month moved up toward the agreed target. When there was a sudden price 'collapse' (for example, when propylene prices fell) this was arrested by fixing a new and much lower target and the upward trend was re-established, the success of such a tactic being particularly marked in July to November 1983.

199 According to the Decision (point 91, second paragraph), the deliveries of most producers in the years when a system was in operation did not generally show a sharp variance from the quota or target which had been allocated.

200 In reply to the applicant, which had pointed to variances between its original target tonnage and its actual deliveries in the year in question (particularly in 1980) in order to argue that there was no quota system, the Decision (point 91, third paragraph) states that during that year the tonnage targets had been continuously revised and that the original division of the market had been retained overall in terms of market share. Accordingly, although the applicant stressed that its sales in western Europe had progressed from year to year, going from 39 000 t in 1979 to 45 000 t in 1982, its market share in fact remained constant throughout that period (between 3.1% and 3.2%) and corresponded almost precisely with its target for each year. Similarly, the changes in the market share of some producers after 1977 were no evidence of unrestricted competition since quotas or targets were agreed so as to take account of the ambitions of the newcomers and the larger firms were willing to accept some reduction in their market share in the interests of increasing price levels (Decision, point 91, last paragraph).

201 The Decision concludes (in point 92, first paragraph) that the fact that in practice the cartelization of the market was incomplete and did not entirely exclude the

operation of competitive forces does not preclude application of Article 85. Given the large number of producers, their divergent commercial interests and the absence of any enforceable measures of constraint in the event of non-compliance by a producer with agreed arrangements, no cartel could control totally the activities of its participants. The Decision (point 92, last paragraph) also rejects the undertakings' argument that in the absence of their arrangements market developments would have been the same. It points out that what might have occurred had there been no agreement is a matter of speculation but that it is significant that the producers themselves acknowledged the effectiveness of their meetings in rejecting the suggestion in May 1982 that they cease to meet, since it was considered better, if supply and demand were in equilibrium, to take active steps to move prices up rather than leave it to the market.

202 In point 73 it is stated that the Commission has in any event never maintained that the system of regular meetings controlled fully the operations and sales of the producers or was the only factor affecting the price levels of polypropylene. Indeed the evidence relied upon by the Commission shows that the producers recognized that the market was affected by matters such as changes in demand or raw material price increases beyond their control. In deciding upon the amount, timing, modalities and chances of success of a planned price initiative those market factors had to be taken into account by the producers. One of the main purposes of the meetings, however, was to try to coordinate the response of the producers to such factors. It may also be that price was determined to a large extent by conditions of supply and demand but the documentary evidence shows that by means of their volume control or quota systems the producers were attempting to manipulate those conditions.

B — Arguments of the parties

203 The applicant submits that Article 85(1) of the EEC Treaty prohibits 'agreements and concerted practices' not only where they affect trade between Member States but also where they are anti-competitive in object or effect. It states that neither of those two elements is present in ATO's case, since the independence of its sales

policy precludes the possibility that its conduct could have been intended to interfere with the free play of competition.

204 According to the applicant, the Commission has not been able to show the existence of any effect on the market either; its demonstration consists solely of assertions of principle (Decision, points 90 to 92), while the Commission acknowledges elsewhere in the Decision (point 73) that prices could have been determined by conditions of supply and demand. The producers are thus accused of having 'attempted to influence' those conditions by controlling volumes or establishing systems of quotas.

205 The applicant argues that Article 85(1) of the EEC Treaty cannot be applied to it because even if there was such an attempt at action it had no effect on the market and because ATO did not participate and did not submit to volume controls or to systems of quotas or price fixing.

206 The applicant submits that the Commission is confronted by a contradiction which it cannot overcome. The Commission considers that the documents in its possession, particularly those written by one of the participants, constitute absolute proof of the existence of the agreement which it has described, but that theoretical description does not correspond at all to what was actually observed in the applicant's conduct or to the operation of the polypropylene market.

207 The Commission in its turn refers to the points of the Decision mentioned by the applicant in order to refute the assertions that there was no effect on the market and that the absence of any effect on the market precludes the application of Article 85(1) of the EEC Treaty.

C — Assessment by the Court

208 The applicant's line of argument seeks solely to demonstrate that its participation in the regular meetings of polypropylene producers was not caught by Article 85(1) of the EEC Treaty since its competitive conduct on the market showed that that participation had no anti-competitive object or effect.

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

210 The Court repeats that it is clear from its assessments relating to the findings of fact made by the Commission that the purpose of the regular meetings which the applicant attended together with competitors was to restrict competition within the common market, in particular by fixing price and sales volume targets, and that consequently its participation in those meetings did have an anti-competitive object within the meaning of Article 85(1) of the EEC Treaty.

211 Accordingly, the Commission was entitled to consider that by taking part in the regular meetings of polypropylene producers between 1978 and September 1983 the applicant associated itself with the polypropylene producers between whom common purposes emerged concerning price initiatives, measures designed to facilitate the implementation of the price initiatives and sales volume targets for 1979, 1980 and the first half of 1983 and concerning measures restricting monthly sales by reference to a previous period for 1981 and 1982, and that it thus

infringed Article 85(1) of the EEC Treaty by participating in an agreement and a concerted practice.

212 It follows from all the foregoing considerations that all the applicant's grounds of challenge relating to the findings of fact and to the application of Article 85(1) of the EEC Treaty by the Commission in the contested decision must be dismissed.

