JUDGMENT OF THE COURT OF FIRST INSTANCE
(Third Chamber, Extended Composition)

14 May 1998 *

In Case T-338/94,

Finnish Board Mills Association — Finnboard, a trade association governed by Finnish law, established at Helsinki, represented initially by Hans Hellmann and Hans-Joachim Voges, Rechtsanwälte, Cologne, and subsequently by Hans Hellmann alone, with an address for service in Luxembourg at the Chambers of Loesch & Wolter, 11, Rue Goethe,

applicant,

v

Commission of the European Communities, represented by Bernd Langeheine and Richard Lyal, of its Legal Service, acting as Agents, assisted by Dirk Schroeder, Rechtsanwalt, Cologne, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: German.

APPLICATION for annulment of Commission Decision 94/601/EC of 13 July 1994 relating to a proceeding under Article 85 of the EC Treaty (IV/C/33.833 — Cartonboard, OJ 1994 L 243, p. 1),

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES (Third Chamber, Extended Composition),

composed of: B. Vesterdorf, President, C. P. Briët, P. Lindh, A. Potocki and J. D. Cooke, Judges,

Registrar: J. Palacio González, administrator,

having regard to the written procedure and further to the hearing which took place from 25 June to 8 July 1997,

gives the following

Judgment

Facts

1 This case concerns Commission Decision 94/601/EC of 13 July 1994 relating to a proceeding under Article 85 of the EC Treaty (IV/C/33.833 — Cartonboard, OJ 1994 L 243, p. 1), as corrected prior to its publication by a Commission

decision of 26 July 1994 (C(94) 2135 final) (hereinafter 'the Decision'). The Decision imposed fines on 19 producers supplying cartonboard in the Community on the ground that they had infringed Article 85(1) of the Treaty.

2 The product with which the Decision is concerned is cartonboard. The Decision refers to three types of cartonboard, designated as 'GC', 'GD' and 'SBS' grades.

3 GD grade cartonboard (hereinafter 'GD cartonboard') is white-lined chipboard (recycled paper) which is normally used for the packaging of non-food products.

4 GC grade cartonboard (hereinafter 'GC cartonboard') is cartonboard with a white top layer and is normally used for the packaging of food products. GC cartonboard is of higher quality than GD cartonboard. During the period covered by the Decision there was normally a price differential of approximately 30% between those two products. High quality GC cartonboard is also used, but to a lesser extent, for graphic purposes.

5 SBS is the abbreviation used to refer to cartonboard which is white throughout (hereinafter 'SBS cartonboard'). The price of this cartonboard is approximately 20% higher than that of GC cartonboard. It is used for the packaging of foods, cosmetics, medicines and cigarettes, but is designated primarily for graphic uses.

6 By letter of 22 November 1990, the British Printing Industries Federation ('BPIF'), a trade organisation representing the majority of printed carton producers in the United Kingdom, lodged an informal complaint with the Commission. It claimed

that the producers of cartonboard supplying the United Kingdom had introduced a series of simultaneous and uniform price increases and it requested the Commission to investigate whether there had been an infringement of the Community competition rules. In order to ensure that its initiative received publicity, the BPIF issued a press release. The content of that press release was reported in the specialised trade press in December 1990.

7 On 12 December 1990, the Fédération Française du Cartonnage also lodged an informal complaint with the Commission, making allegations relating to the French cartonboard market which were similar to those made in the BPIF complaint.

8 On 23 and 24 April 1991, Commission officials acting pursuant to Article 14(3) of Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-1962, p. 87, hereinafter 'Regulation No 17'), carried out simultaneous investigations without prior notice at the premises of a number of undertakings and trade associations operating in the cartonboard sector.

9 Following those investigations, the Commission sent requests for both information and documents to all the addressees of the Decision pursuant to Article 11 of Regulation No 17.

10 The evidence obtained from those investigations and requests for information and documents led the Commission to conclude that from mid-1986 until at least (in most cases) April 1991 the undertakings concerned had participated in an infringement of Article 85(1) of the Treaty.

11 The Commission therefore decided to initiate a proceeding under Article 85 of the Treaty. By letter of 21 December 1992 it served a statement of objections on each of the undertakings concerned. All the addressees submitted written replies. Nine undertakings requested an oral hearing. A hearing was held on 7, 8 and 9 June 1993.

12 At the end of that procedure the Commission adopted the Decision, which includes the following provisions:

'*Article 1*

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

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

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

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

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

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

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

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

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

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

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

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

(...)

Article 3

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

(...)

(v) Finnboard-the Finnish Board Mills Association, a fine of ECU 20 000 000, for which Oy Kyro AB is jointly and severally liable with Finnboard in the sum of ECU 3 000 000, Metsä-Serla Oy in the sum of ECU 7 000 000, Tampella Corporation in the sum of ECU 5 000 000 and United Paper Mills Ltd in the sum of ECU 5 000 000;

(...)'

13 According to the Decision, the infringement took place within a body known as the 'Product Group Paperboard' (hereinafter 'the PG Paperboard'), which comprised several groups or committees.

14 In mid-1986 a group entitled the 'Presidents Working Group' (hereinafter 'the PWG') was established within that body. This group brought together senior representatives of the main suppliers of cartonboard in the Community (some eight suppliers).

15 The PWG's activities consisted, in particular, in discussion and collaboration regarding markets, market shares, prices and capacities. In particular, it took broad decisions on the timing and level of price increases to be introduced by producers.

16 The PWG reported to the 'President Conference' (hereinafter 'the PC'), in which almost all the managing directors of the undertakings in question participated (more or less regularly). The PC met twice each year during the period in question.

17 In late 1987 the Joint Marketing Committee (hereinafter 'the JMC') was set up. Its main task was, on the one hand, to determine whether, and if so how, price increases could be put into effect and, on the other, to prescribe the methods of implementation for the price initiatives decided by the PWG, country-by-country and for the major customers, in order to achieve a system of equivalent prices in Europe.

18 Lastly, the Economic Committee discussed, *inter alia*, price movements in national markets and order backlogs, and reported its findings to the JMC or, until the end of 1987, to the Marketing Committee, the predecessor of the JMC. The Economic Committee was made up of marketing managers of most of the undertakings in question and met several times a year.

19 According to the Decision, the Commission also took the view that the activities of the PG Paperboard were supported by an information exchange organised by Fides, a secretarial company, whose registered office is in Zurich, Switzerland. The Decision states that most of the members of the PG Paperboard sent periodic reports on orders, production, sales and capacity utilisation to Fides. Under the Fides system, those reports were collated and the aggregated data were sent to the participants.

20 The applicant, Finnish Board Mills Association — Finnboard (hereinafter 'Finnboard') is a trade association governed by Finnish law which, in 1991, had six member companies, including cartonboard producers Oy Kyro AB, Metsä-Serla Oy, Tampella Corporation and United Paper Mills. The cartonboard produced by

those four member companies is marketed by Finnboard throughout the Community, partly through its own subsidiaries.

21 According to the Decision, from mid 1986 until at least April 1991, Finnboard participated in the meetings of all the bodies of the PG Paperboard. For approximately two years a representative of Finnboard presided over the PWG and the PC.

Procedure

22 The applicant brought this action by application lodged at the Registry of the Court on 14 October 1994.

23 Sixteen of the eighteen other undertakings held to be responsible for the infringement have also brought actions to contest the Decision (Cases T-295/94, T-301/94, T-304/94, T-308/94, T-309/94, T-310/94, T-311/94, T-317/94, T-319/94, T-327/94, T-334/94, T-337/94, T-347/94, T-348/94, T-352/94 and T-354/94).

24 The applicant in Case T-301/94, Laakmann Karton GmbH, withdrew its action by letter lodged at the Registry of this Court on 10 June 1996 and the case was removed from the Register by order of 18 July 1996 (Case T-301/94 *Laakmann Karton GmbH* v *Commission*, not published in the ECR).

25 The above four Finnish undertakings, members of the applicant, and as such held jointly and severally liable for payment of the fine imposed on it, have also brought actions against the Decision (Joined Cases T-339/94, T-340/94, T-341/94 and T-342/94).

26 Lastly, an action was also brought by an association, CEPI-Cartonboard, which was not an addressee of the Decision. However, it withdrew its action by letter lodged at the Registry of the Court on 8 January 1997 and the case was removed from the Register of the Court by order of 6 March 1997 (Case T-312/94 *CEPI-Cartonboard* v *Commission*, not published in the ECR).

27 By letter of 5 February 1997 the Court requested the parties to take part in an informal meeting with a view, in particular, to their presenting observations on a possible joinder of Cases T-295/94, T-304/94, T-308/94, T-309/94, T-310/94, T-311/94, T-317/94, T-319/94, T-327/94, T-334/94, T-337/94, T-338/94, T-347/94, T-348/94, T-352/94 and T-354/94 for the purposes of the oral procedure. At that meeting, which took place on 29 April 1997, the parties agreed to such a joinder.

28 By order of 4 June 1997 the President of the Third Chamber, Extended Composition, of the Court, in view of the connection between the abovementioned cases, joined them for the purposes of the oral procedure in accordance with Article 50 of the Rules of Procedure and allowed an application for confidential treatment submitted by the applicant in Case T-334/94.

29 By order of 20 June 1997 he allowed an application for confidential treatment submitted by the applicant in Case T-337/94 which related to a document produced in response to a written question from the Court.

30 Upon hearing the report of the Judge Rapporteur, the Court (Third Chamber, Extended Composition) decided to open the oral procedure and adopted measures of organisation of procedure in which it requested the parties to reply to certain written questions and to produce certain documents. The parties complied with those requests.

31 The parties in the cases referred to in paragraph 27 above presented oral argument and gave replies to the Court's questions at the hearing which took place from 25 June to 8 July 1997.

32 In the present case, the applicant, by letter of 19 July 1995, declared its intention not to lodge a reply. However, in that letter it submitted that the figures used by the Commission to calculate the fine were incorrect.

33 On 6 October 1995 the Commission submitted its observations on the applicant's letter.

Forms of order sought

34 The applicant claims that the Court should:

— annul the Decision in so far as it concerns it;

— in the alternative, reduce the amount of the fine;

— order the defendant to pay the costs.

35 The Commission contends that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

The application for annulment of the Decision

The plea alleging breach of the rules concerning use of languages

Arguments of the parties

36 This plea is made up of three parts.

37 In the first part the applicant points out that at the time the Decision was adopted it was not subject to the jurisdiction of a Member State. The Decision could therefore be authentic as against it for the purposes of Article 16 of the Rules of Procedure of the Commission of 17 February 1993 (OJ 1993 L 230, p. 15, hereinafter 'Rules of Procedure of the Commission') only in the language of its agent, that is to say, in German. In support of this argument it also refers to Regulation No 99/63/EEC of the Commission of 25 July 1963 on the hearings provided for in Article 19 (1) and (2) of Council Regulation No 17 (OJ, English Special Edition 1963-1964, p. 47), Article 2(1) of which provides that the statement of objections is to be addressed to an undertaking or its agent. In a situation such as that in this case, where the agent chosen is subject to the jurisdiction of a Member State, that provision requires the agent's language to be chosen as the language of the procedure. That language is also the only one in which the Decision is authentic.

38 The applicant argues further that Article 2 of Council Regulation No 1, of 15 April 1958, determining the languages to be used by the European Economic Community (OJ, English Special Edition 1952-1958, p. 59), applies by analogy and that, as the reply to the Commission's request for information was in German, that language was chosen as the language of the procedure. However, despite the complaints sent to it on several occasions by the applicant's agent, the Commission continued to send documents in English.

39 Finally, the choice of English as the language of the Decision infringes Article 6(3)(a) of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (hereinafter 'the ECHR').

40 In the second part of the plea the applicant submits that the rules concerning use of languages were breached when the Decision was notified to it: under Article 191(3) of the Treaty, decisions should be notified in the language of the persons to whom they are addressed. In this case the Decision was notified to it in English.

41 Finally, in the third part of the plea, the applicant submits that its right to be heard was infringed in that the official statement of objections made against it, the covering letter and numerous pieces of documentary evidence attached to the statement were in English. Referring to the first part of the plea, it submits that those documents should have been in German and therefore disputes the validity of the statement of objections.

42 It adds that, in view both of the size of the statement of objections and its appendices and of the fact that many of those documents were in a foreign language, it was allowed insufficient time to reply to them.

43 The Commission contends that it did not infringe the rules relating to the use of languages.

44 As regards the first part of the plea, the Commission points out that Regulation No 1 only concerns correspondence sent to persons subject to the jurisdiction of a Member State, whereas the Decision was adopted before the accession of Finland to the Community. Furthermore, the Decision did not constitute a 'reply' within the meaning of Article 2 of Regulation No 1.

45 It was therefore entitled to choose the language of the case freely, taking account, however, of any connections between the applicant and the Member States of the Community (see Case 6/72 *Europemballage and Continental Can* v *Commission* [1973] ECR 215, paragraph 12). In this case English was chosen as the language of the procedure in view of the fact that it was the working language of the European Free Trade Association (EFTA) and the language of proceedings in the EFTA Court of Justice; the fact that the applicant used English in its correspondence with its subsidiaries; and, finally, the fact that it has an English name.

46 As regards the second part of the plea, the Commission argues that irregularities in the procedure for notification of a decision do not affect its legality. Such irregularities may merely, under certain circumstances, prevent the period within which an application must be lodged from starting to run, an effect which is immaterial in the present case (see Case 52/69 *Geigy* v *Commission* [1972] ECR 787, paragraph 11).

47 Finally, as regards the third part of the plea, the Commission points out that the applicant and its agent also received the German version of the statement of objections. In any event, the applicant's reply to the statement of objections, lodged without its having requested an extension of the period allowed, demonstrates that it was perfectly able to understand the complaints made against it. There is therefore no basis for a finding that its right to be heard was infringed (Case 41/69 *ACF Chemiefarma* v *Commission* [1970] ECR 661, paragraphs 48, 52 and 53).

Findings of the Court

48 It is common ground that the Commission sent the statement of objections and the Decision to the applicant's registered office in Finland and that, on the date of the adoption of the Decision, the applicant was not yet subject to the jurisdiction of a Member State of the Community. At that time the Community rules did not expressly provide for an official language of the Community to be used in relations between the Commission and an undertaking established in a third country.

49 Regulation No 1, as amended, on which the applicant relies, lays down rules regarding the use of languages only in the case of relations between the Community and a Member State or a person subject to the jurisdiction of one of the Member States.

50 In the present case the documents before the Court show that the Commission did not send any official document to the applicant's German agent, since the documents he received were copies of official documents sent directly to the applicant.

51 Moreover, neither Article 2 of Regulation No 99/63 nor Article 6 of the ECHR, even assuming that the latter provision could be relied on by an undertaking subject to an investigation pursuant to competition law, require documents to be sent in the language of the Member State in which the agent lives.

