Brussels, 19.01.2005

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COMMISSION DECISION

of 19 January 2005

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

(Case No COMP/E-1/.37.773 – MCAA)

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

(Text with EEA relevance)

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(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles 85 and 86 of the Treaty[1], and in particular, Article 3 and Article 15(2) thereof,

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

Having regard to the Commission decision of 7 April 2004 to initiate proceedings in this case,

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

[1] OJ 13 21.2.1962, p.204/62. Regulation as last amended by Regulation (EC) No 1216/1999 (OJ L 148, 15.6.1999, p5).

[2] OJ L 1, 4.1.2003, p.1. Regulation as amended by Regulation (EC) No 411/2004 (L 68, 6.3.2004, p.1).

the EC Treaty[3] and Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty[4]

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

Having regard to the final report of the Hearing Officer in this case[5],

WHEREAS:

1. SUMMARY OF THE INFRINGEMENT

(1) This Decision imposing fines for an infringement of Article 81 of the Treaty and Article 53 of the EEA Agreement is addressed to the following undertakings:

- Akzo Nobel NV
- Akzo Nobel Nederland BV
- Akzo Nobel Chemicals BV
- Akzo Nobel Functional Chemicals BV
- Akzo Nobel Base Chemicals AB
- Eka Chemicals AB
- Akzo Nobel AB
- Atofina SA
- Elf Aquitaine SA
- Hoechst AG
- Clariant GmbH
- Clariant AG

(2) The infringement consists of the participation of the above undertakings in a continuing agreement contrary to Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement covering the Community and the EEA, by which they engaged in the following activities in the market for Monochloroacetic acid:

- allocating volume quotas;
- allocating customers;
- agreeing concerted price increases;

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3 OJ L 354, 30.12.1998, p. 18.
4 OJ L 123, 27.4.2004, p.18.
5 OJ […], […], p. […].

- agreeing on a compensation mechanism in order to ensure the "proper" implementation of the quota system;

- exchanging information on sales volumes and prices so as to monitor the implementation of the arrangements;

- participating in regular meetings and other contacts in order to agree the above restrictions and to implement and/or modify them as required.

The infringing agreement ran from at least January 1984 to May 1999[6].

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1.The product

(3) Monochloroacetic acid ("MCAA") is a strong and aggressively reactive organic acid which involves reacting acetic acid with chlorine. It is toxic and corrosive and requires special handling. It comes in liquid, flake and molten form.

(4) Having regard to its toxicity and hazardous properties, MCAA is often presented as sodium monochloroacetate ("SMCA") a white salt presented in soluble powder or granulated form. SMCA is not a derivative of MCAA but a different delivery form instead of the free acid to ensure greater safety. Consequently, both MCAA and SMCA are referred to throughout this Decision as MCAA.

(5) MCAA is mainly used as a chemical intermediate for the synthesis of cellulose ethers, mainly carboxymethyl cellulose ("CMC"), which are employed in the manufacture of detergents, adhesives, drilling muds for deep wells, textile auxiliaries and thickeners used in foods, pharmaceuticals and cosmetics.

(6) SMCA is also used as a chemical intermediate for the production of CMC, amphoteric surfactants, pigments, dyes and printing inks, paints, lacquers and varnishes, as well as pharmaceutical products and crop protection products, particularly selective herbicides and insecticides.

2.2.The market players

2.2.1. Akzo Nobel NV, Akzo Nobel Nederland BV, Akzo Nobel Chemicals BV, Akzo Nobel Functional Chemicals BV, Akzo Nobel AB, Akzo Nobel Base Chemicals AB and Eka Chemicals AB

(7) The Akzo Nobel group of companies is active in the areas of healthcare, coatings, chemicals, and, until the end of 1999, was active in the area of fibres. The ultimate holding company of this group is Akzo Nobel NV, Arnhem[7].

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6 See under the heading "Duration" for individualised dates.

7 Homepage: www.akzo.com.

(8) On an organisational level, the activities of Akzo Nobel NV were, until 1993-1994, organised in six "product-divisions", which were in turn further subdivided into different "product groups" and "management units". The division presidents of each "product division" reported to the Board of Management of the ultimate parent company Akzo Nobel NV. The MCAA activities formed part of the "Chemicals" product division.

(9) Since1993-1994, the Akzo Nobel group has been organised on the basis of a two-layer structure: a "corporate centre" and, directly underneath, approximately 20 Business Units ("BU's"). The corporate centre co-ordinates the most important tasks with regard to general strategy of the group, finance, legal affairs and human resources. The BU's each have their own General Manager, management team and supporting services responsible for the entire operational management of the BU. The BU management operates within the limits of the financial and strategic targets set out by the corporate centre and is bound by the "Business Principles" and "Corporate Directives" applicable to the entire Akzo Nobel group. The person in charge of each organisational unit at a specific level has a duty to report on the activities to a higher level. As such, the MCAA sub-BU has to report on its activities to the (higher) Chemicals BU, which in turn reports back to the corporate centre.

(10) The MCAA activities of the Akzo group were previously the responsibility of Akzo Salt and Basic Chemicals BV, which was renamed Akzo Chemicals BV in 1993 and renamed **Akzo Nobel Chemicals BV** in 1994. Since July 1997, the MCAA activities of the Akzo group have been concentrated in **Akzo Nobel Functional Chemicals BV** and Akzo Nobel Chemicals BV was transformed into a holding company, which in turn belongs to the holding company Akzo Nobel Nederland BV The latter is a wholly owned subsidiary of the ultimate holding company Akzo Nobel NV, Arnhem.

(11) The MCAA activities of the Akzo group in Sweden, which were acquired in 1994 through the merger with Nobel Industrier AB, are currently performed by **Akzo Nobel Base Chemicals AB** (previously named Eka Nobel Skoghall AB), a 100% subsidiary of **Eka Chemicals AB** (previously named Eka Nobel AB) and directly involved in the MCAA business). Eka Chemicals AB is in turn a 100% subsidiary of Akzo Nobel AB, the former Nobel Industrier AB, which became a fully owned subsidiary of Akzo Nobel NV after the merger. Since 2003, Eka Chemicals AB has been a 100% subsidiary of Akzo Nobel Chemicals Holding AB (Sweden), itself fully-owned by Akzo Nobel Chemicals International BV (Netherlands), which in turn is a 100% subsidiary of Akzo Nobel NV[8]. On an organisational level, Eka Chemicals AB's MCAA activities, including the production plant of Skoghall, became the responsibility of Akzo Nobel Chemicals BV's Business Unit Functional Chemicals[9].

(12) For reasons of clarity, **"Akzo"** is the name used hereafter for the actions undertaken by Akzo Nobel Chemicals BV until 30 June 1997 and by Akzo Nobel Functional Chemicals BV as from 1 July 1997. It also includes as from 25 February 1994 the actions undertaken by Akzo Nobel Base Chemicals AB and Eka Chemicals AB.

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8 See pages 7930-7936 of the file.