The statement of reasons

1. *Adoption of a single decision*

213 The applicant submits that the Commission has not correctly proved ATO's participation in a cartel. It is difficult, perilous and artificial, because of the different economic circumstances of the firms to which the Decision is addressed, to place all the undertakings on the sole footing of the 'horizontal cartel'. However, that is what the Commission did in condemning the conduct of the polypropylene producers in often very general terms which, as a whole, extend to all or the great majority of them accusations based on the conduct of a few. That method of comprehensive description of actions of which the polypropylene producers are accused makes it difficult to determine precisely the facts and actions attributed to each of them, on the basis of which the Commission assessed their respective degrees of responsibility. The Decision is thus not sufficiently individualized and is excessively general, as is shown, moreover, by the small number of passages in the Decision in which ATO's own conduct is separately condemned and the absence of any specific reply to ATO's arguments.

214 It further accuses the Commission of having proceeded on the basis of a general presumption of guilt. The Decision systematically interprets facts and documents in the light of the existence of a cartel, without ever considering that the same facts might be explained by other reasons. ATO was thus inserted in a network of evidence by virtue of which each producer is regarded as an accomplice to the conduct adopted by other producers, and that conduct, however inoffensive it may be, is itself systematically interpreted as anti-competitive.

215 The Commission considers that the passages of the Decision which concern the applicant are sufficiently specific to enable it to understand the purport of the accusations made against it. The Commission adds that the Decision is based not only on the main statement of objections but also on the particular objections addressed to the different undertakings, one set of which concerns the applicant alone. Furthermore, the Commission points out that the applicant appears several times in the Decision and in the tables attached to it.

216 The Court considers that its assessments regarding the proof of the infringement show that the applicant was able, like the Court, to discern sufficiently clearly the objections made against it.

217 Similarly, it must be stressed that the fact that the Decision is a single one did not have the effect of extending to the applicant accusations based on the conduct of other producers, since the Commission proved to the requisite legal standard all the objections made against the applicant in the Decision.

218 Finally, it follows from the Court's assessments regarding the proof of the infringement that it was a 'horizontal' infringement in which the various polypropylene producers participated in accordance with its own economic characteristics and that the applicant has not shown in what way those characteristics prevented the Commission from placing the various producers on the sole footing of the 'horizontal' cartel.

219 It follows from the foregoing that this ground of challenge cannot be upheld.

2. *Insufficient reasoning*

220 The applicant argues that the Decision does not enable it to determine to what extent the Commission took into account the explanations provided by ATO in

reply to the statements of objections which were sent to it. In the Decision repeats most of those objections without any reference to the matters raised by the applicant, even if only to reject them, in particular those concerning its growth on the market to the point at which its production facilities were used to capacity and those showing that since its price instructions were issued after the publication of news in the specialized press it simply followed the indications of the market.

221 The Commission maintains that it has refuted all the applicant's arguments which were worthy of consideration.

222 The Court observes that the Court of Justice has consistently held (see in particular its judgment in Joined Cases 209 to 215 and 218/78 *Van Landewyck* [1980] ECR 3125, paragraph 66, and its judgment in Joined Cases 240 to 242, 261, 262, 268 and 269/82 *Stichting Sigarettenindustrie* v *Commission* [1985] ECR 3831, paragraph 88) that, although under Article 190 of the EEC Treaty the Commission is obliged to state the reasons on which its decisions are based, mentioning the factual and legal elements which provide the legal basis for the measure and the considerations which have led it to adopt its decision, it is not required to discuss all the issues of fact and of law raised by every party during the administrative proceedings. It follows that the Commission is not obliged to answer those points of fact and law which it considers irrelevant.

223 It should be pointed out in that regard that the first argument raised by the applicant is answered in point 91, third paragraph, of the Decision. That answer is specifically addressed to the applicant since it concerns the increase in its sales. As the Court held in its assessment regarding the proof of the infringement, that first argument is irrelevant in so far as it concerns the fact that the applicant's production facilities were used to capacity. As for the second argument, it was taken into consideration in the Decision (point 30) but was not upheld. Furthermore, it follows from the Court's assessments regarding the proof of the infringement that that argument is unfounded.

224 It follows that this ground of challenge must be dismissed.

The fine

225 The applicant submits that although it may have displayed a lack of prudence in participating in the meetings of polypropylene producers and in failing to express sufficient reservations regarding the content of those meetings, that possible lack of prudence was not of such a nature to justify the excessively heavy fine imposed on it by the Commission. It states that it regarded the meetings as a means of obtaining information on a market which it was discovering. It adds in that respect that the movement of information is one of the prerequisites of competition.

226 The Commission considers that the gravity of the infringement which it has established amply justifies the fine imposed on the applicant and that the applicant's argument that the transmission of information has a beneficial effect on competition is unacceptable inasmuch as competition requires market transparency as regards all economic agents, on both the supply and the demand side, whereas the exchange of information in issue was restricted to suppliers.

227 The Court finds that the facts established show, by their intrinsic gravity — in particular the fixing of price and sales volume targets — that the applicant did not act rashly or even through lack of care but intentionally. In this regard, particular emphasis must be placed on the clear nature of the infringement of Article 85(1) of the Treaty and in particular of points (a), (b) and (c) of that provision, whose terms were known to the polypropylene producers.

228 Moreover, the applicant's argument regarding the transmission of information must be rejected categorically both for the reasons expressed by the Commission and because if it were upheld it would amount to depriving the provisions of the Treaty on competition of any practical effect.

229 It follows from all the foregoing considerations that the fine imposed on the applicant is appropriate having regard to the duration and gravity of the breach of the Community competition rules found to have committed.

Costs

230 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has failed in its submissions and the Commission has applied for costs to be awarded against the applicant, the latter must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1. Dismisses the application;

2. Orders the applicant to pay the costs.

Cruz Vilaça Schintgen

Edward Kirschner Lenaerts

Delivered in open court in Luxembourg on 24 October 1991.

H. Jung J. L. Cruz Vilaça

Registrar President