52 The language of the statement of objections and of the Decision had therefore to be chosen in the light of the relationship established by the applicant, within the Community, with a Member State (see, to that effect, *Europemballage and Continental Can* v *Commission*, cited above, paragraph 12). In that regard, it is, however, common ground that English was the language used by the applicant in

its correspondence with its own sales subsidiaries in the Member States of the Community. Under the circumstances, the Commission was entitled to choose English as the language of the statement of objections and of the Decision.

53 Finally, the appendices to the statement of objections which do not emanate from the Commission must be regarded as supporting documentation on which the Commission relies and must therefore be brought to the attention of the addressee as they are (see, *inter alia*, Case T-148/89 *Tréfilunion* v *Commission* [1995] ECR II-1063, paragraph 21).

54 As to the allegation that the applicant was allowed insufficient time to reply to the statement of objections, it suffices to point out that the applicant did not dispute the Commission's statement that no extension of the time allowed to lodge a reply to the statement of objections was requested.

55 In the light of the above, the plea must be rejected as unfounded.

The plea alleging irregularities in the procedure for the adoption, authentication and notification of Commission decisions

Arguments of the parties

56 The applicant submits that, in order to ensure the proof of authenticity of the Decision and the legal protection of its addressees, the Decision should have been authenticated as a single document, the various sheets of paper being bound together if necessary. That is the only way to prevent the deletion or alteration of certain parts of the Decision. In this case, the Decision was not authenticated as a

single document. Its purport did not become clear until the Decision of 13 July 1994 was read in combination with the amending decision of 26 July 1994. Those two decisions were communicated separately to the applicant, which undermined their probative value.

57 The applicant asks the Court to order the Commission to produce the original of the two decisions at issue in order to verify whether they were bound together as described and whether the initial decision contained any reference to the subsequent alteration.

58 It also points out that the German version of the second paragraph of Article 15 of the ECSC Treaty provides that individual acts are binding on the party concerned 'durch die Zustellung', whereas the German version of Article 191(3) of the EC Treaty uses the expression 'bekannt werden'. The French version of the two treaties, in using the term 'notification' in both cases, confirms that there is no material difference between the two provisions. Basing its analysis on Article 4 of Decision No 22/60 of the High Authority of 7 September 1960 on the implementation of Article 15 of the Treaty (OJ, English Special Edition, Second Series VIII, p. 13), the applicant argues that only formal notification either of the original Decision, or of a duly authenticated copy thereof, can be regarded as valid notification. Consequently, service of a certified true copy, as in this case, renders the Decision inoperative.

59 Finally, the applicant argues that the Decision was not authenticated in accordance with Article 16 of the Rules of Procedure of the Commission by the signatures of the President and the Secretary-General of the Commission. It points out that the Decision notified bore only the signature of the Commissioner responsible for competition matters. It requests the Court to order the Commission to produce the original of the Decision so that it may be ascertained whether it was duly authenticated.

60 Even if the original Decision had been duly authenticated, the Decision would still be invalid, because a document identical to the original Decision was not notified to it.

61 The Commission states that Article 191(3) of the EC Treaty does not lay down any requirement for formal notification. It is sufficient that the decision reaches the addressee in simple written form and puts him in a position to take cognisance of it (Case 8/56 *ALMA* v *High Authority* [1957] ECR 179, 190, and Case C-195/91 P *Bayer* v *Commission* [1994] ECR I-5619, paragraphs 7 and 20). As those conditions were met in this case, the applicant's arguments based on irregularities in the notification procedure are without foundation.

62 Moreover, a certified true copy of the Decision is considered to be an authentic version of it (Joined Cases 97 to 99/87 *Dow Chemical Ibérica and Others* v *Commission* [1989] ECR 3165, paragraph 59, Case T-43/92 *Dunlop Slazenger* v *Commission* [1994] ECR II-441, paragraphs 24 and 25, and Case T-34/92 *Fiatagri and New Holland Ford* v *Commission* [1994] ECR II-905, paragraph 27).

63 In this case the Decision was authenticated in accordance with Article 16 of the Commission's Rules of Procedure. Moreover, the applicant has not adduced any evidence of irregularities in the procedure for the adoption of the Decision. The Commission submits that the Decision of 26 July 1994 did not alter the Decision in any respect in regard to the applicant and that, in any event, the fact that the decision of 26 July 1994 refers to the Decision constitutes a sufficient link between them.

64 In those circumstances the Commission should not be ordered to produce the original of the Decision (see *Bayer* v *Commission*, *Fiatagri and New Holland Ford* v *Commission* and *Dunlop Slazenger* v *Commission*, cited above).

Findings of the Court

65 The applicant cannot argue, in support of its claim that the procedure for the adoption and authentification of the Decision was irregular, that the 'certified true copy' of the original sent to it does not bear the signatures of the President and the Secretary-General of the Commission. The first paragraph of Article 16 of the Rules of Procedure of the Commission provides: 'Instruments adopted [...] in the course of a meeting [...] shall be annexed, in the authentic language or languages, to the minutes of the meeting at which they were adopted [...]. They shall be authenticated by the signatures of the President and the Secretary-General on the first page of the minutes.' Authentication of a decision adopted in the course of a meeting by the college of Commissioners does not therefore require the signatures of the President and the Secretary-General of the Commission on the decision itself but rather on the minutes of the meeting at which the decision was adopted. Accordingly, the fact that the 'certified true copy' of the Decision did not bear the signatures of the President and the Secretary-General of the Commission is not evidence that the Decision was not duly authenticated.

66 The applicant does not plead any other evidence or specific fact such as to displace the presumption of validity which applies to Community acts (see, *inter alia*, *Dunlop Slazenger* v *Commission*, cited above, paragraph 24).

67 In the absence of any such evidence, the Court should not order the measures of inquiry sought.

68 As regards the validity of the notification, there is no provision of Community law which precludes the notification of a decision in the form of a certified true copy or the separate notification of an amending decision.

69 In the present case the copy of the Decision sent to the applicant bears the name of the Commissioner responsible for competition policy and the words 'certified copy'. It is also signed by the Secretary-General of the Commission. Such a copy is lawful. It has the same legal force as the original instrument adopted by the college of Commissioners and authenticated in accordance with the procedures laid down by the Commission's Rules of Procedure.

70 As to the procedures for notification, it is settled case-law that a decision is properly notified within the meaning of the Treaty, if it reaches the addressee and he is in a position to take cognisance of it (*Europemballage and Continental Can* v *Commission*, cited above, paragraph 10). In this case, as is clear from the very terms of the application, the applicant was in a position to take full cognisance of the Decision and to assert all its rights before the Court.

71 The plea must therefore be rejected as unfounded.

The plea grounded upon infringement of the rights of the defence and infringement of the procedural rules relating to the statement of objections

Arguments of the parties

72 This plea is in two parts.

73 In the first part, the applicant submits that the statement of objections was not adopted and communicated to the addressees by the competent body under Article 2 of Regulation No 99/63, that is to say, the Commission.

74 The statement of objections was sent to it in the form of an unsigned document attached to a letter from the Director-General for Competition. Without a signature that document could not be considered to be an 'act' of the Commission. Accordingly, it could not serve as a basis for the Decision.

75 Moreover, even if the document in question, together with its covering letter, could be regarded as a 'statement of objections' for the purposes of Regulation No 99/63, it was not communicated to it by the Commission. Article 19(1) of Regulation No 17 accords the Commission exclusive authority in that respect, which its Rules of Procedure do not allow to be delegated. In any event, under the Rules of Procedure, neither the decision on the contents of the statement of objections nor its notification to its addressees could be delegated to a third party (*Geigy* v *Commission*, cited above, and Case 8/72 *Cementhandelaren* v *Commission* [1972] ECR 977). Similarly, the authority to fix the deadline for replying to the statement of objections could not be delegated to a third party.

76 In the second part of the plea the applicant submits that, in not binding the appendices to the statement of objections, the Commission infringed the requirement under Article 2(1) of Regulation No 99/63 that the statement of objections be in writing, which is intended to provide the same guarantees as are provided by the requirement for authentication of final decisions. The statement of objections could not therefore serve as a basis for the Decision.

77 The requirement that objections be notified in writing also implies that the statement of objections has to be signed at the foot of the last page. The signature of the Director-General on the covering letter is no substitute for the necessary signature.

78 As regards the first part of the plea, the Commission points out that it is clear from the documents submitted to the applicant that the objections raised against it were adopted by the Commission. Moreover, the Director-General of the Commission signed the statement of objections by virtue of a simple delegation of authority to sign, so that the argument based on his lack of authority to sign is unfounded (Joined Cases 43/82 and 63/82 *VBVB and VBBB* v *Commission* [1984] ECR 19, paragraph 14, and *Geigy* v *Commission*, cited above, paragraph 5).

79 The Commission submits that the purpose of the requirements under Article 10 of Regulation No 99/63 regarding the method of sending the statement of objections is primarily to provide evidence of the date it was served: the statement of objections is duly served if the addressee is in a position to take full cognisance of the tenor of the objections raised (*Geigy* v *Commission*, cited above, paragraph 11, and *Bayer* v *Commission*, cited above, paragraphs 7 and 20).

80 As regards the second part of the plea, the Commission argues that the applicant misconstrues the scope of Article 2 of Regulation 99/63. That article does not require that the statement of objections bear an original signature nor that the statement consist of a single document. Moreover, the marking of the appendices and the numbering of all the pages of the documents sent was sufficient to establish that they were related.

Findings of the Court

81 As regards the first part of the plea, the documents before the Court show that the statement of objections sent to the applicant was accompanied by a letter signed by the Director-General of the Directorate-General for Competition (DG IV) of the Commission.

82 In signing that letter the Director-General did not act pursuant to a delegation of powers but to a simple delegation of authority to sign which he had received from the Commissioner responsible (*Geigy* v *Commission*, cited above, paragraph 5). Such delegation is the normal method by which the Commission exercises its powers (*VBVB and VBBB* v *Commission*, cited above, paragraph 14).

83 As the applicant has not supplied any evidence to suggest that in this case the Community administration failed to observe the applicable rules (*VBVB and VBBB* v *Commission*, cited above, paragraph 14), this submission must be dismissed.

84 The applicant submits, secondly, that the statement of objections was not adopted by the Commission. On that point, it suffices to point out that the applicant has not adduced any evidence to call into question the presumption of validity enjoyed by Community measures. There is thus no need to verify the existence of the alleged infringement (by analogy, *Fiatagri and New Holland Ford* v *Commission*, cited above, paragraph 27).

85 The first part of the plea must therefore be rejected.

86 Nor can the second part of the plea be upheld.

87 Under Article 2(1) of Regulation No 99/63, '[t]he Commission shall inform undertakings and associations of undertakings in writing of the objections raised against them'. That provision does not require the document containing the statement of objections to be signed or the statement of objections to be contained in one formal document.

88 In any event, the objections raised against the applicant were communicated in writing in such a way that the various documents on which the Commission based its objections could be clearly identified.

89 In the light of the above, the plea must be rejected.

The plea grounded upon infringement of Article 190 of the Treaty

Arguments of the parties

90 The applicant sets out in detail the objectives of the obligation to state reasons laid down in Article 190 of the Treaty, first submitting that, for each action deemed to constitute an infringement, the Commission should have indicated the provision infringed and specified whether the infringement took the form of an agreement or a concerted practice. That information was vital in order to ascertain whether each of the actions in question met the conditions for classification as an illegal act, namely the existence of the relevant factual elements, illegality and fault. Accordingly, the statement that the infringement consisted in participation in an agreement or a concerted practice was not sufficient, as a single action could not be deemed both an agreement and a concerted practice.

91 While several actions can be described as a continuous infringement, that does not mean that the Commission need not indicate, for each individual action, the aspects which constitute an illegal act. Only if each individual action constitutes an illegal act may all the actions taken together be described as a continuous infringement.

92 Second, the applicant argues that, for each action described as illegal, the Decision should have given a precise indication of the specific factual circumstances, such as the place where it occurred, the participants and the precise role of each of them.

93 Finally, for each action in question, the Decision should have indicated the natural persons who took part. Article 15 of Regulation No 17 presupposes an intentional or negligent action by a natural person which was nevertheless imputable to an undertaking.

94 The Commission considers that the Decision contains a sufficient description of the facts to justify the imposition of the fine. Given the complex and long-term nature of the agreement, individual actions formed part of an overall system intended to distort free competition on the market, so that it was not necessary to classify each individual action as an agreement or a concerted practice (Case T-7/89 *Hercules Chemicals* v *Commission* [1991] ECR II-1711, paragraphs 262 to 264). In any event, the Commission made clear, in points 131 and 132 of the Decision, that from the end of 1987 the conduct of the undertakings presented all the characteristics of a full agreement in the sense of Article 85(1) of the Treaty, and that, until then, their conduct had constituted a concerted practice. Moreover, it could characterise an action primarily as an agreement and, in the alternative, as a concerted practice (Case T-13/89 *ICI* v *Commission* [1992] ECR II-1021, paragraphs 251 and 252).

95 In the case of a single infringement, the Commission was not obliged to prove that each individual act of the cartel met the criteria laid down in Article 85 (*ibid*, paragraphs 259 and 260).

96 Nor was it necessary to prove that every undertaking participated in each aspect of the cartel. As argued in points 116 and 117 of the Decision, it was sufficient for the

Commission to demonstrate the existence of the overall cartel and the participation of each undertaking in certain acts forming part of the overall joint enterprise (see *ICI* v *Commission*, cited above, paragraphs 256 to 261 and 305, and *Hercules Chemicals* v *Commission*, paragraph 272).

97 Finally, the Commission submits that it was not required to indicate in the Decision the names of the persons who had committed the acts, as Article 85 of the Treaty expressly concerned undertakings. It was merely necessary to demonstrate that persons authorised to act on behalf of the undertakings participated in the agreement, their actions being imputable to the undertakings concerned (Joined Cases 100 to 103/80 *Musique Diffusion française and Others* v *Commission* [1983] ECR 1825, paragraph 97). The statement of objections contained a detailed description of the evidence against the applicant and the appendices to that statement revealed the identity of the persons who acted.

Findings of the Court

98 It is settled law that the purpose of the obligation to give reasons for an individual decision is to enable the Community judicature to review the legality of the decision and to provide the party concerned with an adequate indication as to whether the decision is well founded or whether it may be vitiated by some defect enabling its validity to be challenged; the scope of that obligation depends on the nature of the act in question and on the context in which it was adopted (see, *inter alia*, Case T-49/95 *Van Megen Sports* v *Commission* [1996] ECR II-1799, paragraph 51). Although pursuant to Article 190 of the Treaty the Commission is bound to state the reasons on which its decisions are based, mentioning the facts, law and considerations which have led it to adopt them, it is not required to discuss all the issues of fact and law which have been raised during the administrative procedure (see, *inter alia*, Joined Cases 209/78 to 215/78 and 218/78 *Van Landewyck and Others* v *Commission* [1980] ECR 3125, paragraph 66).