9 See pages 6696-6709 (8272-8281) of the file.

(13) Akzo Nobel NV's total world-wide turnover in 2003 was EUR 13 thousand million. Its world-wide and EEA-wide turnover relating to the MCAA business was as set out in Table 1 (in millions of euros):

Table 1

	World-wide	**EEA-wide**
1996	69,7	51,1
1997	77,4	57,4
1998	75,9	55,6

(14) Akzo Nobel Nederland BV, Akzo Nobel Chemicals BV and Eka Chemicals AB can be respectively allocated the following total world-wide turnover figures for 2003: EUR 1,7 thousand million, EUR 46,6 million and EUR 30,6 million. Their respective EEA-wide turnovers relating to MCAA for 1998 were EUR 31 million, EUR 31 million and EUR 24,6 million.

2.2.2. Hoechst AG

(15) Hoechst AG (or **"Hoechst"**) is part of an international group of companies operating in the life science industry, specifically pharmaceuticals, agriculture and animal health. Since December 1999, Hoechst has been an intermediate holding company which is an affiliate of Aventis SA. Around 97% of the shares in Hoechst are held by Aventis SA. The remaining 3% are held by different private and institutional shareholders.

(16) Until 30 June 1997, Hoechst had two plants with a combined estimated capacity of 95 000 tons per annum. On 30 June 1997, Hoechst sold its entire MCAA business (as well as its other special chemicals activities) to Clariant GmbH[10].

(17) The company's headquarters are situated in Frankfurt am Main, in Germany.

(18) The company's total world-wide turnover in 2003 was EUR 4,5 thousand million. Its world-wide and EEA-wide turnover relating to the MCAA business was as set out in Table 2 (in millions of euros):

Table 2

	World-wide	**EEA-wide**
1996	53,14	31,16
1997	28,34 (1st half)	18,07 (1st half)
1998	0	0

[10] See pages 6616-6617 and 6375 of the file.

(19) Hoechst has achieved no turnover with MCAA since the second half of 1997 due to the divestiture of the entire MCAA business to Clariant.

2.2.3. Clariant GmbH and Clariant AG

(20) Clariant GmbH (hereinafter **"Clariant"**) is a global chemical company with headquarters based in Sulzbach, Germany. It is a fully-owned subsidiary of Clariant AG with headquarters in Muttenz, Switzerland. It was created in 1997, when Clariant AG acquired the Speciality Chemicals division of Hoechst AG. It operates its business through a number of divisions and wholly-owned subsidiaries. From 1997 until the end of 2002, the MCAA Business formed part of the Fine Chemicals Division, which was renamed the Life Science and Electronics Materials Division in 2000.

(21) On 1 January 2003, the MCAA Business was transferred to a newly established, wholly owned subsidiary of Clariant GmbH, known as Clariant Acetyl Building Blocks GmbH & Co KG ("CABB").

(22) Clariant AG's total world-wide turnover in 2003 was EUR 5,87 thousand million (CHF 8,52)[11]. Clariant GmbH's total world-wide turnover in 2003 was EUR 1,8 thousand million. Its world-wide and EEA-wide turnover relating to the MCAA business was as set out in Table 3 (in millions of euros):

Table 3

	World-wide	**EEA-wide**
1996	-	-
1997	39,46 (2nd half)	24,76 (2nd half)
1998	69,26	43,81

2.2.4. Atofina SA / Atochem

(23) Atochem SA was created in 1983 from the merger of Cloè Chimie, Atochimie and the biggest part of the chemical activity of the group Péchiney Ugine Kuhlmann. It changed its name into Elf Atochem SA in 1992 after a merger with Elf, and, into Atofina SA in April 2000, after a 1999-takeover of Atochem's parent company Elf by TotalFina. It recently changed its name to Arkema SA on 1 October 2004. Hereinafter it will be referred to as **"Atochem"** since most documents cited in this Decision refer to Elf Atochem SA and Atochem SA, or as **"Atofina"** which was the name in use for the administrative procedure.

(24) Since 1984 Atofina SA has been owned for 98% by Elf Aquitaine SA, which in turn has been owned for 99,4% by Total SA since 2000.

[11] Euro exchange rate: 1 euro = 1.4528 CHF (OJ C 1, 4.1.2003, p.2).

(25) Elf Aquitaine SA's world-wide turnover in 2003 was around EUR 84,5 thousand million. Atofina's total world-wide turnover amounted to EUR 17,8 thousand million in 2003. Its world-wide and EEA-wide turnover relating to the MCAA business was as set out in Table 4 (in millions of euros):

Table 4

	World-wide	**EEA-wide**
1996	28,6	22,8
1997	30,3	23
1998	27,5	22

2.2.5. Eka

(26) Eka, a company founded by Alfred Nobel in 1895, became Eka Nobel AB (Bohus, Sweden) in 1986 when it was acquired by Nobel Industrier AB. On 25 February 1994, Nobel Industrier AB merged with Akzo NV and became a fully-owned subsidiary of Akzo Nobel NV. Its subsidiary, Eka Nobel AB **("Eka")**, including its wholly-owned MCAA production plant Eka Nobel Skoghall AB, thus became part of the Akzo group. Following the merger with Akzo NV, the responsibility for Eka Nobel AB's MCAA business, including the MCAA production plant of Eka Nobel Skoghall AB, became the responsibility of Akzo Nobel Chemicals BV's (the former Akzo Chemicals BV) Business Unit Functional Chemicals[12]. In 1995, Eka Nobel Skoghall AB was renamed Akzo Nobel Base Chemicals AB and in 1996 Nobel Industrier AB was renamed Akzo Nobel AB and its subsidiary Eka Nobel AB was renamed Eka Chemicals AB.

(27) In July 1997, the Swedish MCAA activities of Akzo Nobel Chemicals BV's Business Unit Functional Chemicals were consolidated in Akzo Nobel Base Chemicals AB, currently a wholly owned subsidiary of Eka Chemicals AB, itself wholly owned by Akzo Nobel Chemicals Holding AB, which is in its turn a 100% subsidiary of Akzo Nobel Chemicals International BV (Amersfoort, Netherlands).

2.3. Description of the market

2.3.1. Supply

(28) During the period under investigation, there were eight main world-wide suppliers of MCAA: three European producers, Hoechst (Clariant since 1997), Akzo (including Eka since 1994) and Atochem; two Japanese producers, Daicel Chemical Industries Ltd and Denak Co. Ltd. (a 50/50 Japanese joint venture created in 1976 between Akzo and Denki Kagaku Kogyo Kabushiki Kiisha); and three US based undertakings, Dow Chemicals, Hercules and Niacet.

[12] See pages 6696-6709 (8272-8281) of the file.

(29) On a world-wide level, it is estimated[13] that Hoechst (Clariant since 1997) held around 18% of the market in 1996 and 19% in 1998. Akzo's world-wide market share for MCAA is estimated at 23% in 1996 and 24% in 1998. Atochem's world-wide market share for MCAA is estimated at 12% in 1996 and 12% in 1998.