99 In this case, the Decision sets out in detail the reasons why the Commission considered that the infringement on the part of the undertakings named in Article 1 of the Decision should be characterised as an agreement and a concerted practice (points 129 to 132 of the Decision). In particular, according to the first paragraph of point 131 'from the end of 1987, with the concretisation of the progressive collusion of the producers in the so-called "price before tonnage" scheme, the infringement has presented all the characteristics of a full "agreement" in the sense of Article 85'. In addition it is explained that 'the working out of the plan via the twice-yearly price initiatives is not to be treated as involving a series of separate agreements or concerted practices but as part of one and the same continuing agreement' (second paragraph of the same point).

100 Where, as here, a decision gives sufficient reasons to show why the conduct in question was characterised as an agreement and concerted practice, the Commission is not required to characterise each of the actions concerned separately as either an agreement or a concerted practice (see, to the same effect, *Hercules Chemicals* v *Commission*, cited above, paragraph 264).

101 The Decision also sets out in detail the reasoning followed as regards the applicant's participation in the infringement. It refers directly to the applicant as regards the concerted price increases (points 74, 76, 78, 79, 81, 85 and 87 of the Decision). Moreover, leaving aside the accuracy of the grounds they set out, which is a matter to be considered in the Court's examination of the merits of the Decision, the points describing the discussions with an anti-competitive object in the PWG (in particular, points 37, 51 and 52 of the Decision) must as a matter of course relate to the applicant, since, according to the Decision, the applicant participated in the meetings of that body (second paragraph of point 36). Similarly, the points of the Decision describing the discussions with an anti-competitive object in the JMC also concern the applicant (points 44 to 46, 58, 71, 73, 84, 85 and 87), inasmuch as the Commission considered that it had participated in the meetings of that body (table 7 annexed to the Decision and the first paragraph of point 46).

102 In such circumstances, the statement of reasons for the Decision gave the applicant an adequate indication of the essential elements of fact and of law supporting the reasoning which led the Commission to hold it responsible for an infringement of Article 85(1) of the Treaty.

103 Finally, as acts by a natural person are imputable to an undertaking within the meaning of Article 85 of the Treaty where that person is authorised to act on behalf of the undertaking (by analogy, *Musique Diffusion française and Others* v *Commission*, cited above, paragraph 97), it follows that the Commission gave sufficient reasons for the Decision in referring to the applicant's name.

104 In any event, the individual particulars annexed to the statement of objections reveal the identity of the applicant's representatives which the Commission believes to have participated in the meetings of the bodies of the PG Paperboard.

105 As none of the submissions of the applicant have been upheld, the plea must be rejected.

The plea grounded on infringement of Article 85(1) of the Treaty in that the Commission did not prove that the applicant participated in any agreement

106 This plea is in three parts. Each part will be considered separately.

The first part of the plea: no proof that the applicant participated in any agreement

— Arguments of the parties

107 The applicant submits that it never attended meetings of the various bodies of the PG Paperboard nor had any knowledge of the discussions with an anti-competitive object which the Decision alleges were held at those meetings.

108 The persons who, according to the Decision, represented it at the meetings of bodies of the PG Paperboard attended only as representatives of the Nordic Paperboard Institute (hereinafter 'NPI'), a Scandinavian association of cartonboard producers. The statements by other producers (see Table 5 annexed to the Decision), to the effect that it was considered to be one of the members of the JMC, were based on misapprehensions.

109 As regards the agreements and/or concerted practices between the participants in the meetings of the bodies of the PG Paperboard, the Decision gave no precise information showing the meetings at which the discussions were alleged to have taken place, the exact subject-matter of those discussions, the participants in the meetings and, finally, the participants in the collusion. In particular, in many points, the Decision makes no mention of the applicant or its member companies.

110 The applicant, stating that, even according to the Decision, its alleged representatives participated in only a few meetings of the PWG and the JMC, submits that the Decision contains no evidence to prove it participated in any sort of collusion. Even if there was collusion at certain meetings and it was represented in the bodies

concerned, it is not proven that the collusion took place at the meetings which its alleged representatives attended.

111 The applicant disputes that the outcome of PWG meetings was reported to the undertakings which were not members of the PWG (point 38 of the Decision). In particular, the statement that 'the Scandinavian producers (all members of the NPI) were usually told of the outcome by Finnboard' (fourth paragraph of point 38 of the Decision) is not supported by any evidence.

112 The allegation that the undertakings which were not members of the PWG were informed of the outcome of meetings of that body at meetings of the PC (point 38 of the Decision) is pure conjecture.

113 As regards the meetings of the PC, the suggestion in the Decision that the applicant and, to a certain extent, its member companies participated in the meetings of that body is without foundation.

114 As to the JMC, the statement by Fiskeby — of which the applicant was unaware — to the effect that on a few occasions a representative of the NPI gave it information about matters dealt with at meetings (point 46 of the Decision), confirms that representatives of the NPI, but not those of the applicant, took part in meetings of that committee.

115 Finally, as the Decision itself states, the discussions held at the meetings of the Economic Committee covered the general market situation.

116 The Commission states that the applicant was one of the full members of the PG Paperboard. It refers, in that connection, to Stora's statement of 23 December 1991 (appendix 43 to the statement of objections), in which the applicant is described as one of the undertakings represented in the PWG. Moreover, the minutes of the meetings of the PC referred to the managers of Finnboard as representatives of Finland, along with representatives of other Scandinavian countries.

117 The applicant's argument that it took no part in the meetings of the PWG is, in any event invalid: even if the managers of Finnboard acted as representatives of the NPI, that would merely mean that they represented the interests of almost all the Scandinavian producers. They would inevitably have taken the applicant's interests into consideration, in view of their role in that undertaking.

118 The applicant was also represented at the meetings of the JMC and the Economic Committee. Several producers of cartonboard named it as one of the members of the JMC.

119 For the rest, the Commission bases its arguments on the description in the Decision of the main roles of those bodies.

— Findings of the Court

120 According to the Decision, the applicant and the other undertakings named in Article 1 thereof infringed Article 85(1) of the Treaty by participating in an agreement and concerted practice. The Commission considered that the applicant participated in that infringement from mid-1986 until at least April 1991.

121 According to Table 7, annexed to the Decision, the applicant participated in meetings of the PWG, the PC, the JMC and the Economic Committee.

122 The Commission considers that the applicant participated in meetings of the PWG in its own right and as a representative of the NPI (fourth paragraph of point 38 and of point 79 of the Decision). Moreover, it states that the 'managing director [of Finnboard] was also chairman of the PG Paperboard and presided over the PWG from May 1988 onwards' (fourth paragraph of point 79 of the Decision).

123 As regards the applicant's participation in the JMC, it is stated that 'Finnboard seems to have represented the NPI as well as its own four member mills, Kyro, Metsä-Serla, Tampella and United Paper Mills' (first paragraph of point 32 of the Decision).

124 Finally, as regards the applicant's participation in meetings of the PC, 'Finnboard representatives (who had also been to the PWG meetings held just before) took part separately from the NPI in all the President Conference meetings' (second paragraph of point 42 of the Decision).

125 The documents before the Court show that the applicant's managers were involved in the structures of the PG Paperboard during the period covered by the Decision. For instance, the individual particulars annexed to the statement of objections show that the vice-chair of the PG Paperboard was held, during the period covered by the Decision, by the applicant's 'managing director': Mr de la Chapelle from mid-1986 to 1987, Mr Sommar from 1987 to 1988 and Mr Lindahl from 1990 onwards.

126 Mr Sommar was elected vice-chairman of the PG Paperboard at the general meeting in 1987 and, on that occasion, was expressly described, when put forward for the post, as 'the new Chairman of the Finnboard Executive Committee' (appendix 97 to the statement of objections).

127 Moreover, it is common ground that the chairmanship of the PG Paperboard was held by Mr Köhler from May 1988 until autumn 1990. On that point, it is stated in the minutes of the meeting of the PWG of 6 April 1990 (attached to the defence):

'Mr Köhler reminds us that he will take over other duties in the forest industry in Finnland in the coming autumn. Therefore he will leave Finnboard and will have to resign as president of the PG Paperboard.'

128 According to Stora's statements, the applicant participated in meetings of the PWG [appendices 35 (p. 14), 37 (p. 2) and 43 (p. 3) to the statement of objections].

129 Finally, several undertakings identified the applicant as a participant in meetings of the JMC (see Table 5 attached to the Decision).

130 In view of the Stora's statements and the actual participation in meetings of bodies of the PG Paperboard by several persons employed by the applicant, its claim that those persons participated only in their capacity as representatives of the NPI cannot be upheld.

131 Moreover, the applicant has not adduced the slightest evidence, such as a mandate to represent exclusively the NPI, to call into question the corroborative evidence of its participation, in its own right, in the meetings of the bodies of the PG Paperboard. At the hearing it even admitted that it had paid the travel expenses of its employees incurred in attending the meetings concerned, a fact which cannot but confirm the accuracy of the Commission's findings.

132 In the light of this evidence, the applicant's participation in its own right in the meetings of the PG Paperboard must be considered to have been proven.

133 Inasmuch as the applicant seeks in this part of the plea to contest the merits of the Commission's allegations regarding the anti-competitive object of the meetings in question, the relevant arguments must be examined in conjunction with the other two parts of the plea.

134 In the light of the above, the first part of the plea cannot be upheld.

The second part of the plea: lack of evidence of the applicant's participation in price initiatives

— Arguments of the parties

135 The applicant submits that the Decision contains no specific evidence proving its participation in price initiatives. The general grounds of the Decision do not establish any link between the various price initiatives implemented and the conduct of individual undertakings. In particular, the grounds of the Decision do not rule out

the possibility that collusion took place on the fringe of meetings or at meetings in which nobody connected with the applicant took part.

136 The systematic announcements of price increases do not prove the existence of collusion as they were simply a direct result of market conditions.

137 With reference to the appendices to the statement of objections relied on in the Decision, the applicant submits that many of those documents do not even mention its name, directly or indirectly, and that the documents which do mention it merely make general references to inconsequential details, the source of which is not given. Moreover, the circumstances in which certain documents were drawn up ruled out any connection between those documents and the bodies of the PG Paperboard. Such documents thus cannot be considered to prove the applicant's participation in price initiatives.

138 In the light of those considerations, the applicant disputes the probative value of a large number of the documents relied on by the Commission. Moreover, it submits that the documents appearing in appendices 44, 109, 130 and 131 to the statement of objections, documents which are relied on in the Decision, do not have the probative value which the Commission attributes to them. Rather, they are evidence of the absence of any collusion whatsoever on the part of the applicant.

139 The price list obtained from the premises of Finnboard (UK) Ltd (see point 79 of the Decision, hereinafter 'Finnboard list') does not mention the applicant. That document is not so similar to the two lists obtained from Rena (appendices 110 and 111 to the statement of objections) that any conclusions could be drawn as regards the applicant. It is not mentioned in the Rena price lists and the Finnboard list only contains information generally available and apparently concerns a past event, given the use of the Swedish word 'höjs' (a verb the infinitive of which

means 'to increase'). Moreover, the price lists obtained from Rena contain data relating to Ireland but Finland is not mentioned. The reverse is true of the Finnboard list.

140 The note obtained from Rena, which, the Decision alleges, concerns the JMC meeting of 6 September 1989 (appendix 117 to the statement of objections), states merely: '[...] 10.5% difference between GC I and GC on the lowest prices from Finnboard [...]'. That comment does not prove that the applicant participated in any collusion; the author of the note was merely noting a price differential between two products. Moreover, according to the covering letter from Rena (appendix 116 to the statement of objections), the information given in the note was based on individual conversations held on the fringe of the meeting of the JMC, conversations in which the applicant's employees took no part.

141 The note obtained from Rena, which, the Decision alleges, concerns the JMC meeting of 6 September 1990 (appendix 118 to the statement of objections), does not even concern a meeting of the JMC (see the covering letter from Rena, appendix 116 to the statement of objections), but merely relates to internal discussions. The mere mention of the applicant's name ('Finnboard a lot down in USSR [...]') does not constitute evidence of any collusion.

142 As regards Stora's statement describing the role of the JMC in the implementation of price initiatives (appendix 35 to the statement of objections, p. 17), the applicant submits that, even if it were considered to have participated, *quod non*, in the meetings of that body, Stora and it were, according to the Decision, both present at only seven meetings of the JMC. It is thus perfectly possible that any discussions with an anti-competitive object took place during meetings in which the applicant did not take part and that innocuous discussions were held at the seven meetings of the JMC at which Stora and the applicant were both present.

143 The Commission considers that it has proved both the existence of price initiatives and the participation of the applicant in such initiatives.

144 As regards the existence of price initiatives, it refers essentially to points 74 to 90 of the Decision. In addition it refers to certain evidence relied on in the Decision (appendices 44 and 70 to the statement of objections).

145 Finally, it refers to two lists of price increases obtained from Rena (appendices 110 and 111 of the statement of objections, mentioned at points 80 and 83 of the Decision respectively). Those lists, from the same source, confirm Stora's statements regarding arrangements for price increases made in the PG Paperboard. They do not mention any particular company by name but set out the price increases applicable in each European country. The fact that the applicant is not expressly mentioned is therefore irrelevant.

146 As regards the applicant's participation in price initiatives, the Commission disputes that the price increases were the result of general market conditions. First, it adduced evidence of collusion in this area, which was not even contested by several of the producers concerned. Second, participation in meetings at which discussions with an anti-competitive object were held is sufficient to satisfy the criteria for the application of Article 85 of the Treaty (Case T-1/89 *Rhône-Poulenc* v *Commission* [1991] ECR II-867, paragraph 66).

147 The Finnboard list contains information concerning GD grades, which proves that this was not an internal document, as the applicant does not produce those grades. The resemblance between the Finnboard list and the list obtained from Rena also demonstrates that the former concerned price increases on which cartonboard producers had reached an agreement. The information contained in the Finnboard list

shows that it concerned price increases in the second quarter of 1989 and does not refer to historical data, contrary to the applicant's claims.

148 Finally, the applicant's participation is proved by handwritten notes obtained from FS-Karton and Rena (appendices 113 and 117 to the statement of objections), which name certain producers of cartonboard, including Finnboard.

— Findings of the Court

149 According to Article 1 of the Decision, the undertakings referred to therein infringed Article 85(1) of the Treaty by participating, during the reference period, in an agreement and concerted practice whereby the suppliers of cartonboard in the Community, *inter alia*, 'agreed regular price increases for each grade of the product in each national currency' and 'planned and implemented simultaneous and uniform price increases throughout the Community'.

150 It has already been found that the applicant participated in meetings of the PWG and the JMC from mid-1986 until at least April 1991. The Court must therefore examine whether the Commission has proved that the purpose of the meetings of those two bodies was, *inter alia*, collusion on prices, before it considers the applicant's own position in relation to the purpose of those meetings.