(30) In the EEA, during the period of the infringement, nearly the entire market was controlled by the three largest European producers, Hoechst (and as from 1997 Clariant), Akzo and Atochem, totalling in excess of 90% of the market. The remaining portion of the MCAA market in the EEA was supplied by Eka (until 1994) and Nitrokemia (a small Hungarian producer).

(31) Hoechst was historically the largest producer in the EEA holding between 40% and 50% of the EEA market throughout most of the duration of the infringement. This historical leadership of Hoechst diminished, however, after Akzo acquired Eka in the beginning of 1994. After that, Akzo's market share increased to around 40-45%. Atochem was third with a market share between 19%-24% since 1990[14].

(32) Estimated EEA turnover figures (in millions of euros) and relative market shares were as set out in Table 5[15]:

Table 5

Size and relative importance in the EEA market for MCAA

	Hoechst	**Akzo**	**Atochem**	**Clariant**
1996	31,9 *(28%)*	51,1 *(46%)*	22,8 *(20%)*	-
1997	*18,0 (1st half)*	57,4 *(44%)*	23 *(18%)*	42,8 *(33%) (including first half Hoechst)*
1998	-	55,6 *(44%)*	22 *(17%)*	43,8 *(34%)*
1999	-	53,6 *(45%)*	19 *(16%)*	41,3 *(35%)*

2.3.2. Demand

(33) MCAA is used to make chemical intermediates. It is therefore sold directly to industrial users. Demand for MCAA therefore mainly comes from large industrial corporations, who often ensure their supply on the basis of one-year contracts. A part of the MCAA production is also used captively by the producers themselves.

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13 Estimates are based on the MCAA turnover (in value) and market share figures provided by the parties.

14 These estimates are based on the data provided by the parties on turnover figures and market shares in the EEA. Not all undertakings have however been able to provide complete data for the entire duration of the infringement.

15 The figures retained in Table 5 are based on the parties own turnover figures for the EEA market for MCAA. It is estimated that the sum of these turnover figures represent around 92-95 per cent of the total market. The official Commission exchange rates have been used to convert Hoechst's figures from DEM into ECU/EURO.

(34) World-wide demand for MCAA was estimated at 324 000 tons in 1996, 337 000 tons in 1997 and 350 000 tons in 1998, worth around EUR 298 million, EUR 310 million and EUR 323 million respectively[16].

(35) The EEA market for MCAA is estimated at about 132 000 tons in 1996, 135 000 tons in 1997 and 139 000 tons in 1998[17]. In value, the market is estimated at EUR 106 million in 1996, EUR 123 million in 1997 and EUR 121 million in 1998[18].

(36) Throughout the duration of the infringement, MCAA sales in the EEA market represented a significant proportion of the world wide MCAA sales[19].

2.3.3. Other market information

(37) With regard to pricing, it is estimated on the basis of the information provided by the respective parties that until the early 1990s, prices remained fairly stable at around EUR 950/1000 per ton per year for the EEA market[20].

(38) Between 1991 and 1994, prices came increasingly under pressure dropping to around EUR 800/850 per ton per year[21]. The parties have submitted that this is in part caused by the increase in capacity originating from Eka's newly constructed production plant which became operational in May 1993, as well as an aggressive low-price policy adopted by Eka[22].

(39) In 1994, MCAA prices in the EEA started to rise again[23] with further price increases in 1995[24]. After that they remained fairly stable until 1997 at around EUR 1000 per ton each year, after which they started to decrease slightly again but not in proportion to the decrease of prices of acetic acid which also occurred.

2.4.Inter-state trade

(40) European MCAA production is concentrated in a small number of sites. Hoechst (and since 1997, Clariant) has production facilities in Knapsack and Gersthofen, Germany, while Atochem (Atofina) has its production facilities in St Auban, France. Akzo, for its part, has production facilities in Hengelo, the Netherlands and in Skoghall, Sweden (former Eka site). From these units, the three companies supply the EEA market.

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16 Based on data provided by Akzo.

17 Based on data provided by Akzo.

18 Based on the own turnover data provided by the parties for the EEA market for MCAA. These estimates are most likely on the conservative side given that the sum of the turnover data provided by the parties only represents on average 95% of the market. The numbers are confirmed by the estimates provided by Akzo, which are slightly higher.

19 Based on turnover data provided by the parties.

20 See pages 7938-7940, 8200-8202, 8229-8232 of the file.

21 See also page 1330.

22 See for instance at pages 1017 and 7848 of the file.

23 As confirmed by price information submitted by the parties at pages 7938-7940, 8200-8202 and 8229-8232; See also pages 1041 and 2936-2937 of the file.

24 See for instance pages 2217-2219 of the file, where a general price increase for Europe for 1995 is mentioned as from 1 July 1995; See also pages 2936-2937 of the file.

(41) Therefore, during the period considered in this Decision, the MCAA market was characterised by important trade flows between Member States, as well as between the Contracting Parties to the EEA Agreement.

(42) There is accordingly a substantial volume of trade between Member States, as well as between the Contracting Parties to the EEA Agreement in the MCAA market.

3. PROCEDURE

3.1.The Commission's investigation

(43) By letter of 6 December 1999[25], Clariant GmbH informed the Commission of a cartel existing with regard to monochloroacetic acid and its derivatives and filed an application under the Commission Notice on the non-imposition or reduction of fines in cartel cases[26] ("the Leniency Notice").

(44) On 14 and 22 December 1999, and 13, 18 and 25 January 2000, Clariant GmbH handed a first set of documents to the Commission relating to the case. On 10 February 2000, Clariant GmbH provided further information and documents relating to the case.

(45) On 2 March 2000, Clariant GmbH handed over copies of purchase orders and invoices evidencing the cross sales of MCAA made with other MCAA producers. On 18 April 2000, 6 September 2000 and 8 November 2000, Clariant GmbH submitted certain additional information.

(46) On 14 and 15 March 2000, the Commission carried out on-the-spot inspections at the premises of Elf Atochem SA (now Atofina SA) located in Paris-La Defense (France) and Akzo Nobel Chemicals BV and Akzo Nobel Functional Chemicals BV located in Amersfoort (Netherlands).

(47) On 19 April 2000, Elf Atochem SA/Atofina SA expressed its intention to co-operate fully with the Commission's investigation. On 3 May 2000, Atofina SA submitted a statement describing its participation in the cartel arrangements. By letter of 11 May 2000, Atofina SA confirmed that its co-operation with the Commission’s investigation is in the framework of its application under the Leniency Notice.

(48) On 26 May 2000, Atofina SA submitted a second statement providing further details of the existence and operation of the cartel arrangements and supported by certain documents relating to the case.

(49) On 15 December 2000, Akzo Nobel Chemicals BV made an application under the Leniency Notice.

(50) On 25 July 2001, Akzo Nobel Chemicals BV and Akzo Nobel Functional Chemicals BV submitted a draft memorandum providing detailed information on the functioning

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[25] See pages 75-79 of the file.