151 As regards the PWG, the Decision states that 'the "PWG met from 1986 to assist in the introduction of discipline in the market"' (third paragraph of point 37 of the Decision), and that 'from soon after its inception, the PWG "reached agreement and took broad decisions on both the timing and the level of price increases to be

introduced by cartonboard producers"' (fourth paragraph of point 37 of the Decision).

152 That information comes from Stora's statement (appendix 39 to the statement of objections). Stora states, moreover, that '[t]he PWG met from 1986 to assist in the introduction of discipline to the market'. Those statements are supported by appendix 73 to the statement of objections, a confidential note dated 28 December 1988 sent by the marketing director of the Mayr-Melnhof Group in Germany (Mr Katzner) to the General Manager of Mayr-Melnhof in Austria (Mr Gröller) concerning the market situation.

153 According to that document, closer cooperation within the 'Presidents' grouping' ('Präsidentenkreis'), decided on in 1987, had produced two significant results:

'— PRO-Carton

— Price discipline.

In both areas there is something positive and something negative to report:

[...]

— On prices: winners and losers.'

154 The author of the note goes on to say 'all participants gained (and are still gaining) in that the downward price movement which had been a permanent feature until autumn 1987 could be stopped and reversed into price increases by means of (up till now) two clearly visible and perceptible steps'.

155 It should be noted that the expression 'Presidents' grouping' was interpreted by Mayr-Melnhof as a general reference to both the PWG and the PC, that is to say, without reference to a specific event or meeting (appendix 75 to the statement of objections, point 2. a), an interpretation which it is unnecessary to consider in the present context.

156 In the light of the evidence it must be held that the Commission has demonstrated the role played by the PWG in collusion on prices.

157 According to the Decision, the main purpose of the JMC was, from the outset:

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

— to work out the details of the price initiatives decided by the PWG on a country-by-country basis and for the major customers with the aim of achieving an equivalent (i. e. uniform) price system in Europe ...' (point 44, last paragraph, of the Decision).

158 More specifically, the Commission maintains in the first and second paragraphs of point 45 of the Decision, that:

'This committee discussed market-by-market how the price increases agreed by the PWG were to be implemented by each producer. The practicalities of bringing proposed price increases into effect were addressed in "round table" discussions, with each participant having the chance to comment on the suggested increase.

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

159 The Court finds that the Commission was entitled to refer to Stora's statements (appendices 35 and 39 to the statement of objections) as support for those findings as to the object of the meetings of the JMC.

160 Moreover, even if the Commission does not possess any official minutes of a meeting of the JMC, it obtained from Mayr-Melnhof and Rena some internal notes relating to the meetings of 6 September 1989, 16 October 1989 and 6 September 1990 (appendices 117, 109 and 118 to the statement of objections). Those notes, the tenor of which is given in points 80, 82 and 87 of the Decision, set forth the detailed discussions held during those meetings relating to concerted price initiatives. They therefore constitute evidence which clearly corroborates the description of the JMC's functions given by Stora.

161 In that regard, it suffices to refer by way of example to the note obtained from Rena regarding the JMC meeting of 6 September 1990 (appendix 118 to the statement of objections), in which it is stated, *inter alia*:

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

F	FF 40
NL	14 NLG
D	DM 12
I	LIT 80
B	BF 2.50
CH	SF 9
GB	£ 40
IRL	£ 45

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

Only 1 price increase a year.
For deliveries from 7 Jan.
Not later than 31st January.
14 of September letter with price increase (Mayr-Melnhof).
19 Sept. Feldmühle sending its letter.
Cascades before end of Sept.
All must have sent out their letters before 8 October.'

162 As the Commission explains in points 88 to 90 of the Decision, it was also able to obtain internal documents supporting the conclusion that the undertakings, and in particular those named in appendix 118 to the statement of objections, actually

announced and implemented the agreed price increases (see also table G annexed to the Decision).

163 In that connection the Court rejects the applicant's submission that there is no proof that appendix 118 to the statement of objections concerned a meeting of the JMC. That document is drawn up on paper headed 'Schweizerischer Bankverein' ('Swiss Bank Association') and is dated 6 September 1990, that is to say, the date of the JMC meeting held in Zurich. It describes very clearly the discussions with an anti-competitive object between the producers named therein. It has therefore been proved that it concerns the meeting of the JMC held on the date in question.

164 Even though the documents on which the Commission relies concern only a small number of the JMC's meetings held during the period covered by the Decision, all the available documentary evidence corroborates Stora's statement indicating that the main object of the JMC was to determine and plan the implementation of concerted price increases. The almost total absence of minutes, whether official or internal, of the meetings of the JMC must be regarded as sufficient proof of the Commission's assertion that the undertakings which participated in the meetings attempted to hide the true nature of the discussions in that body (see, in particular, point 45 of the Decision). In those circumstances, the burden of proof has been reversed and it is for the addressees of the Decision which participated in the meetings of that body to prove that it had a lawful object. Since such proof was not adduced by those undertakings, the Commission was entitled to consider that the discussions which the undertakings held in the meetings of that body had a principally anti-competitive object.

165 As regards the position of the applicant, this Court considers that its participation in the meetings of the PWG and the JMC constitutes sufficient evidence of its participation in collusion on prices.

166 It must first be pointed out that the applicant's managers held executive offices in the PG Paperboard from mid-1986 until autumn 1990 (see above, paragraphs 122 to 127). Furthermore, appendix 118 to the statement of objections describes discussions held at a meeting of the JMC in which it is common ground that an employee of the applicant took part.

167 The applicant's involvement in collusion on prices is, moreover, corroborated by the documentary evidence of that collusion set out in the Decision. In particular, the Finnboard list, described in point 79 of the Decision, is strikingly similar in form to the two other price lists mentioned in points 80 and 83 of the Decision, that is to say, the lists obtained by the Commission from Rena (appendices 110 and 111 to the statement of objections). The three lists contain information, in respect of several types of cartonboard and several Community countries, regarding the dates and precise amounts of the price increases implemented by the undertakings in question in April 1989, September/October 1989 and April 1990 respectively. That information corresponds, as regards the amounts of the price increases and the dates of their implementation, to the actual conduct of those undertakings on the market and in particular to that of the applicant (see tables D, E and F annexed to the Decision).

168 In view of the striking similarities in the form of those three price lists, the Court finds that they have a common origin. Moreover, appendix 110 is dated 3 December 1989, a date prior to the price announcements to which it refers. As a result, the Commission was justified in inferring that the two other undated price lists had to be regarded as having been drawn up prior to the dates of the actual price increase announcements to which those lists refer.

169 As regards, more specifically, the Finnboard list, the applicant's submission that the use of the Swedish word 'höjs' demonstrates that the document in question refers to a previous price increase for graphic cartonboard must be dismissed as

unfounded. 'Höjs' can, in that form, indicate either a present ('is increased') or future ('will be increased') event.

170 Finally, as regards that list, the Commission rightly pointed out in the Decision (fourth paragraph of point 79):

'Finnboard does not produce UD or GD grades, so the list cannot have been purely internal or relating to Finnboard's own business alone.'

171 In the light of the above and without the need to consider the applicant's submissions concerning other documents (appendices 44, 130 and 131 to the statement of objections), it must be concluded that the Commission has established that the applicant participated in collusion on prices.

The third part of the plea: lack of evidence of the applicant's participation in volume control

— Arguments of the parties

172 The applicant submits that the Decision contains no evidence that it infringed Article 85 of the Treaty as regards volume control. Appendix 73 to the statement of objections (see point 53 of the Decision), a document of particular importance in the statement of reasons for the Decision, does not once mention the applicant by name.

173 Point 61 of the Decision, regarding the system for the reporting and monitoring of production, sales volumes and capacity utilisation, contains no criticism of the applicant: it did not supply information to Fides and did not receive any report on capacity utilisation.

174 The Decision's reasoning in regard to orders in hand and machine downtime is purely theoretical. It does not even refer to any agreement to that end, as it alleges that only a loose system of encouragement existed.

175 Finally, as regards the agreement allegedly concluded within the PWG on freezing the market shares of the main producers, the applicant repeats that it did not participate in such meetings. Moreover, neither Stora's statement (appendix 43 to the statement of objections) nor the note from Rena concerning a meeting of the NPI (appendix 102 to the statement of objections, see point 58 of the Decision) contain any information from which it could be inferred that the applicant participated in collusion. In particular, Stora's statement shows that the discussions concerning market shares were extremely vague and did not concern individual undertakings.

176 The Commission contends that the existence of collusion on volume control has been proved (points 51 to 71 of the Decision).

177 The price before tonnage policy was described in detail by Stora (appendix 39 to the statement of objections). The implementation of that policy required production volumes to be monitored and tailored to demand. For that reason producers exchanged information on the state of order backlogs, order inflow and capacity utilisation. Moreover, they kept each other informed of the amount of planned or actual downtime in order to plan downtime in the sector as a whole.

178 That account of the price before tonnage policy is corroborated by a note from Mayr-Melnhof concerning the meeting of the Economic Committee of 3 October 1989 (appendix 70 to the statement of objections), by a confidential note of 28 December 1988 by Mayr-Melnhof's sales director (appendix 73 to the statement of objections), and by appendices 113, 130 and 131 to the statement of objections.

179 As regards the applicant's participation in the discussions in question, the Commission points out that its participation is proved by the fact that, for a long time, it presided over the PWG, the body within which those discussions took place.

180 Furthermore, the role played by the applicant is confirmed by numerous documents, in particular appendices 70, 130 and 131 to the statement of objections, which mention the applicant several times.

— Findings of the Court

181 According to Article 1 of the Decision, the undertakings referred to in that article infringed Article 85(1) of the Treaty by participating, during the relevant period, in an agreement and concerted practice whereby the suppliers of cartonboard in the Community 'reached an understanding on maintaining the market shares of the major producers at constant levels, subject to modification from time to time' and 'increasingly from early 1990, took concerted measures to control the supply of the product in the Community in order to ensure the implementation of the said concerted price rises'.

182 According to the Commission, those two types of collusion, dealt with in the Decision under the heading 'volume control', were initiated during the reference

period by the participants in the PWG meetings. It is apparent from the third paragraph of point 37 of the Decision that the true purpose of the PWG, as described by Stora, 'included "discussions and concertation on markets, market shares, prices, price increases and capacity"'.

183 As to the PWG's role in relation to the collusion on market shares, the Decision (point 37, fifth paragraph) states as follows: 'In connection with the moves to increase prices, the PWG held detailed discussions on the market shares in western Europe of the national groupings and of individual producer groups. As a result, certain "understandings" were reached between the participants as to their respective market shares, the object being to ensure that the concerted price initiatives were not jeopardised by excess of supply over demand. The large producer groups in effect agreed to maintain their market shares at the levels disclosed for each year by the annual production and sales figures and available in definitive form through Fides in March of the following year. Market share developments were analysed in each meeting of the PWG on the basis of the monthly Fides returns and if significant fluctuations emerged, explanations would be sought from the undertaking presumed responsible.'

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

185 The first paragraph of point 56 states: 'The basic understanding between the major producers on maintaining their respective market shares continued throughout the period covered by this Decision'. According to point 57: '"Market share development" was analysed at each meeting of the PWG on the basis of provisional statistics'. Finally, the last paragraph of point 56 states: 'The undertakings which took part in these discussions on market shares were those represented in the PWG,

namely Cascades, Finnboard, KNP (until 1988), [Mayr-Melnhof], MoDo, Sarrió, the two Stora group producers CBC and Feldmühle, and (from 1988) Weig'.

186 The Court therefore considers that the Commission correctly established the existence of collusion on market shares between the participants in the meetings of the PWG.

187 The Commission's analysis is in essence based on Stora's statements (appendices 39 and 43 to the statement of objections) and is confirmed by appendix 73 to the statement of objections.

188 In appendix 39 to the statement of objections, Stora states: 'The PWG met from 1986 to assist in the introduction of discipline in the market. ... Among other (legitimate) activities, its purpose included discussion and concertation on markets, market shares, prices, price increases, demand and capacity. Its role included assessing and explaining to the President Conference the precise state of supply and demand on the market and the measures to be taken to attempt to bring order to the market.'

189 As regards more specifically the collusion on market shares, Stora indicates that 'the shares taken by national groups of EC, EFTA and other countries supplied by members of the PG Paperboard were considered in the PWG' and that the PWG 'discussed the possibility of holding market shares at the previous year's level' (appendix 39 to the statement of objections, point 19). It also states (same document, point 6) that '[d]iscussions about producers' European market shares also took place during this period, the first reference period being 1987 levels'.

190 In a reply to a request by the Commission of 23 December 1991, sent on 14 February 1992 (appendix 43 to the statement of objections), Stora also states: 'The understandings on market share levels reached by the PWG members related to Europe as a whole. The understandings were based on the previous total year figures, usually definitively available by the following March' (point 1.1).

191 That assertion is confirmed in the same document as follows: '(...) the discussions led to understandings usually in March of each year between members of the PWG to maintain their market shares at the previous year's level' (point 1.4). Stora reveals that 'no measures were taken to ensure respect for the understandings' and that the participants in the meetings of the PWG 'were aware that if they took exceptional positions in certain markets supplied by others, those others could retaliate in other markets' (*ibidem*).

192 Lastly, it states that Finnboard took part in the discussions concerning market shares (point 1.2).

193 Stora's assertions concerning collusion on market shares are supported by appendix 73 to the statement of objections (see paragraphs 152 and 178 above).

194 According to that document, cited in points 53 to 55 of the Decision, the closer cooperation within the 'Presidents' grouping' ('Präsidentenkreis') decided on in 1987 had produced 'winners' and 'losers'. The author of the note considers Mayr-Melnhof to be amongst the losers for various reasons, including the following:

'(2) An agreement could only be reached by our being "punished" — we were asked to make "sacrifices".

(3) Market shares had to be "frozen" at 1987 levels, existing contacts maintained and no new activities or grades obtained via pricing (the result will be apparent in January 1989 — if all are honest)'.

195 Those sentences must be read in the more general context of the note.

196 In that regard, it should be noted (see paragraph 155 above) that the reference to the 'Presidents' grouping' was interpreted by Mayr-Melnhof as a general reference to both the PWG and the PC, that is to say, without reference to a specific event or meeting (appendix 75 to the statement of objections, point 2. a).

197 The author goes on to indicate that this cooperation had led to 'price discipline' which had produced 'winners' and 'losers'.

198 It is necessary, therefore, to understand the phrase relating to the market shares which were to be frozen at 1987 levels against the background of that discipline decided upon by the 'Presidents' grouping'.

199 Moreover, the reference to 1987 as reference year is consistent with Stora's second statement (appendix 39 to the statement of objections; see paragraph 188 above).