[26] OJ C 207, 18.7. 1996, p. 4.

of the cartel arrangements. This draft memorandum was subsequently replaced by another draft memorandum on 21 December 2001.

(51) On 21 February 2003, Akzo Nobel Chemicals BV and Akzo Nobel Functional Chemicals BV submitted a new statement regarding the case as a continuation of their co-operation with the Commission's investigation under the Leniency Notice and containing certain additional information.

(52) On 9 April 2003, the Commission addressed a request for information to Mitsui & Co. Ltd (Japan) and Daicel Chemicals Industries Ltd (Japan). It received replies from those companies on 22 May 2003 and 30 May 2003 respectively.

(53) On 28 May 2003, the Commission addressed a request for information to Hoechst AG on the arrangements and its involvement therein, to which it received a reply on 10 July 2003.

(54) Further requests for information relating to market data were addressed to Akzo Nobel NV, Atofina SA and Clariant Int AG on 7 August 2003. The replies to these requests were received on 15 September 2003 and 25 September 2003 .

(55) An additional request for information was sent to Akzo Nobel NV on 22 September 2003 relating to market shares and its company structure, to which Akzo Nobel Chemicals BV and Akzo Nobel Functional Chemicals BV replied on 14 October 2003 on Akzo Nobel NV's behalf. Further information on the company structure was requested from Akzo Nobel NV on 29 October 2003 and a reply was received on 13 November 2003. Requests for information relating to the company structure and market data were also addressed to Clariant GmbH and Atofina SA on 28 October 2003, to which they replied on 24 November 2003 and 26 November 2003 respectively. A similar request for information was also sent to Hoechst AG on 19 November 2003, who replied on 5 December 2003 and 15 December 2003. The Commission also sent further requests to confirm turnover figures to all addressees on 3 March 2004, to which all parties replied.

3.2. Investigations and proceedings in other jurisdictions

(56) In the United States, the Department of Justice conducted a grand jury investigation in the Northern District of California into suspected price fixing and other restraints of trade by certain producers of MCAA sold in the United States and elsewhere. This conduct would constitute a violation of Section 1 of the Sherman Act, 15 U.S.C. §1.

(57) Akzo Nobel Chemicals BV, Atochem SA and Hoechst AG agreed to plead guilty to the charges and agreed to pay fines totalling USD 29 million.

(58) One executive of Akzo Nobel Chemicals BV and two executives of Atochem SA also agreed to plead guilty and agreed to serve a three month jail sentence in the United States and pay fines of USD 20 000, USD 50 000 and USD 50 000 respectively.

(59) In Canada, the Competition Bureau launched an investigation concerning MCAA in 2000, revealing Akzo Nobel Chemicals BV's involvement in an international price fixing conspiracy from 1995 to 1999. On 18 August 2003, Akzo Nobel Chemicals BV

pleaded guilty in the Federal Court of Canada to the above-mentioned charges and was sentenced to a fine of 1,9 million Canadian Dollars.

4. DESCRIPTION OF THE EVENTS

4.1. Preliminary observation: the documentary evidence

(60) The facts as set out in this Section are based principally (but not exclusively) on the following evidence:

- Statements and documents submitted by Clariant and in particular those submitted on 22 December 1999, 18 January 2000, 16 February 2000, 18 April 2000, 6 September 2000 and 8 November 2000 and annexes[27];
- Statements made by Atofina on 3 May 2000 and 26 May 2000 and annexes[28];
- Memorandum submitted by Akzo on 25 July 2001, as supplemented by its memoranda of 21 December 2001 and 21 February 2003 and annexes[29].

4.2. The cartel's history

(61) Contacts between Akzo, Rhône-Poulenc (Atochem entered the market by acquiring the MCAA business from Rhône-Poulenc in 1984), Hoechst as well as certain other MCAA producers, exchanging European customer and pricing information, existed as early as the late 1970s, early 1980s[30]. These early contacts most probably took place on a bilateral level. It is only in the early 1980s, that multilateral meetings started to be organised.

(62) Gradually, these contacts evolved into more regular contacts and became more solidified[31].

(63) Contacts between Akzo, Atochem and Hoechst with a view to concluding a volume and customer allocation agreement regarding the European MCAA market can be traced back to at least 1 January 1984, when Atochem entered the market by acquiring the MCAA business from Rhône-Poulenc[32].

(64) Indeed, Atochem states that the cartel existed from at least the beginning of 1984, when it entered the market: *"[…] Essentially three periods can be distinguished in the operation of the cartel since Atochem is active on the market, namely since 1984"*[33]. A first period runs *"as from the year 1984 until the 1990-1991"*. Atochem's first product manager confirms that cartel members met *"three or four times a year on a rotating basis"* in order to implement the arrangements and states that *"he participated in*

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27 See pages 1-998, 1116-1178, 1190-1217, 6375-6389 of the file.
28 See pages 1003-1115, 6391-6398 of the file.
29 See pages 7785-7900, 5875-6145, 6146-6374 of the file.
30 See pages 1013-1014, 1016-1017, 1043, 1050-1053; See also page 6385 and pages 7794, 7798-7799, 7847-7850 of the file.
31 See pages 7799 and 7850 of the file.
32 See pages 1016, 1044, 1050-1052 of the file.
33 See pages 1016-1017 of the file.

nearly all of the meetings between 1984 and 1992 […]"[34]. In fact, its first product manager was responsible for Atochem's MCAA business since the beginning of 1984 and confirms the existence of the arrangements at least as from the start of his job[35].

4.3. Organisation and structure of the cartel

4.3.1. General

(65) The structure, organisation and operation of the cartel were based upon a shared assessment of the market. Hoechst, Akzo and Atochem aimed at holding on to their respective market shares. Co-ordination was viewed as the means to do so[36].

(66) The participants would meet between 2 and 4 times a year on a multilateral basis[37]. Meetings took place on a rotating basis in the respective countries of the participating undertakings[38].

(67) In addition, the participants would also hold contacts on a bilateral level including by telephone, mostly at sales managers' level. They also met during special meetings and on social occasions[39]. An important element was that no written notes would be kept[40].

(68) In the beginning of the 1990s, Akzo submits, there were also numerous meetings among marketing managers. The purpose of those meetings was not to discuss the European customer allocations, but to discuss whether their subordinates were doing their jobs in implementing the agreements[41].

(69) Finally, according to statements made by Atochem and Akzo[42], Hoechst was the driving force behind the infringement over a long period. As the market leader with a market share in excess of 45%, Hoechst had a particular interest in organising the market to maintain its market share. Furthermore, they submit that it was on Hoechst's MCAA manager's initiative that the decision was made to "formalise" the arrangements in 1993. This involved an explanation of the rules for "orderly marketing" including transparent statistics, no cheating, and "no field man's excuses". This meant that each producer was expected to control its sales people, and implementation of a compensation system[43]. According to Atochem and Akzo, it was also Hoechst who developed the mechanism of the exchange of sales statistics, referred to as ABC charts[44].

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34 See page 1053 of the file.
35 See pages 1050-1054 of the file.
36 See pages 6375, 6378, 6382 and 7839 of the file.
37 See pages 6385, 7850, 7866, 1016-1019 of the file.
38 See for instance page 1018 of the file.
39 See pages 7868-7871 of the file.
40 See page 1053 and 7864 of the file.
41 See pages 7854-7855 of the file.
42 See pages 1016, 7839, 7863-7864 of the file.
43 See pages 7864, 1018, 1029, 1046-1047 of the file.
44 See pages 6385-6386 of the file.

4.3.2. Organisational changes to the arrangements

(70) Even though the essential features of the cartel agreement, as discussed in more detail below, remained the same throughout the entire duration of the cartel, certain organisational aspects varied over time. In particular in 1993, the participants considered that there was a need to "improve the old system" in order to keep the cartel going[45]. These "improvements" consisted in a formalisation of the exchange of sales and price data through the quarterly exchange of charts, especially designed for that purpose by Hoechst, in which the sales data of the previous sales quarter would be filled out by each cartel member[46]. In order to justify the thus exchanged market figures, the participants also agreed in 1993 to use an official system for reporting the total MCAA sales on a geographical and customer sector basis, which was entrusted to a statistical organisation named [organisation] (see below at recitals (77)-(83))[47].

(71) In 1993, a fourth member, Eka, also joined the cartel arrangements[48].

(72) According to the parties, the need for "improving" certain organisational aspects of the cartel was mainly due to difficulties encountered in the operation of the cartel during the early 1990s. According to Atochem, an important factor was the change of personnel at the respective MCAA producers which meant that the good functioning of the cartel could no longer purely depend on good personal relations of the persons involved[49]. Other factors invoked by Atochem are the fall of the profitable Soviet market around 1990-1991, the increase in power of Akzo (after buying Eka in 1994), and the increase in the price of the raw materials (acetic acid)[50]. Akzo for its part states that the main disruptive factor was the behaviour of Eka in the market, including a substantial increase in its production capacity as a result of opening a new plant[51].

(73) An internal note of Akzo dated 4 September 1992 found during the on-the-spot verifications and dealing with the business environment and competitive position[52], illustrates the difficulties encountered. Under the heading Strategy it is stated *"Although in general the MCA industry is increasingly moving to captive positions, in 1992 we did not observe important changes. In the free market the competition mainly between Akzo and Hoechst has been extremely hard, leading to a price fall of 10%. This is still not enough to have an influence on the positions taken by Eka Nobel. If we want to attack Eka, this will result in a further price erosion and it is questionable if at the end of the day, our market share will have changed significantly. So our strategy has to remain focussed on increasing our captive positions. […]"*

(74) An internal note of Akzo dated February 1994, submitted by Akzo confirms the same state of affairs[53]: *"due to strong competition and the weakening of the economy the price level for MCA/SMCA was under pressure and dropped in the period 1990-1993*

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45 See pages 6385, 7862-7864 of the file.
46 See pages 6377-6380, 6385-6386, 6388 and 12-20 of the file.
47 See pages 7864-7868, 6379, 1018 of the file.
48 Until its merger with Akzo in 1994.
49 See also pages 7847 and 1017-1018 of the file.
50 See page 1017-1018 of the file.
51 See pages 7855-7860 of the file.
52 See pages 3439-3446 of the file.
53 See page 6111 of the file.

with about 15%. The main competitors Hoechst, Atochem, as well as Akzo, have a capacity utilisation of 65-75% and tried to maintain volumes by price adjustments. On top of that Eka Nobel added new capacity and followed a very aggressive price policy in order to fill-up plant capacity". The note continues to state that *"In 1993, however, the price level stabilised and for 1994 we see first signs of price recovery […]. In detail, per January 1994, Akzo could achieve as a first step, price increases of 3-4% with several customers in Europe, e[s]pecially in these countries where currency changes compared to NLG have been strong (UK, Italy, Spain)"*.

(75) Despite these problems, Akzo submits, each of the three main European producers realised that they were being watched by the other two producers. The information exchanges thus placed a limit on the producers' willingness to undercut each others' prices and pursue other producers' customers in the EEA[54].

(76) In any event, as mentioned above and as further developed below, the essential features of the cartel remained unchanged throughout the entire duration of the infringement.

4.3.3. The role of [organisation]

(77) One of the novelties introduced in 1993 was that an independent statistical organisation, named [organisation][55] (hereinafter referred to as "[organisation]"), was entrusted with the task of collecting the participants' quarterly sales figures for MCAA and providing the group with total sales statistics per customer and per country[56].

(78) [information regarding organisation].

(79) Prior to drawing up their quarterly sales statistics for MCAA as from 1994, the participants also provided their historical sales figures for MCAA to [organisation] for the period 1990-1994[57]. [organisation] had issued instructions to that effect on 29 November 1993[58]. The statistics issued to the group by [organisation] contain aggregate figures per customer and per country.

(80) The participants would meet with a [organisation] representative, generally twice a year, near [location] in order to discuss these statistics as well as other issues of a general nature, such as overall business trends, safety issues and related safety sheets, and raw material developments. In total, 13 [organisation] meetings were held between May 1994 and 17 August 1999 (the last meeting of 17 August 1999 was cancelled according to Akzo)[59].

(81) These meetings also allowed the cartel participants to meet "unofficially", usually the evening before, in order to hold their cartel meetings. In fact, the parties have admitted

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54 See page 7847 of the file.

55 See pages 1018, 1025, 1038-1040, 1130-1136, 1047 of the file.

56 This was asked as from 1 January 1994. See second contract submitted by Clariant on page 98 of the Commission's file. See also pages 6029-6030 and 6090-6091. See also pages 1292-1304 of the file.

57 See pages 1318-1324 of the file. See also page 6382 of the file.

58 See page 1133 of the file. See also pages 1672-1743 of the file.

59 The dates of those meetings are as follows: 18.05.1994; 02.09.1994; 31.01.1995; 27.04.1995; 27.10.1995; 26.04.1996; 25.10.1996; 30.01.1997; 28.10.1997; 30.01.1998; 21.10.1998; 29.01.1999 and 17.08.1999. See also pages 3633-3726 of the file.

that the [organisation] meetings were to serve as an "umbrella" to cover up the real purpose of the gatherings, namely the implementation of the cartel arrangements[60].

(82) These discussions would be typically held in a different building, such as a hotel, and efforts were made to arrive and leave from these meetings separately. Occasionally, these meetings would be held in the same room as the [organisation] meetings. All parties state, however, that the [organisation] representative never attended the unofficial meetings.

(83) On Atochem's copy of the minutes of the [organisation] meeting of 31 January 1995, there is a hand-written note to the effect that *"the new contract is still missing which will justify our presence. Pb [problem] with the new EC jurisprudence"*[61].