200 As to the role played by the PWG in the collusion on the control of supply, which was a feature of the consideration of machine downtime, the Decision states that

the PWG played a decisive role in implementing downtime when, from 1990, production capacity increased and demand fell: 'From the beginning of 1990 ... the industry leaders ... considered it necessary to concert on the need for taking downtime in the forum of the PWG. The major producers recognised that they could not increase demand by lowering prices and that maintaining full production would simply bring prices down. In theory, the amount of downtime required to bring supply and demand back into balance could be calculated from the capacity reports' (point 70 of the Decision).

201 It is also observed: 'However, the PWG did not formally allocate the "downtime" to be taken by each producer. According to Stora, there were practical difficulties in reaching a coordinated plan on downtime to cover all the producers. Stora says that for these reasons only "a loose system of encouragement existed"' (point 71 of the Decision).

202 The Court finds that the Commission adequately established the existence of collusion on downtime between the participants in the meetings of the PWG.

203 The documents it produces support its analysis.

204 In its second statement (appendix 39 to the statement of objections, point 24), Stora gives the following explanation: 'With adoption by the PWG of the policy of price before tonnage and the gradual implementation of an equivalent price system from 1988, members of the PWG recognised that downtime would have to be taken to maintain those prices in the face of a reduced growth in demand. Without taking downtime the producers would have been unable to maintain agreed price levels in the face of an increasing excess of capacity'.

205 In the following point of its statement, it adds: 'In 1988 and 1989 the industry was able to run at near full capacity. Downtime in addition to normal closure for repairs and holidays became necessary from 1990. ... Ultimately downtime had to be taken when the order flow ceased in order to maintain the price before tonnage policy. The amount of downtime required to be taken by producers (to maintain the balance between production and consumption) could be calculated from the capacity reports. No formal allocation of downtime was made by the PWG, although a loose system of encouragement existed ...'.

206 As to appendix 73 to the statement of objections, the reasons adduced by the author of the note in order to explain why he considered Mayr-Melnhof to be a 'loser' at the time when the note was written are significant evidence of the existence of collusion on downtime between the participants in the meetings of the PWG.

207 The author states:

'(4) It is at this point that there begins to be a difference in opinion between the parties involved as to what is desired.

[...]

(c) All sales representatives and European agents were released from their quantity budgets and a pricing policy followed which admitted of practically no exceptions (our employees often did not understand our changed attitude to the market — in the past they were just required to go for tonnage and now the sole objective is price discipline with the danger of having to stop machines).'

208 Mayr-Melnhof states (appendix 75 to the statement of objections) that the passage reproduced above refers to its own internal situation. However, when considered in the light of the more general background to the note, that passage reflects the implementation, at the level of sales personnel, of a rigorous policy adopted within the 'Presidents' grouping'. The document must therefore be construed as meaning that the participants in the 1987 agreement, that is to say, the participants in the meetings of the PWG at least, undoubtedly weighed up the consequences the agreed policy would have if it were to be applied rigorously.

209 The fact that discussions relating to consideration of downtime took place between the manufacturers when they prepared price increases is corroborated, in particular, by a Rena note dated 6 September 1990 (appendix 118 to the statement of objections), which refers to the amounts of price increases in several countries, the dates for the future announcements of those increases and the state of the order backlogs expressed in working days for several manufacturers.

210 The author of the document notes that certain manufacturers were providing for downtime, which he illustrates as follows:

'Kyro	36 days	1 week
Simpele	28 days	1 week September
Ta	27 days	
Ingerois	24 days	23/September stop
[...]		
Kopparfors	5-15 days	
	5/9 will stop for five days'.	

211 It should be pointed out that the applicant participated in the meeting of the JMC referred to in that note (Table 4 annexed to the Decision). In that regard, it is common ground that the names mentioned above, 'Kyro', 'Simpele', 'Ta' for Tako, and 'Ingerois' refer to the cartonboard manufacturing sites of the member companies of Finnboard, that is to say, Oy Kyro AB, United Paper Mills Ltd, Metsä-Serla Oy and Tampella Corporation.

212 On the basis of the foregoing, the Commission has proved to the requisite legal standard that there was collusion on market shares between the participants in the meetings of the PWG and that there was collusion on downtime between those same undertakings. Since it is established that the applicant took part in the meetings of the PWG and that that undertaking is expressly referred to in the main inculpatory evidence (Stora's statements), the Commission was fully entitled to hold the applicant liable for its participation in those two types of collusion.

213 The applicant's criticism of Stora's statements, by which it disputes their probative value, does not weaken that finding.

214 It is common ground that Stora's statements are made by one of the undertakings regarded as having participated in the alleged infringement and that they contain a detailed description of the nature of the discussions held in the bodies of the PG Paperboard, of the objective pursued by the undertakings which met within it, and of the participation of those undertakings in the meetings of its various bodies. Since this central evidence is corroborated by other documents, it constitutes a sound basis for the Commission's assertions.

215 Since the Commission has proved the existence of the two types of collusion in question, it is unnecessary to consider the other documents criticised by the applicant.

216 Since none of the parts of the plea has been upheld, the plea must be rejected in its entirety.

The plea of infringement of Article 85(1) of the Treaty in that the Commission did not take due account of the competitive conditions and the market situation

Arguments of the parties

217 There are two parts to this plea.

218 In the first part, the applicant submits that, because of the market conditions, it had no interest in participating in collusion which sought to restrict competition.

219 On that point, it is clear from the Decision that, in 1990, exports from the Scandinavian countries were in the main made up of GC and SBS cartonboard and that 80% of the cartonboard produced by the Finns was of GC grade. Furthermore, exports from the Member States of EFTA covered approximately half the demand for GC cartonboard in the Community. Accordingly, it was only in respect of GC cartonboard that the applicant had any interest in the evolution of the Community cartonboard market.

220 The producers of GC cartonboard were almost entirely unaffected by the sales difficulties encountered by the producers of GD cartonboard, because demand for GC cartonboard increased during the second half of the 1980s more than three times as fast as demand for GD cartonboard and the Scandinavian producers of GC cartonboard managed to increase their market shares continually. On the other hand, producers of GD cartonboard suffered fierce competition. The effects of this favourable competitive situation for producers of GC cartonboard were strengthened both by the vertical integration of their production lines their cartonboard mills being set up in direct proximity to forests and woodpulp plants and by the

fact that the Finnish producers had the most modern industrial plant. In the circumstances, the applicant disputes that the average operating margin of cartonboard producers was as much as 20% during the period covered by the Decision (point 16 of the Decision).

221 Given the market conditions and the competitive situation of the applicant at the time, it thus had no interest in participating in an agreement to restrict competition. As the Commission failed to take account of those particular circumstances, its analysis of the market conditions is incomplete and erroneous.

222 In the second part of the plea the applicant submits that the Decision is based on an inadequate analysis of the market conditions in that it contains no finding as to the existence of effective competition during the period in question. The Commission should have taken account, at least in calculating the fines, of the fact that any collusion had in any event had no impact on actual competition.

223 As regards the first part of the plea, the Commission contends that, since the participation of the applicant in the agreement has been proved, there is no need to consider whether it had any interest in participating in it. In any event, the applicant obviously had an interest in keeping prices artificially high. Even if its submissions concerning the favourable competitive position of GC cartonboard producers are well-founded, the maintenance of high prices would have conferred on it an even greater advantage over producers of GD cartonboard.

224 Finally, the average operating margin was in fact 20% (point 16 of the Decision).

225 As regards the second part of the plea, the Commission contends that the study drawn up by London Economics (hereinafter 'LE report'), on which the applicant relies, does not disprove either the existence of an agreement or its effect on the free play of competition.

226 In any event, given the manifestly anti-competitive object of the agreement, it is not necessary to demonstrate the existence of specific effects on the market (Joined Cases 56/64 and 58/64 *Consten and Grundig* v *Commission* [1966] ECR 299).

Findings of the Court

227 As has already been held, the Commission has proved that the applicant participated, from mid-1986, in collusion on prices and, from the end of 1987, in collusion on market shares and on downtime, that is to say, in the three constituent elements of the infringement found in Article 1 of the Decision.

228 Furthermore, the Commission concluded, and the applicant has not disputed, that the object of the abovementioned collusion was to restrict competition within the common market and that the collusion had affected trade between Member States (points 133 to 138 of the Decision).

229 In those circumstances, the applicant's submissions that it had no interest in any agreement and that the collusion had no effect on actual competition are ineffective: even if the factual claims put forward by the applicant as part of its argument

were well-founded, they would not be such as to call into question the Commission's finding of an infringement of Article 85(1) of the Treaty.

230 This plea cannot therefore be upheld.

Application for annulment of Article 2 of the Decision

Arguments of the parties

231 The applicant alleges that the order to desist contained in Article 2 of the Decision is wholly imprecise and does not make clear what information is not to be exchanged. It is unacceptable for Article 2 to make the undertakings bear the risk of ascertaining the scope of the order. Moreover, the lack of precision in Article 2 renders it unenforceable.

232 Furthermore, the order is not justified inasmuch as it prohibits the exchange of aggregated information concerning order inflow and backlog. The exchange of such data is entirely innocuous and the mere fact that it is possible to use the information exchanged for an anti-competitive purpose cannot justify the prohibition of such exchange.

233 Finally, CEPI-Cartonboard notified the Commission of a system for the exchange of such aggregated information. As Article 2 of the Decision in fact prohibits that system, the Commission should, before adopting the Decision, have verified whether the conditions for exemption under Article 85(3) of the Treaty were met,

and should have given a statement of reasons on that point in the Decision. The applicant's rights of defence were thus infringed, because the Commission did not hear the evidence of CEPI-Cartonboard before adopting the Decision.

234 The Commission disputes that the prohibition contained in Article 2 of the Decision is too abstract or imprecise. The operative part of the Decision must be read in the light of the statement of reasons set out therein and such a reading allows its addressees to understand the exact scope of the prohibition (Joined Cases 40 to 48/73, 50/73, 54 to 56/73, 111/73, 113/73 and 114/73 *Suiker Unie and Others* v *Commission* [1975] ECR 1663, paragraphs 122 to 124). In the present case, the statement of reasons sets out in detail the facts on which the prohibition is based.

235 The directions in the first and fourth paragraphs of Article 2 order the cessation, and prohibit the resumption, of the infringement described in the statement of reasons for the Decision. Moreover, the second and third paragraphs of Article 2 of the Decision only describe the way in which a legal exchange of information might be organised, a description which is intended to assist manufacturers in organising their future conduct. This is clear from the positive statements used in these paragraphs.

236 The Commission contends that the prohibition of the exchange of information in aggregated form on order inflow and backlog is justified on the cartonboard market by the high degree of concentration in the industry and the homogeneity of the products. Referring to points 68 to 70 of the Decision, it argues that the regular exchange of such information makes for transparency of market conditions which allows both downtime to be planned so as to prevent a fall in prices and the possibility of price increases to be assessed throughout the sector. Moreover, the cartonboard producers already used the information exchanged to facilitate a common commercial policy.

237 Accordingly, the Commission correctly took the view that the exchange of information in question constituted a restriction of competition on the relevant market under Article 85(1) of the Treaty.

238 Finally, Article 2 of the Decision does not concern the system of information exchange notified by CEPI-Cartonboard.

Findings of the Court

239 It will be recalled that Article 2 of the Decision provides as follows:

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

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

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

or

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

Any scheme for the exchange of general information to which they subscribe, such as the Fides system or its successor, shall be so conducted as to exclude not only any information from which the behaviour of individual producers can be identified but also any data concerning the present state of the order inflow and backlog, the forecast utilisation rate of production capacity (in both cases, even if aggregated) or the production capacity of each machine.

Any such exchange system shall be limited to the collection and dissemination in aggregated form of production and sales statistics which cannot be used to promote or facilitate common industry behaviour.

The undertakings are also required to abstain from any exchange of information of competitive significance in addition to such permitted exchange and from any meetings or other contact in order to discuss the significance of the information exchanged or the possible or likely reaction of the industry or of individual producers to that information.

A period of three months from the date of the communication of this Decision shall be allowed for the necessary modifications to be made to any system of information exchange.'

240 As is apparent from point 165 of the Decision, Article 2 was adopted in accordance with Article 3(1) of Regulation No 17. By virtue of that provision, where the Commission finds that there is an infringement, *inter alia*, of Article 85 of the Treaty, it may require the undertakings concerned to bring the infringement to an end.

241 It is settled law that Article 3(1) of Regulation No 17 may be applied so as to include an order directed at bringing an end to certain acts, practices or situations which have been found to be unlawful (Joined Cases 6/73 and 7/73 *Istituto Chemioterapico Italiano and Commercial Solvents* v *Commission* [1974] ECR 223, paragraph 45, Case C-241/91 P and C-242/91 P *RTE and ITP* v *Commission* [1995] ECR I-743, paragraph 90), and also at prohibiting the adoption of similar conduct in the future (Case T-83/91 *Tetra Pak* v *Commission* [1994] ECR II-755, paragraph 220).

242 Moreover, since Article 3(1) of Regulation No 17 is to be applied according to the nature of the infringement found, the Commission has the power to specify the extent of the obligations on the undertakings concerned in order to bring an infringement to an end. Such obligations on the part of the undertakings may not, however, exceed what is appropriate and necessary to attain the objective sought, namely to restore compliance with the rules infringed (judgment in *RTE and ITP* v *Commission*, cited above, paragraph 93; to the same effect, see Case T-7/93 *Langnese-Iglo* v *Commission* [1995] ECR II-1533, paragraph 209, and Case T-9/93 *Schöller* v *Commission* [1995] ECR II-1611, paragraph 163).

243 As regards, first, the applicant's argument that the Commission committed an error of law in adopting Article 2 of the Decision without having first expressed its view on the compatibility with Article 85 of the information exchange system notified by CEPI-Cartonboard, the Court observes that the notification made by that association on 6 December 1993 related to a new information exchange system, separate from that considered by the Commission in the Decision. When adopting Article 2 of the contested decision, the Commission could not therefore

assess the legality of the new system in the context of that decision. When it adopted Article 2, it was therefore entitled simply to examine and express a view on the old information exchange system.

244 Next, in order to verify whether, as the applicant claims, the scope of the direction in Article 2 of the Decision is too wide, it is necessary to consider the extent of the various prohibitions it places on the undertakings.

245 The prohibition in the second sentence of the first paragraph of Article 2, requiring the undertakings to refrain in future from any agreement or concerted practice which may have an effect which is the same as, or similar to, those of the infringements found in Article 1 of the Decision, is aimed solely at preventing the undertakings from repeating the behaviour found to be unlawful. Consequently, in adopting such directions, the Commission has not exceeded the powers conferred on it by Article 3 of Regulation No 17.

246 The provisions of subparagraphs (a), (b) and (c) of the first paragraph of Article 2 are directed more specifically at prohibiting future exchange of commercial information.

247 The direction in subparagraph (a) of the first paragraph of Article 2, which prohibits any future exchange of commercial information by which the participants directly or indirectly obtain individual information on competitors, presupposes a finding by the Commission in the Decision that an information exchange of such a nature is unlawful under Article 85(1) of the Treaty.

248 It should be noted that Article 1 of the Decision does not state that the exchange of individual commercial information in itself constitutes an infringement of Article 85(1) of the Treaty.

249 It states more generally that the undertakings infringed that article of the Treaty by participating in an agreement and concerted practice whereby the undertakings, *inter alia*, 'exchanged commercial information on deliveries, prices, plant standstills, order backlogs and machine utilisation rates in support of the above measures'.

250 However, since the operative part of a decision must be interpreted in the light of the statement of reasons for it (*Suiker Unie and Others* v *Commission*, cited above, paragraph 122), it should be noted that the second paragraph of point 134 of the Decision states:

'The exchanging by producers of normally confidential and sensitive individual commercial information in meetings of the PG Paperboard (mainly the JMC) on order backlog, machine closures and production rates was patently anti-competitive, being intended to ensure that the conditions for implementing agreed price initiatives were as propitious as possible. ...'.

251 Consequently, as the Commission duly found in the Decision that the exchange of individual commercial information in itself constituted an infringement of Article 85(1) of the Treaty, the future prohibition of such an exchange of information satisfies the conditions for the application of Article 3(1) of Regulation No 17.

252 The prohibitions relating to the exchanges of commercial information referred to in subparagraphs (b) and (c) of the first paragraph of Article 2 of the Decision

must be considered in the light of the second, third and fourth paragraphs of that article, which support what is expressed in those subparagraphs. It is in this context that it is necessary to determine whether, and if so to what extent, the Commission considered the exchanges in question to be illegal, since the extent of the obligations on the undertakings must be restricted to that which is necessary in order to bring their conduct into line with what is lawful under Article 85(1) of the Treaty.

253 The Decision must be interpreted as meaning that the Commission considered the Fides system to be contrary to Article 85(1) of the Treaty in that it underpinned the cartel (point 134, third paragraph, of the Decision). Such an interpretation is borne out by the wording of Article 1 of the Decision, from which it is apparent that the commercial information was exchanged between the undertakings 'in support of the ... measures' considered to be contrary to Article 85(1) of the Treaty.

254 The scope of the future prohibitions set out in subparagraphs (b) and (c) of the first paragraph of Article 2 of the Decision must be assessed in the light of that interpretation by the Commission of the compatibility, in the present case, of the Fides system with Article 85 of the Treaty.

255 In that regard, first, the prohibitions in question are not restricted to exchanges of individual commercial information, but relate also to certain aggregated statistical data (Article 2, first paragraph, (b), and second paragraph, of the Decision). Second, subparagraphs (b) and (c) of the first paragraph of Article 2 prohibit the exchange of certain statistical information in order to prevent the establishment of a possible support for future anti-competitive conduct.

256 Such a prohibition exceeds what is necessary in order to bring the conduct in question into line with what is lawful because it seeks to prevent the exchange of purely statistical information which is not in, or capable of being put into, the form of individual information on the ground that the information exchanged might be used for anti-competitive purposes. First, it is not apparent from the

Decision that the Commission considered the exchange of statistical data to be in itself an infringement of Article 85(1) of the Treaty. Second, the mere fact that a system for the exchange of statistical information might be used for anti-competitive purposes does not make it contrary to Article 85(1) of the Treaty, since in such circumstances it is necessary to establish its actual anti-competitive effect.

257 Consequently, the first to fourth paragraphs of Article 2 of the Decision must be annulled, save and except as regards the following passages:

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

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

Any scheme for the exchange of general information to which they subscribe, such as the Fides system or its successor, shall be so conducted as to exclude any information from which the behaviour of individual producers can be identified.'

The claim for annulment or reduction of the amount of the fine

The plea that the fine was calculated on the basis of irrelevant turnover figures

Arguments of the parties

158 There are two parts to this plea.

159 In the first part, the applicant argues that the fine was calculated, incorrectly, on the basis of the turnover of four of its member companies producing cartonboard, that is to say, Kyro, Metsä-Serla, Tampella and United Paper Mills. The applicant's turnover in 1990 was in fact considerably lower than that of those companies. Its turnover for the purposes of Article 15 of Regulation No 17 was made up of the sales commission which it invoiced to its member companies.

160 It submits that, when it effects sales on behalf of its member companies, it does not acquire any title to the goods, title passing directly from the member company to the customer. Nor is it a creditor of the end customer, as the debts are payable directly to the member companies. Customers always want the goods to be supplied by a particular cartonboard mill. The applicant conducts negotiations with customers on the basis of contracts which have already been concluded and can only act in accordance with the conditions of sale already established in those contracts. In the case of new customers, sales staff were obliged to approach the local Finnboard sales director, who would, in turn, inform the cartonboard mill requested by the customer so that conditions of sale could be drawn up. Finally, when a customer's order was accepted by the cartonboard mill in question, the invoice was dispatched by the applicant on behalf of that cartonboard mill.

261 In negotiations regarding transport and financing its role is, again, that of intermediary.

262 It submits that, according to the Decision, Finnboard and its member companies should not be considered to be a single undertaking within the meaning of Article 85 of the Treaty. This confirms that the relevant turnover for the calculation of the fine consists solely of the commission which the applicant receives.

263 In the second part of the plea, set out in the letter to the Court of First Instance of 19 July 1995, the applicant argues that it is clear from the defence that the Commission calculated the fine on the basis of an incorrect turnover figure: it calculated the fine on the basis that the applicant marketed 250 000 tonnes of cartonboard in 1990, whereas the quantity actually marketed was only 219 364 tonnes. The discrepancy is attributable to the fact that Metsä-Serla's production of wallpaper was mistakenly included. Setting out its own calculation of its turnover in 1990, the applicant submits that its turnover was overestimated by 17%.

264 As regards the first part of the plea, the Commission contends that the applicant cannot be considered to be equivalent to an independent commercial agent. It must be treated as a sales and distribution body for its member companies, for which it effects all sales, through the intermediary of its own sales subsidiaries. The contracts for sale and delivery are concluded directly between the applicant and its customers and supplies are invoiced in its name. Moreover, to a certain extent the applicant has the power to negotiate specific conditions of sale with customers. Amounts corresponding to the sales are entered in the current assets part of the balance sheet as debts due to the applicant.

265 Finally, the Commission argues that the objective of Article 15(2) of Regulation No 17 could not be achieved if, by setting up a joint sales agency,

manufacturers could limit their liability to 10% of its running costs.

266 As regards the second part of the plea, in its letter of 6 October 1995, the Commission contends that no account should be taken of it because in its letter of 19 July 1995 the applicant opted not to lodge a reply.

267 However, in response to the arguments in question, it concedes that it was mistaken in stating in the defence that the fine was calculated on the basis that 250 000 tonnes were marketed in 1990. In fact, using the marketing figures notified by the applicant, it based its calculation of turnover on the assumption that 221 000 tonnes were marketed. The discrepancy with the applicant's calculation of its turnover is explained by the fact that the Commission took the view that the price per tonne used by the applicant was too low: the applicant took the average sale price as ECU 833 per tonne, whereas it emerged from confidential minutes found at the premises of its British subsidiary that even prices to major customers in 1990 were on average well above ECU 1 000 per tonne. Moreover, despite the Commission's requests for clarification, the applicant never explained the figures used to calculate the turnover of its member companies.

Findings of the Court

268 As regards the first part of the plea, it follows from the Court's examination of the pleas relied on by the applicant in support of its application for annulment of the Decision that the Commission has proved that the applicant participated in meetings of the bodies of the PG Paperboard and in the collusion with an anti-competitive object which took place at those meetings. The applicant has not disputed that, if that were proved, it could be held liable for the infringement found

in Article 1 of the Decision and, on that basis, be fined under Article 15(2) of Regulation No 17.

269 That Article provides:

'The Commission may by decision impose on undertakings or associations of undertakings fines of from 1000 to 1 000 000 units of account, or a sum in excess thereof but not exceeding 10% of the turnover in the preceding business year of each of the undertakings participating in the infringement where, either intentionally or negligently:

(a) they infringe Article 85 (1) ...'

270 It is settled case-law that the use of the general term 'infringement' in Article 15(2) of Regulation No 17, inasmuch as it covers without distinction agreements, concerted practices and decisions of associations of undertakings, indicates that the upper limits for fines laid down in that provision apply in the same way to agreements and concerted practices as to decisions of associations of undertakings. It follows that the upper limit of 10% of turnover must be calculated by reference to the turnover of each of the undertakings which are parties to those agreements and concerted practices or of all of the undertakings which were members of the association of undertakings, at least where, by virtue of its internal rules, the association is able to bind its members. The correctness of this view is borne out by the fact that the influence which an association of undertakings has been able to exert on the market does not depend on its own 'turnover', which discloses neither its size nor its economic power, but rather on the turnover of its members, which constitutes an indication of its size and economic power (judgments in Joined Cases T-39/92 and T-40/92 *CB and Europay* v *Commission* [1994] ECR II-49, paragraphs 136 and 137, and in Case T-29/92 *SPO and Others* v *Commission* [1995] ECR II-289, paragraph 385).

271 In this case, although the applicant was classified as an 'undertaking' (point 173 of the Decision), the fine imposed on it was not fixed on the basis of the turnover appearing in its annual reports and published accounts, which corresponds to the amount of commission received by it on sales of cartonboard effected on behalf of its member companies: the turnover used to calculate the fine is made up of the total invoiced value of the sales which the applicant made on behalf of its members (see point 173, third paragraph, and point 174, first paragraph, of the Decision).

272 To assess whether the Commission was entitled to take account of that turnover, the principal information, as contained in the documents before the Court, must be examined and, in particular, the applicant's reply to the written questions of the Court regarding its organisation and its legal and factual relations with its member companies.

273 According to its statutes of 1 January 1987, the applicant is an association which markets the cartonboard produced by some members and paper goods produced by other members.

274 Under paragraphs 10 and 11 of those statutes, each of the members is to have one representative on the Board of Directors, responsible, *inter alia*, for the adoption of guidelines for the operations of the association; confirmation of the budget, the financing plan and principles regarding the division of expenses among the member companies; and the appointment of the 'Managing Director.'

275 Paragraph 20 of the statutes provides:

'The members shall be jointly and severally liable for undertakings given on behalf of the Association as if it were for their own debt.

The liability for debt and undertakings shall be distributed in proportion to the net invoicings of the members for the current year and for the two preceding years.'

276 As regards the sale of cartonboard products, it is clear from the applicant's reply to the Court's written questions that, at the material time, its member companies had given it authority to make all their sales of cartonboard, with the sole exception of the intra-group sales of each member company and sales of small quantities to occasional customers in Finland (see also paragraph 14 of the statutes). In addition, the applicant fixed and announced identical prices for its cartonboard-producing members.

277 The applicant also explains that, in the case of individual sales, customers placed their orders with it and generally indicated which mill they preferred. Such preferences are attributable, *inter alia*, to differences in quality between the products of the applicant's member companies. Where no preference was expressed, orders were divided amongst its members, pursuant to paragraph 15 of its statutes, under which:

'The orders received are to be divided justly and equally for manufacture by the members, in consideration of the production capacity of each member as well as the principles of distribution laid down by the Board of Directors.'

278 The applicant was authorised to negotiate conditions of sale, including prices, with each potential customer, its member companies having drawn up general guidelines for such individual negotiations. Each order had none the less to be submitted to the member company concerned, which decided whether or not to accept it.

279 The procedures for individual sales and the accounting principles applied for such sales are described in a statement of 4 June 1997 by the applicant's accountants:

'Finnboard acts as Commission agent for the principals, invoicing "in its own name on behalf of each Principal".

1. Each order is confirmed by the Principal mill.

2. At the moment of shipment from the mill, the mill issues a base invoice to Finnboard ("Mill invoice"). The invoice is entered into the Principals' Account as a receivable and into Finnboard's purchase ledger as a debt to the mill.

3. The mill invoice (less the estimated costs of transport, storage, delivery and financing) is prepaid by Finnboard within an agreed period (10 days in 1990/1991). Finnboard thus finances the foreign stocks and customer receivables of the mill without taking title to the goods shipped.

4. At the moment of delivery to the customer, Finnboard issues a customer invoice on behalf of the mill. The invoice is recorded as a sale in the Principals' Account and as a receivable in Finnboard's sales ledger.

5. Customer payments are recorded in the Principals' Accounts and the possible differences between estimated and actual prices and costs (ref. point 3) are cleared through the Principals' Account.'

280 It is thus clear, first, that, although the applicant was bound to submit each individual order to the member company concerned for its final approval, contracts for sale concluded by it on behalf of its member companies could bind them, as those companies were liable for undertakings given by the applicant under paragraph 20 of its statutes.

281 Second, the commission received by the applicant, which appears as its turnover in its annual reports, covers only expenses connected with the sales it effected on behalf of its member companies, such as transport or financing costs. It follows that the applicant had no economic interest of its own in taking part in collusion on prices, since the price increases announced and implemented by the undertakings meeting in the bodies of the PG Paperboard could not generate any profit for it. On the other hand, its cartonboard-producing member companies had a direct economic interest in the applicant's participation in such collusion.

282 Accordingly, the applicant's turnover for accounting purposes discloses neither its size nor its economic power. It cannot therefore, constitute the basis for calculation of the upper limit provided by Article 15(2) of Regulation No 17 for a fine exceeding ECU 1 000 000. The Commission was therefore entitled to base its calculation of that upper limit on the total value of cartonboard sales invoiced to customers, which the applicant made in its own name on behalf of its member

companies since the value of those sales constitutes an indication of its real size and economic power (see, by analogy, the judgment in *CB and Europay* v *Commission*, cited above, paragraphs 136 and 137).

283 In the particular circumstances of this case, that interpretation is not undermined by the mere fact that the Commission formally classified the applicant as an undertaking rather than an association of undertakings.

284 The first part of the plea must therefore be rejected.

285 As regards the second part, it suffices to find that, in its letter of 6 October 1995, the Commission explained that the statement made in its defence was an error: it actually based its calculation on the fact that the applicant had marketed 221 000 tonnes of cartonboard in 1990, which corresponds to the figure supplied by the applicant itself in a letter of 27 September 1991. That explanation is confirmed by a letter from the Commission to the applicant dated 28 March 1994 setting out the method of calculation of the turnover used to determine the amount of the fine. The turnover so calculated is shown in a table concerning the calculation of the amount of individual fines, which the Commission supplied in response to a written question by the Court.

286 Accordingly, the second part of the plea cannot be accepted.

287 In the light of the foregoing, the plea must be rejected in its entirety.

Procedural and substantive pleas relating to the determination of the amount of fines

Arguments of the parties

288 The applicant submits that the Decision gives a list of the criteria used by the Commission to calculate fines (points 168 and 169). However, it maintains that the way the criteria were actually applied should have been explained.