4.4. The essential features of the cartel

4.4.1. Customer and volume allocation

(84) The main objective of the cartel between the European MCAA producers was to maintain market shares through a volume and customer allocation system. The volume allocation was based on the agreed market share percentage: Hoechst (45%), Akzo (30%) and Atofina (25%)[62].

(85) Whereas prior to 1993, the good personal relationships between the persons involved permitted a more informal monitoring of the implementation of the agreement, the participants resorted to more formal mechanisms in 1993. The parties filled in charts with their sales data at quarterly meetings which were collected by a designated rotating "secretariat"[63]. Afterwards, the consolidated data was sent to the private addresses of the participants[64]. These charts, referred to as the ABC charts, contained the respective sales data and pricing data of Hoechst (later Clariant), Akzo and Atochem[65]. At the following meeting, the market shares would then be calculated on the basis of this data received and compared to the agreed market share percentage[66].

(86) The customer allocation consisted of an agreement between the producers to respect certain existing customer accounts which would be off limits to the other producers[67]. Akzo submits that, generally, customer allocations were known and did not need to be discussed.

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60 See pages 1018, 1029 and 1039-1040 of the file. See also 6379 of the file.

61 See page 1668 of the file.

62 See for instance recitals 116, 118 and 124. See also pages 1017, 1024 and 1057 of the file. See also on page 6378 of the file. Before 1994, Akzo's allocation corresponded to 22%, but was increased to 30% after its merger with Eka.

63 Until June 1995, the data was collected by Hoechst, then by Akzo for a short period followed by Atochem; see for instance at pages 6385-6386 and 1025 of the file.

64 See pages 6381-6387 and 6388-6389. See also pages 11-20, 40-59 and 1062 of the file.

65 See pages 2628-2630 of the file. See pages 442-492 of the file. See also pages 6381-6387 of the file.

66 See page 6381-6387 of the file. See page 1057 of the file.

67 See for instance recitals 127, 136, 139-146, 151, 154. See also page 1039 of the Commission's file: Lamberti was attributed to Atochem and Hoechst, Aqualon to Atofina, Witco: Atofina could not deal with it.

4.4.2. Price fixing and exchange of price information

(87) The participants also exchanged price information[68]. This was essentially meant to ensure that agreed quotas could be respected: knowing everyone's prices, each participant could avoid getting a contract in excess of its quota by offering a too high price[69]. As from 1996, Atofina submits that these prices were mentioned on the exchanged charts[70].

(88) In addition, the cartel participants also agreed to implement price increases[71]. Usually through telephone calls, the participants would discuss what "a reasonable market price" would be. European price increases were implemented either by a single increase or by a number of gradual increases; the latter often prompted by the fact that long-term contracts limited the ability to raise prices. The producers agreed to stagger price-increase announcement dates, and took turns in announcing an unpopular price increase, either countrywide or to a specific European customer[72]. After 1995, the price for acetic acid diminished again, but MCAA prices did not decrease in the same proportion. Atochem confirms that the price increases were concerted among competitors, although it claims that they "reflected" the market[73].

(89) According to Akzo, the producers organised at least five or six price meetings and, during at least two, the producers agreed to increase prices in the EEA[74]. Atofina submits that an agreement was reached on a concerted price increase which was implemented in 1995[75]. Akzo confirms that it contacted Hoechst on the need to increase European pricing rather than gaining additional volume in early 1995[76].

4.4.3. Monitoring of volume quotas and prices

(90) In order for the arrangements to be effective, the participants reviewed the actual sales volumes, as well as price information, during the regular multilateral meetings[77]. The cartel meetings would start with the completion of a chart with the participants' respective sales figures and a review of those filled out before[78].

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68 See further at recitals 103-105, 108, 111, 114, 126, 134, 151. See also pages 1018, 1038-1039 of the file. See also page 7870 of the file.

69 See further at recital 105 for instance. See also for instance at page 1030 of the file..

70 See at pages 1025 and 1030 of the file.

71 See page 7847 of the file regarding prices where it is stated that in the period prior to 1993, the parties would contact each other and discuss what a reasonable market price would be. See also minutes of statements made by Clariant on 13 December 1999 at pages 6375-6376 of the file.

72 See further at recitals 126, 134, 151. See pages 1023, 1307-1317 of the file. See also pages 7870, 7875-7876 of the file.

73 See pages 1024 and 1045 of the file.

74 It further submits however that there is no evidence that these agreements were actually implemented in the market place. See however also pages 7873 and 7876 of the file. See also below in recitals 126, 134, 151.

75 See page 1018. See also attached interview notes with **[Atofina employee]** at page 1023-1024 of the file.

76 See page 7876 of the file.

77 See pages 1025 and 1030 of the file.

78 See at recitals 120, 140, 151-152. (A reconstruction of the charts used by the cartel members has been handed over by Atofina on pages 1062-1064 of the file, the originals & disquettes appear not to have been preserved. See also charts handed over by Clariant at pages 442-492 of the file.)

4.4.4. Compensation mechanism

(91) The arrangements also included a compensation mechanism to ensure that the agreed volume quotas would be respected[79].

(92) Compensation would either consist of the company who oversold buying product from a company who had undersold at the then-market price[80] or, alternatively, producers would sometimes agree on a customer-specific remedy, meaning that the producer who oversold could offer to sell less to a specific customer account or agree that the competitor who had undersold could take the account for the next quarter[81].

4.5. The operation of the cartel

4.5.1. Details of meetings and contacts

(93) The following description of meetings and contacts between competitors is not exhaustive. It provides, however, an illustrative description of the subjects discussed which the Commission is able to document. The parties submit that a key factor in the arrangements was not to keep any written notes relating to the cartel meetings[82]. Atochem's first MCAA product manager has testified that he personally participated in nearly all cartel meetings which were held between 1984 and 1992 and which were organised between three or four times a year[83].

(94) Akzo has further submitted two binders with detailed records of supply requirements of various European customers, which producer(s) supplied which customer, and at what price. These binders were kept by Akzo's MCAA sales manager before 1991 and later passed on to his successor. Akzo submits that these notes were, at least largely, based on market information received from competitors[84]. As such they also provide testimony of the contacts held between competitors.

1989

(95) An internal table inserted in the binders of Akzo's MCAA sales manager and submitted by Akzo shows how Akzo had to compensate in Germany after having supplied a Hoechst customer (KVK) in Denmark[85]. Another similar note submitted by Akzo shows that customer allocation discussions took place involving Hoechst and Akzo. Although it follows from the evidence in the file that Eka only joined the arrangements at a later stage (see below), it was also involved in these particular discussions: *"KVK MCA for 80% of Eka - 20% of Ho[echst]- lot of fighting - also Metsa Serla also (sic) cause. Eka Nobel finds alright that you take over KVK-but then*

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79 See recitals 139, 143, 151. See also pages 1040-1041 of the file. See also pages 457 and 463 of the file.

80 See pages 426-437 and 637-998 of the file. See also page 1033 of the file. See pages 1073-1086 of the file. See also pages 1404-1420 of the file.