289 More specifically, the Commission should have indicated the turnover of each undertaking and the percentage of that figure used to calculate the fine. In the absence of such information, the Community judicature could not exercise its power of review of the fines imposed and it was impossible to ascertain whether the fine imposed on a specific undertaking was in proportion to the fines imposed on the other undertakings to which the Decision was addressed.

290 In the absence of such information, it had to be concluded that the criteria had not in fact been applied.

291 Even if those criteria had actually been applied, they were illegal. Several of them had already been taken into consideration inasmuch as the fines were calculated on the basis of the turnover of each undertaking: the criteria concerning the territory within which the infringement allegedly occurred, the respective importance of each undertaking in the sector and the overall value of the economic sector in question. Such criteria could not, therefore, be used again as a reason to increase the amount of the fine.

292 Nor should the Commission have taken into account the fact that the undertakings took steps to conceal the cartel. As the agreements on price fixing and market shares were typical kinds of agreements prohibited by Article 85 of the Treaty, it goes without saying that the undertakings did not disclose their participation in such agreements.

293 The applicant argues that, contrary to what the Commission alleges, there is nothing to show that the cartel achieved anything. On the contrary, the LE report showed that if there were any cartel, it had no effect on prices. Moreover, the Commission was wrong to rely on the finding that the undertakings earned an average operating profit margin of 20% during the period of the cartel (point 16 of the Decision).

294 The Commission should have taken account of the fact that the cartel did not cover certain regions of the Community, in which the applicant achieved a significant proportion of its turnover, that is to say, Spain, Portugal, Greece, Ireland and Denmark.

295 Finally, the unusual reduction in the fine imposed on Stora gives rise to doubts as to whether the general level of the fines was justified. The alleged cartel was not of a particularly serious nature and the general level of fines should thus have been set at an amount well below 5% of the turnover of each undertaking.

296 The Commission takes the view that the criteria listed in points 168 and 169 of the Decision are relevant and sufficient to determine the amount of the fines. The criteria have to be assessed in the light of the statement of reasons for the Decision, which sets out in detail the individual considerations taken into account in determining the amount of the fine imposed on the applicant.

297 To reinforce the deterrent effect of the fines, it is open to the Commission to raise the level of fines at any time (see judgment in *ICI* v *Commission*, cited above, paragraph 385). The infringements in this case were expressly mentioned in Article 85(1) of the Treaty and should therefore be considered to be manifest and serious infringements. The manifest and serious nature of the infringements was, moreover, exacerbated by the steps taken by the addressees of the Decision to conceal them.

298 Finally, the Commission maintains that it was entitled to take account of the fact that the collusion was largely successful: the LE report demonstrated that in 1988 and 1989 there was a linear relationship between the price increases announced and the price increases passed on to customers. That relationship was even acknowledged by the author of the report at the hearing before the Commission (minutes of the hearing before the Commission, p. 21 and 28).

Findings of the Court

299 The applicant's arguments are presented, in its written pleadings, as a single plea alleging that the criteria for determining the amount of the fines were irrelevant. However, in fact they comprise several distinct pleas, which will be considered in turn.

— The statement of reasons concerning the amount of the fines

300 It is settled law that the purpose of the obligation to give reasons for an individual decision is to enable the Community judicature to review the legality of the decision and to provide the party concerned with an adequate indication as to whether the decision is well founded or whether it may be vitiated by some defect enabling its validity to be challenged; the scope of that obligation depends on the

nature of the act in question and on the context in which it was adopted (see, *inter alia*, *Van Megen Sports* v *Commission*, cited above, paragraph 51).

301 As regards a decision which, as in this case, imposes fines on several undertakings for infringement of the Community competition rules, the scope of the obligation to state reasons must be assessed in the light of the fact that the gravity of infringements falls to be determined by reference to numerous factors including, in particular, the specific circumstances and context of the case and the deterrent character of the fines; moreover, no binding or exhaustive list of criteria to be applied has been drawn up (order in Case C-137/95 P *SPO and Others* v *Commission* [1996] ECR I-1611, paragraph 54).

302 Moreover, when fixing the amount of each fine, the Commission has a margin of discretion and cannot be considered obliged to apply a precise mathematical formula for that purpose (see, to the same effect, Case T-150/89 *Martinelli* v *Commission* [1995] ECR II-1165, paragraph 59).

303 In the Decision, the criteria taken into account in order to determine the general level of fines and the amount of individual fines are set out in points 168 and 169 respectively. Moreover, as regards the individual fines, the Commission explains in point 170 that the undertakings which participated in the meetings of the PWG were, in principle, regarded as 'ringleaders' of the cartel, whereas the other undertakings were regarded as 'ordinary members'. Lastly, in points 171 and 172, it states that the amounts of fines imposed on Rena and Stora must be considerably reduced in order to take account of their active cooperation with the Commission, and that eight other undertakings, including the applicant, were also to benefit from a reduction, to a lesser extent, owing to the fact that in their replies to the statement of objections they did not contest the essential factual allegations on which the Commission based its objections.

304 In its written pleas to the Court and in its reply to a written question put by the Court, the Commission explained that the fines were calculated on the basis of the turnover on the Community cartonboard market in 1990 of each undertaking addressed by the Decision. Fines of a basic level of 9 or 7.5% of that individual turnover were then imposed, respectively, on the undertakings considered to be the cartel 'ringleaders' and on the other undertakings. Finally, the Commission took into account any cooperation by undertakings during the procedure before it. Two undertakings received a reduction of two-thirds of the amount of their fines on that basis, while other undertakings received a reduction of one-third.

305 Moreover, it is apparent from a table produced by the Commission containing information as to the fixing of the amount of each individual fine that, although those fines were not determined by applying the abovementioned figures alone in a strictly mathematical way, those figures were, nevertheless, systematically taken into account for the purposes of calculating the fines.

306 However, the Decision does not state that the fines were calculated on the basis of the turnover of each undertaking on the Community cartonboard market in 1990. Furthermore, the basic rates of 9 and 7.5% applied to calculate the fines imposed on the undertakings considered to be 'ringleaders' and those considered to be 'ordinary members' do not appear in the Decision. Nor does it set out the rates of reduction granted to Rena and Stora, on the one hand, and to eight other undertakings, on the other.

307 In the present case, first, points 169 to 172 of the Decision, interpreted in the light of the detailed statement in the Decision of the allegations of fact against each of its addressees, contain a relevant and sufficient statement of the criteria taken into account in order to determine the gravity and duration of the infringement committed by each of the undertakings in question (see, to the same effect, Case T-2/89 *Petrofina* v *Commission* [1991] ECR II-1087, point 264). Similarly, point 168 of the

Decision, which must be read in the light of the general criteria relating to the fines in point 167, contains a sufficient statement of the criteria taken into account in order to determine the general level of the fines.

308 Second, where, as in the present case, the amount of each fine is determined on the basis of the systematic application of certain precise figures, the indication in the decision of each of those factors would permit undertakings better to assess whether the Commission erred when fixing the amount of the individual fine and also whether the amount of each individual fine is justified by reference to the general criteria applied. In the present case, the indication in the Decision of the factors in question, namely the reference turnover, the reference year, the basic rates adopted, and the rates of reduction in the amount of fines would not have involved any implicit disclosure of the specific turnover of the addressee undertakings, a disclosure which might have constituted an infringement of Article 214 of the Treaty. As the Commission has itself stated, the final amount of each individual fine is not the result of a strictly mathematical application of those factors.

309 The Commission also accepted at the hearing that nothing prevented it from indicating in the Decision the factors which had been systematically taken into account and which had been divulged at a press conference held on the day on which that decision was adopted. In that regard, it is settled law that the reasons for a decision must appear in the actual body of the decision and that, save in exceptional circumstances, explanations given *ex post facto* cannot be taken into account (see Case T-61/89 *Dansk Pelsdyravlerforening* v *Commission* [1992] ECR II-1931, paragraph 131, and, to the same effect, Case T-30/89 *Hilti* v *Commission* [1991] ECR II-1439, paragraph 136).

310 Despite those findings, the reasons explaining the setting of the amount of fines stated in points 167 to 172 of the Decision are at least as detailed as those provided in the Commission's previous decisions on similar infringements. Although a plea

alleging insufficient reasons concerns a matter of public interest, there had been no criticism by the Community judicature, at the moment when the decision was adopted, as regards the Commission's practice concerning the statement of reasons for fines imposed. It was only in the judgment in *Tréfilunion* v *Commission*, cited above, paragraph 142, and in two other judgments given on the same day (T-147/89 *Société Métallurgique de Normandie* v *Commission* [1995] ECR II-1057, summary publication, and T-151/89 *Société des Treillis et Panneaux Soudés* v *Commission* [1995] ECR II-1191, summary publication), that this Court stressed for the first time that it is desirable for undertakings to be able to ascertain in detail the method used for calculating the fine imposed without having to bring court proceedings against the Commission's decision in order to do so.

311 It follows that, when it finds in a decision that there has been an infringement of the competition rules and imposes fines on the undertakings participating in it, the Commission must, if it systematically took into account certain basic factors in order to fix the amount of fines, set out those factors in the body of the decision in order to enable the addressees of the decision to verify that the level of the fine is correct and to assess whether there has been any discrimination.

312 In the specific circumstances set out in paragraph 310 above, and having regard to the fact that in the procedure before the Court the Commission showed itself to be willing to supply any relevant information relating to the method of calculating the fines, the absence of specific grounds in the Decision regarding the method of calculation of the fines should not, in the present case, be regarded as constituting an infringement of the duty to state reasons such as would justify annulment in whole or in part of the fines imposed.

— The effects of the infringement

313 According to the seventh indent of point 168 of the Decision, the Commission determined the general level of fines by taking into account, *inter alia*, the fact that the cartel 'was largely successful in achieving its objectives'. It is common ground

that this consideration refers to the effects on the market of the infringement found in Article 1 of the Decision.

314 In order to review the Commission's appraisal of the effects of the infringement, the Court considers that it suffices to consider the appraisal of the effects of the collusion on prices. Consideration of the effects of the collusion on prices, the only effects disputed by the applicant, makes it possible to assess, in general, whether the cartel was successful, because the purpose of the collusion on downtime and on market shares was to ensure the success of the concerted price initiatives.

315 As regards collusion on prices, the Commission appraised the general effects of this collusion. Consequently, even assuming that the individual data supplied by the applicant show, as it claims, that the effects of collusion on prices were, in its case, less significant than those found on the European cartonboard market taken as a whole, such individual data cannot in themselves suffice to call into question the Commission's assessment. Furthermore, the applicant's assertion that, in point 16 of the Decision, the Commission based its argument on an erroneous definition of the cartonboard producers' average operating margin is also irrelevant. There are no grounds for considering that the Commission took that definition of the operating margin into account when it assessed the effects on the market of the collusion on prices, nor that the operating margin earned should have been taken into account for the purpose of that assessment.

316 It is apparent from the Decision, as the Commission confirmed at the hearing, that a distinction was drawn between three types of effects. Moreover, the Commission relied on the fact that the price initiatives were considered by the producers themselves to have been an overall success.

317 The first type of effect taken into account by the Commission, and not contested by the applicant, consisted in the fact that the agreed price increases were actually announced to customers. The new prices thus served as a reference point in

individual negotiations on transaction prices with customers (see, *inter alia*, points 100 and 101, fifth and sixth paragraphs, of the Decision).

318 The second type of effect consisted in the fact that changes in transaction prices followed those in announced prices. The Commission states that 'the producers not only announced the agreed price increases but also with few exceptions took firm steps to ensure that they were imposed on the customers' (point 101, first paragraph, of the Decision). It accepts that customers sometimes obtained concessions in regard to the date of entry into force of the increases or rebates or individual reductions, particularly on large orders, and that 'the average net increase achieved after all discounts, rebates and other concessions would always be less than the full amount of the announced increase' (point 102, last paragraph, of the Decision). However, referring to graphs in the LE report, an economic study produced on behalf of several addressee undertakings of the Decision for the purposes of the procedure before the Commission, the Commission claims that during the period covered by the Decision there was 'a close linear relationship' between changes in announced prices and those in transaction prices expressed in national currencies or converted to ecus. It concludes from this that: 'the net price increases achieved closely tracked the price announcements albeit with some time lag. The author of the report himself acknowledged during the oral hearing that this was the case for 1988 and 1989' (point 115, second paragraph, of the Decision).

319 When appraising this second type of effect the Commission could properly take the view that the existence of a linear relationship between changes in announced prices and changes in transaction prices was proof of an effect by the price initiatives on transaction prices in accordance with the objective pursued by the producers. There is, in fact, no dispute that on the relevant market the practice of holding individual negotiations with customers means that, in general, transaction prices are not identical to announced prices. It cannot therefore be expected that increases in transaction prices will be identical to announced price increases.

320 As regards the very existence of a relationship between announced price increases and transaction price increases, the Commission was right in referring to the LE report, which consists of an analysis of changes in the price of cartonboard during the period to which the Decision relates, based on information supplied by several producers, including the applicant itself.

321 However, that report only partially confirms, in temporal terms, the existence of a 'close linear relationship'. Examination of the period 1987 to 1991 reveals three distinct sub-periods. At the oral hearing before the Commission the author of the LE report summarised his conclusion as follows: 'There is no close relationship, even with a lag, between announced price increase and market prices in the early part of the period, in 1987 through 1988. There is such a relationship in 1988/1989, and then the relationship breaks down and behaves rather oddly over the period 1990/1991' (transcript of the oral hearing, p. 28). He also observed that those temporal variations were closely linked to variations in demand (see, in particular, transcript of the oral hearing, p. 20).

322 Those conclusions expressed by the author at the hearing are in accordance with the analysis set out in his report, and in particular with the graphs comparing changes in announced prices and changes in transaction prices (LE report, graphs 10 and 11, p. 29). The Commission has therefore only partially proved the existence of the 'close linear relationship' on which it relies.

323 At the hearing the Commission stated that it had also taken into account a third type of effect of the price collusion, namely the fact that the level of transaction prices was higher than that which would have been achieved in the absence of any collusion. Pointing out that the dates and order of the price increase announcements had been planned by the PWG, the Commission takes the view in the Decision that 'it is inconceivable in such circumstances that the concerted price announcements had no effect upon actual price levels' (point 136, third paragraph, of the Decision). However, the LE report (section 3) drew up a model which enabled a forecast to be made of the price level resulting from objective market conditions. According to that report, the level of prices determined by objective

economic factors in the period 1975 to 1991 would have evolved, with minor variations, in an identical manner to the level of transaction prices applied, including those during the period covered by the Decision.

324 Despite those conclusions, the analysis in the report does not justify a finding that the concerted price initiatives did not enable the producers to achieve a level of transaction prices above that which would have resulted from the free play of competition. As the Commission pointed out at the hearing, it is possible that the factors taken into account in that analysis were influenced by the existence of collusion. So, the Commission rightly argued that the collusive conduct might, for example, have limited the incentive for undertakings to reduce their costs. However, the Commission has not argued that there is a direct error in the analysis in the LE report nor submitted its own economic analysis of the hypothetical changes in transaction prices had there been no collusion. In those circumstances, its assertion that the level of transaction prices would have been lower if there had been no collusion between the producers cannot be upheld.

325 It follows that the existence of that third type of effect of collusion on prices has not been proved.

326 The above findings are in no way altered by the producers' subjective appraisal, on which the Commission relied in reaching the view that the cartel was largely successful in achieving its objectives. In that regard, the Commission referred to a list of documents which it produced at the hearing. However, even supposing that it could base its appraisal of the success of the price initiatives on documents showing the subjective opinions of certain producers, it must be observed that several undertakings, including the applicant, rightly referred at the hearing to a number of other documents in the file showing the problems encountered by the producers in implementing the agreed price increases. In those circumstances, the Commis-

sion's reference to the statements of the producers themselves is insufficient for a conclusion that the cartel was largely successful in achieving its objectives.

327 Having regard to the foregoing considerations, the effects of the infringement described by the Commission are only partially proved. The Court will consider the implications of that conclusion as part of the exercise of its unlimited powers in regard to fines, when it assesses the general level of the fines imposed in the present case (see paragraph 342 below).

— The alleged unlawfulness of some of the criteria taken into account to determine the amount of the fines

328 First, the Court rejects the applicant's argument that the fact that the amount of the fines was determined on the basis of the turnover of each undertaking means that the Commission was not entitled to take account of the territory within which the infringement took place (point 168, second indent, of the Decision), the overall value of the economic sector in question (point 168, third indent, of the Decision) and the respective importance of each undertaking in the sector (point 169, first paragraph, third indent, of the Decision).

329 Those criteria are relevant in assessing the seriousness of the infringement found and, as a result, in determining the amount of the fines in accordance with Article 15(2) of Regulation No 17. Whilst the amount of the fines was, admittedly, determined on the basis of the turnover of each undertaking, consideration of the criteria in question enabled the Commission to determine which part of the turnover should be taken into account in the case of each of the undertakings concerned and the percentage rate to be applied in order to determine the amount of the individual fines.

330 Second, as regards the applicant's argument that the Commission should have taken account of the fact that the agreement did not cover certain Member States which accounted for a large part of its turnover (Spain, Portugal, Greece, Ireland and Denmark), it is apparent from Article 1 of the Decision that simultaneous and uniform price increase were planned and implemented throughout the European Community. Moreover, the applicant puts forward no argument to clarify the basis on which it, apparently, disputes that finding. In those circumstances, the applicant's argument must be rejected.

331 Thirdly, and finally, the applicant's argument that the Commission should not have taken account of the steps taken to conceal the infringement must be rejected.

332 It should be borne in mind, in that connection, that according to the third paragraph of point 167 of the Decision, 'a particularly grave aspect of the infringement is that in an attempt to disguise the existence of the cartel the undertakings went so far as to orchestrate in advance the date and sequence of the announcement of each major producer of the new price increases'. The Decision also states as follows: 'the producers could as a result of this elaborate scheme of deception have attributed the series of uniform, regular and industry-wide price increases in the cartonboard sector to the phenomenon of "oligopoly behaviour"' (point 73, third paragraph). Finally, according to the sixth indent of point 168, the Commission, in determining the general level of fines, took into account the fact that 'elaborate steps were taken to conceal the true nature and extent of the collusion (absence of any official minutes or documentation for the PWG and JMC; discouraging the taking of notes; stage-managing the timing and order in which price increases were announced so as to be able to claim they were "following", etc.)'.

333 The applicant does not contest the Commission's assertion that the undertakings planned the dates and order of dispatch of letters announcing the price increases in order to disguise the existence of price collusion.

334 The absence of official minutes and the almost total absence of internal notes relating to the meetings of the PWG and of the JMC constitute, having regard to the number of such meetings, to the length of time for which they continued and to the nature of the discussions in question, sufficient proof of the Commission's allegation that the participants were discouraged from taking notes.

335 It follows from the foregoing that the undertakings which participated in the meetings of those bodies were not only aware of the unlawfulness of their conduct but also took steps to conceal the collusion. Accordingly, the Commission was fully entitled to hold those steps to be aggravating circumstances when assessing the gravity of the infringement.

— The general level of fines

336 Under Article 15(2) of Regulation No 17, the Commission may by decision impose on undertakings fines ranging from ECU 1 000 to 1 000 000, or a sum in excess thereof but not exceeding 10% of the turnover in the preceding business year of each of the undertakings participating in the infringement where, either intentionally or negligently, they infringe Article 85(1) of the Treaty. In fixing the amount of the fine, regard is to be had to both the gravity and the duration of the infringement. As is apparent from the case-law of the Court of Justice, the gravity of infringements falls to be determined by reference to numerous factors including, in particular, the specific circumstances and context of the case, and the deterrent character of the fines; moreover, no binding or exhaustive list of the criteria which must be applied has been drawn up (order in *SPO and Others* v *Commission*, cited above, paragraph 54).

337 In the present case, the Commission determined the general level of fines by taking into account the duration of the infringement (point 167 of the Decision) and the following considerations (point 168):

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

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

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

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

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

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

— the cartel was largely successful in achieving its objectives.'

338 Furthermore, it is common ground that fines of a basic level of 9 or 7.5% of the turnover on the Community cartonboard market in 1990 of each undertaking addressed by the Decision were imposed on the undertakings regarded as the 'ringleaders' of the cartel and on the other undertakings respectively.

339 It should be pointed out, first, that when assessing the general level of fines the Commission is entitled to take account of the fact that clear infringements of the Community competition rules are still relatively frequent and that, accordingly, it may raise the level of fines in order to strengthen their deterrent effect. Consequently, the fact that in the past the Commission applied fines of a certain level to certain types of infringement does not mean that it is estopped from raising that level, within the limits set out in Regulation No 17, if that is necessary in order to ensure the implementation of Community competition policy (see, *inter alia*, *Musique Diffusion Française and Others* v *Commission*, cited above, paragraphs 105 to 108, and *ICI* v *Commission*, cited above, paragraph 385).

340 Second, the Commission rightly argues that, on account of the specific circumstances of the present case, no direct comparison could be made between the general level of fines adopted in the present decision and those adopted in the Commission's previous decisions, in particular in Commission Decision 86/398/EEC of 23 April 1986 relating to a proceeding under Article 85 of the EEC Treaty (IV/31.149-Polypropylene) (OJ 1986 L 230, p. 1, hereinafter 'the Polypropylene decision'), which the Commission itself considered to be the most similar to the decision in the present case. Unlike in the *Polypropylene* case, no general mitigating circumstance was taken into account in the present case when determining the general level of fines. Moreover, as the Court has already held, the intricate steps taken by the undertakings to conceal the existence of the infringement constitute a particularly serious aspect of it which differentiates it from the infringements previously found by the Commission.

341 Third, the Court notes the lengthy duration and obviousness of the infringement of Article 85(1) of the Treaty which was committed despite the warning which the Commission's previous decisions, in particular the *Polypropylene* decision, should have provided.

342 On the basis of those factors, the criteria set out in point 168 of the Decision justify the general level of fines set by the Commission. Admittedly, the Court has already held that the effects of the collusion on prices, which the Commission took into account when determining the general level of fines, are proved only in part. However, in the light of the foregoing considerations, that conclusion cannot materially affect the assessment of the gravity of the infringement found. The fact that the undertakings actually announced the agreed price increases and that the prices so announced served as a basis for fixing individual transaction prices suffices in itself for a finding that the collusion on prices had both as its object and effect a serious restriction of competition. Accordingly, in the exercise of its unlimited jurisdiction, the Court considers that the findings relating to the effects of the infringement do not justify any reduction in the general level of fines set by the Commission.

343 In the light of all the foregoing considerations, the procedural and substantive pleas relating to the determination of the amount of the fines must be rejected.

The plea alleging misassessment of the role played by the applicant

Arguments of the parties

344 The applicant disputes that it was one of the 'ringleaders' of the agreement: even if the conduct of the representatives of the NPI could be imputed to the applicant, those representatives only participated in half the meetings of the PWG.

345 The applicant was subjected to constant pressure from the other producers, as several appendices to the statement of objections show (see point 76 of the Decision).

346 Finally, the agreement was rooted in the desire of Community producers to protect their market from exports, *inter alia*, by producers from the EFTA countries. It was only following the acquisition by the latter producers of production facilities in the Community that it became a matter of maintaining a balance between the major groups of European producers so as not to jeopardise the price initiatives (point 56 of the Decision). As it had not acquired any production facilities in the Community, the applicant could not be considered to be one of the 'ringleaders' of the agreement.

347 The Commission takes the view that it was fully entitled to consider the applicant to be one of the ringleaders of the agreement. It points out, in particular, that for two years the applicant presided over the PWG, the central decision-making body of the cartel, and the President Conference. Furthermore, the applicant participated in all the price increases and even led three of those increases itself.

348 The minutes of a meeting held by Iggesund Board Sales Ltd on 28 and 29 January 1988 (appendix 72 to the statement of objections, quoted at point 76 of the Decision) confirmed the central role played by the applicant, since they make it clear that the other producers waited for the applicant to act before implementing their own price increases.

349 The applicant's comments concerning the objective pursued by the participants in the cartel merely serve to confirm the anti-competitive nature of that objective.

Findings of the Court

350 It follows from the Court's findings relating to the applicant's pleas in support of its application for annulment in whole or in part of Article 1 of the Decision that the nature of the PWG's functions, as set out in the Decision, has been demonstrated by the Commission.

351 In those circumstances, the Commission was fully entitled to conclude that the undertakings, including the applicant, which participated in the meetings of that body had to be regarded as 'ringleaders' of the infringement found and that accordingly they had to bear special responsibility (see point 170, first paragraph, of the Decision).

352 It is admitted that the applicant's managers participated in approximately half of the meetings of the PWG. Accordingly, the applicant cannot plausibly assert that it played a less important role in the shaping of the cartel than the other undertakings which took part in those meetings, particularly as its representatives held key positions in the PWG for almost the whole of the period covered by the Decision (see above, paragraph 125 et seq.).

353 The applicant's assertion that it was subject to constant pressure from the other producers cannot alter that finding. In the first place, the applicant has not adduced any evidence to prove that it was forced to participate in the infringement. Furthermore, the applicant's reference to point 76 of the Decision does not call into question its role as a 'ringleader' of the agreement.

354 The document cited in that point (appendix 72 to the statement of objections) states:

'Pressure has been put on the Finns from all over Europe to increase prices. Finnboard have been told we will not move on prices until they have published an increase price (*sic*)'.

355 That passage merely indicates that the other undertakings were waiting for the applicant to announce an increase in its prices before proceeding to increase their own prices. Accordingly, it only serves to confirm the role played by the applicant as 'ringleader' of the cartel, in that the other undertakings attached particular importance to its participation in the concerted price increases.

356 Finally, the applicant's argument grounded upon the objective pursued by the basic agreement between the major producers cannot be upheld either. Whilst it is true that Stora explained that the initial concern of the PWG was to contain the growth of the market shares of EFTA producers, the fact remains that that concern was due to the fact that such growth might hamper their efforts to increase prices (see point 56, second paragraph, of the Decision, referring to the statement by Stora appearing in appendix 43 to the statement of objections). The pursuit of such an objective in fact merely serves to confirm the manifest nature of the infringement found.

357 In the light of those considerations, the plea must be rejected.

The plea alleging errors by the Commission in reducing the fines

Arguments of the parties

358 The applicant submits that it should have had its fine reduced, as it did not dispute the main factual allegations on which the Commission based the complaints against it. In its reply to the statement of objections, it confined itself to pointing out breaches of procedural rules and arguing that the facts adduced by the Commission had no probative value.

359 Moreover, it argues that the reduction of Stora's fine was unjustified and led to distortions of competition because of the high level of fines. Without Stora's statements, the Commission would not have had sufficient evidence to prove any agreement. There are indications that Stora's revelations were intended to weaken its main rivals. For that reason, the applicant requests the Court to ask the Commission whether any discussions were held with Stora on the subject of the level of the fine and/or possible reductions of fines.

360 The Commission considers that the applicant has no right to any reduction of the fine. The application clearly shows that it disputes the principal factual allegations put forward by the Commission.

361 Furthermore, the breach, if any, of the principle of proportionality when the amount of Stora's fine was fixed in no way affects the legality of the fine imposed on the applicant.

Findings of the Court

362 In its reply to the statement of objections the applicant disputed, as it did before the Court, that it participated in any infringement of Article 85(1) of the Treaty.

363 Accordingly, the Commission correctly considered that the applicant, by replying in that way, did not conduct itself in a manner which justified a reduction in the fine on grounds of cooperation during the administrative procedure. A reduction on that ground is justified only if the conduct enabled the Commission to establish an infringement more easily and, where relevant, to bring it to an end (see *ICI* v *Commission*, cited above, paragraph 393).

364 Insofar as the applicant argues that the reduction of Stora's fine is excessive, the Court points out that Stora supplied the Commission with statements containing a highly detailed description of the nature and object of the infringement, the operation of the various bodies of the PG Paperboard, and the participation of the various producers in the infringement. Through those statements, Stora supplied information well in excess of that which the Commission may require to be supplied under Article 11 of Regulation No 17. Although the Commission states in the Decision that it obtained evidence corroborating the information contained in Stora's statements (points 112 and 113 of the Decision), it is clear that Stora's statements constituted the principal evidence of the existence of the infringement. Without those statements, it would therefore have been, at the very least, much more difficult for the Commission to establish or put an end to the infringement with which the Decision is concerned.

365 In those circumstances, the Commission, by reducing by two-thirds the fine imposed on Stora, did not overstep the limits of its discretion when determining the amount of fines. The applicant cannot therefore validly claim that the fine imposed on it is excessive in relation to that imposed on Stora.

366 There is thus no need to ask the Commission to indicate whether discussions were held with Stora on the subject of the level of the fine and/or possible reductions in fines.

367 That plea must, therefore, also be rejected.

368 It follows from all the above that Article 2 of the Decision must be partially annulled. For the rest, the application must be dismissed.

Costs

369 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the applicant has been largely unsuccessful, it must be ordered to pay the costs, as sought by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE
(Third Chamber, Extended Composition)

hereby:

1) **Annuls, as regards the applicant, the first to fourth paragraphs of Article 2 of Commission Decision 94/601/EC of 13 July 1994 relating to a proceeding under Article 85 of the EC Treaty (IV/C/33.833 — Cartonboard) save and except the following passages:**

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

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

Any scheme for the exchange of general information to which they subscribe, such as the Fides system or its successor, shall be so conducted as to exclude any information from which the behaviour of individual producers can be identified.';

2) Dismisses the application as regards the remaining claims;

3) Orders the applicant to pay the costs.

Vesterdorf Briët Lindh

Potocki Cooke

Delivered in open court in Luxembourg on 14 May 1998.

H. Jung B. Vesterdorf

Registrar President

Summary