81 See page 1017 of the file. See also copies of purchase orders and invoices evidencing cross sales of MCAA made under the compensation scheme system submitted by Clariant at pages 426-437 and 636-998 of the file.

82 See for instance at page 1053 of the file. See also page 7864 of the file.

83 See page 1053 of the file.

84 See pages 7853-7854 of the file.

85 See pages 6189-6190, 7852 of the file.

also the obligations - buying price MCA KVK with Ho[echst] much- lower than price with us"[86].

1990

(96) On 31 May 1990, Hoechst invited Eka to its Göteborg office. This meeting was prompted by Hoechst's concern about debottlenecking the old Eka plant capacity to increase from 12 000 tons/year. According to Akzo, Eka would often be told by its competitors how it should behave in the European markets during the early 1990s[87]. Eka's three European competitors also set out to convince Eka not to build its new capacity plant in Sweden.

(97) On 21 June 1990, Eka was invited to attend a "multilateral packaging and transportation meeting" in Frankfurt, where representatives from Atochem, Akzo and Hoechst were present. Outside the meeting room, Eka was told by Hoechst that it should behave in the market and all competitors attempted to find out Eka's position on certain accounts[88].

(98) On 11 September 1990, Akzo met with Atochem. The meeting was called "transport MCA". Akzo states that it is not aware whether Atochem's newly adopted pricing policy was a subject of discussion. Atochem is said to have continued to undercut European prices in 1991[89].

(99) On 16 September 1990, Akzo representatives met with Eka's General Manager to discuss a particular European customer[90].

(100) On 27 June 1990, Hoechst invited Eka, Akzo and Atochem to a "packaging and transportation meeting" in Carben, outside Frankfurt. Outside the meeting, further discussions were held on Eka's plans to increase its capacity[91].

(101) On 27-28 November 1990, a multilateral meeting was organised between Atochem, Hoechst and Akzo. According to Akzo, Eka also participated in this meeting, although it is unclear whether Eka wasalso present when general information was exchanged between the three others[92].

(102) An internal note submitted by Akzo[93] shows that at least Akzo and Hoechst discussed compensation issues relating to the English market around the end of 1990. In the third line from the bottom of the page it is stated: *"Ho[oechst] wants to do 400/500 T (tons) - GBP 630 put down. Akzo Nobel swap price GBP 700, quantity outside swap GBP 630."* It is then stated that the *"wish is for H[oechst] to supply 500, Eka 1500 and Akzo Nobel 1200/1400 (total 3000-3500). In 1990 Akzo Nobel did 700 T. which therefore leaves 1100 T!"*.

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86 See pages 6223-6226 and 7852 of the file.
87 See recitals 97, 112 and 116-118.
88 See pages 7856-7859.
89 See page 7855 of the file.
90 See page 7857 of the file.
91 See page 7857 of the file.
92 See page 7858 of the file.
93 See pages 6192, 7852 of the file.

(103) A hand-written note submitted by Akzo[94] is understood to give an overview of 1990 competitor prices offered to Rhône Poulenc Belvedère. Akzo submits that the only way to know these prices would have been through competitor contacts[95].

(104) Another hand-written note of Akzo's MCAA sales manager reflects discussions between Akzo, Atochem and Hoechst regarding the 3rd sales quarter of 1990 to a specific customer account: *"Q390 212 Ho[echst]/ Ato Akzo Nobel 222 Ato 208 + 12= 220"*. According to Akzo, Hoechst and Atochem had both offered DEM 212 before. Now the deal was for Akzo to offer at 222 and Atochem to offer at 220. Consequently, the business would go to Hoechst[96]. A similar note shows that contacts may have involved Eka: *" '90 Ho[echst] DM 202 Akzo DM 210 % 8 Ato DM 207. NB 700/800 Eka's wish- per 31.12.1990 4 loads delivered - the 4th load DM 2000 - Also offered Buna - Sept 90 +/- DM10 (everybody) Ato + DM7 - thus Ho[echst] 212 Akzo Nobel 220 - 8 Ato 214…"*[97].

(105) Another hand-written note submitted by Akzo[98] shows prices charged by Hoechst to Goldsmith, an exclusive Hoechst client. Akzo submits that its then sales manager received these figures from Hoechst in order to make sure that it would not offer at lower prices.

1991

(106) A contemporaneous hand-written note submitted by Akzo shows an overview of prices charged to a specific customer, Knoll, in Germany in which it is stated in relation to the prices to be charged for the 1st Quarter of 1991 (in translation): *"Ho[echst] must negotiate with BASF. Akzo Nobel does this with Knoll"*[99].

(107) On 11 June 1991, Akzo's MCAA business unit's manager met with his Hoechst counterpart in Frankfurt. Discussions concerned those specific customers where there was an important development with regard to the account , for example, when Hoechst started to supply a large German customer traditionally supplied by Akzo[100].

(108) On 23 July 1991, Akzo Nobel's MCAA business unit's manager met one of the Vice Presidents of Atochem in Paris. During this meeting, Atochem's pricing policy was discussed[101].

(109) On 30 July 1991, a lower-level Atochem / Akzo meeting took place in Amsterdam and the general situation in the MCAA market in the EEA was discussed[102].

(110) On 11 September 1991, Eka's General Manager met with Atochem. It is, however, not entirely clear what the subject of that meeting was[103].

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94 See pages 6193, 7852 of the file.
95 For other similar examples, see at pages 7852-7854 and pages 6215, 6217-6218, 6306-6309 of the file.
96 See pages 6321 and 7853 of the file.
97 See pages 6372 and 7856-7857 of the file.
98 See pages 7853-7854 and 6329 of the file.
99 See pages 6336 and 7854 of the file.
100 See page 7860 of the file.
101 See page 7860 of the file.
102 See page 3409 of the file.

(111) A hand-written note submitted by Akzo shows 1991 prices to a specific customer: *"Flakes: Ho[echst] flakes 211+6= 217, Akzo Nobel 211+6= 217 and lowered to 212"* The note continues with a telling remark at the bottom of the page *"about this there was no communication with Ho[echst]"* (original emphasis)[104].

1992

(112) On 30 June 1992, a meeting took place between Eka and Akzo (one of several bilateral meetings that took place between them), discussing volumes and customer positions in the EEA. Similar meetings took place on 26 November 1992 and 8 December 1992[105].

(113) During a "packaging and transportation meeting" organised by Akzo in Amsterdam on 22 January 1992, Hoechst, Atochem, Eka and Akzo discussed production volumes and, although to a limited extent, European customers[106].

1993

(114) In early 1993, some time subsequent to Eka's opening its new plant, Akzo and Hoechst met to discuss the fact that Eka was cutting into the other producers' volume. Hoechst agreed to contact Eka and see if Eka would commit to a reasonable price level in Europe if offered a certain volume of the MCAA market in Europe[107].

(115) Akzo and Atochem also met in Paris on 22 February 1993[108].

(116) In April or May 1993, Akzo, Hoechst and Atochem met in Amsterdam. In addition to discussing the typical safety and transport issues, they also discussed volumes, customers and price information in the European MCAA market. The next day, Hoechst met with Eka on behalf of Atochem and Akzo at Schiphol Airport. The two reviewed the market situation in the EEA, including the fact that Eka had recently displaced Hoechst at a Finnish customer. Hoechst told Eka that it would have to behave in the marketplace and outlined several "rules" to guide Eka's conduct. It was understood that Eka had six or seven accounts with annual sales of 8 000 to 10 000 tons. Hoechst told Eka to grow those accounts slowly rather than going in search of additional European accounts. If Eka did that, it would be accepted into the European MCAA "club" (emphasis added), and would be allowed to have its share of the MCAA market in Europe. Otherwise, Hoechst warned of a counter attack[109].

(117) On 15 June 1993, Hoechst held a meeting with Eka in Sweden and mentioned that the European MCAA market needed to be arranged in a more organised way, mentioning statistics. Akzo submits that at that point Eka intended to participate in the European

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103 See pages 7858-7859 of the file.

104 See pages 6352, 7854 of the file.

105 Akzo further indicates that Eka's General Manager further met with Hoechst at some point prior to November 1992 and on 9 December 1992.

106 See page 7858 of the file.

107 See page 7861 of the file.

108 See page 3408 of the file.

109 See page 7861 of the file. During approximately the same time, Akzo sent the same message to Eka in a telephone call. Against the backdrop of the deteriorating MCAA market in Europe, several bilateral and multilateral meetings were held to address these issues.

competitors' arrangements, even though tensions between Eka and its competitors would still linger on[110].

(118) On 21-22 September 1993, a meeting was organised in Paris between Hoechst, Akzo, Atochem and Eka, referred to by Akzo as the "Fortress Europe" meeting[111]. It was during this meeting that the parties discussed how to "improve" the organisation of the cartel. It was confirmed that volume allocation between competitors in the EEA founded on their market share was to be the basis of the arrangement. Akzo submits that it believes that at this meeting no decision was yet taken on the exact percentage each producer would be allocated. The participants agreed however on how allocations would be made: all accounts would be thrown into one basket, and a producers' market share would equal a percentage of its position at the time.

(119) As for the statistics, the competitors decided (according to Akzo, on a proposal of Hoechst) to ask the [location] statistical organisation [organisation] to provide the statistical processing for the group[112].

(120) In December 1993, four meetings were organised dealing with the implementation of the improvements made to the European competitor meetings and to organise how data submissions to [organisation] would be made in a way that was effective for the parties' intentions of allocating market shares and customers in Europe. These meetings would take place respectively in Frankfurt (exact date unknown), Stockholm (7 December) and Paris (15 and 29 December). In preparation for the first [organisation] meeting, each participant supplied [organisation] with its historical sales data from 1992 forward. Thereafter, the participants submitted quarterly sales tonnage data. The data was provided country-by-country, product-by-product (MCAA and SMCA) and application-by-application. The data was submitted in a format that did not reveal the individual market share of the individual producers[113].

(121) Akzo submits that in late 1993 or early 1994, the European MCAA producers contacted each other on possible entry into the market by a Hungarian company, Nitrokemia. It was agreed that Hoechst would buy the capacity from Nitrokemia and share the expense with Akzo, Atochem and Eka. As such, each Western European producer absorbed volume and cost proportional to its market share in the EEA[114].

1994

(122) Hoechst and Akzo representatives met on 31 January 1994 and 1 February 1994 in what is referred to by Akzo as the first elaborate detail meeting between them[115].

(123) The first official [organisation] meeting was held on 18 May 1994 between representatives of Hoechst, Akzo, Eka and Atochem. A representative of [organisation] was also present[116].

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110 See page 7862 of the file.

111 See pages 7863-7864 of the file; Akzo submitted minutes of a "health and safety aspects of MCA" meeting held in Paris on 21/22 September 1993. See pages 6023-6028, 6031-6033 of the file.

112 See pages 7864, 1018 of the file.

113 See page 7864-7865 of the file. See also page 1193 of the file.

114 See page 7871 of the file.

115 See page 7872 and 6064-6070 of the file.

(124) On 4 and 5 August 1994, the participants met outside Frankfurt in the Jahrhunderthalle. During this meeting, Akzo submits, the participants confirmed the same market share percentages for the allocation of the EEA market: Atochem 25%, Eka 8%, Akzo 22% (Akzo's and Eka's share were subsequently transformed into an adjusted Akzo-Eka share of 30%) and Hoechst 45%[117].

(125) During this meeting, the participants also reached agreement on the allocation of certain customers by "keeping certain sensitive accounts" out of the agreement: Eka could keep Noviant (Metsa-Serla, later Metsa Specialties), the world's largest customer which it had only recently won. It was also agreed to keep captive use out of the arrangement[118].

(126) During this meeting, according to Akzo, the cartel participants also reached an agreement to raise European prices to soften the blow of increasing acetic acid prices[119].

(127) Finally, it was also agreed to maintain a penalty or reparation system, by which producers would have to arrange for compensation when they supplied more than their allocated market share[120].

(128) On 2 September 1994, the second [organisation] meeting was held at Zurich Airport[121].

(129) An internal note submitted by Atochem regarding the customer account of Aqualon testifies indirectly, according to Atochem, to the existence of an agreement to maintain price and volume stability in the market in relation to the years 1992-1994[122].

(130) On approximately 2 October 1994, a farewell party and fishing trip was organised in the Netherlands for the retirement of Mr **[Eka employee]** from Eka. Akzo submits that Mr **[Hoechst employee]** of Hoechst indicated that it wanted more market share[123].

(131) During a meeting in Paris on 2 December 1994, all four producers met in order to discuss accusations of sending inaccurate numbers to [organisation], cheating and pursuing each other's customers. Akzo submits that its representative walked out of the meeting, followed by the representatives of Eka, which effectively merged with Akzo in early 1994[124].

1995

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116 See page 1047 of the file. See minutes of that meeting on pages 1130-1136 of the file. See page 1194 of the file. See also pages 6088-6089 and 6100 of the file.

117 See pages 7872-7874 of the file. See also page 1046 of the file.

118 See pages 7872-7873 of the file.

119 See page 7873 of the file.

120 See page 7873 of the file.

121 See pages 7873-7874 and 1040 of the file.

122 See pages 1020 and 1101-1103 of the file.

123 See pages 1040 and 1194 of the file.

124 See pages 7874 of the file.

(132) On 31 January 1995, the parties met in the framework of the [organisation] meeting[125]. The day before the remaining three producers met informally at a pre-meeting[126].

(133) Akzo submits that in the course of 1995, during a social bilateral meeting between Hoechst and Akzo representatives, European customers and prices were discussed[127].

(134) In early 1995 (February or March), Akzo contacted Hoechst over the telephone indicating that they believed that priority should be placed on raising European MCAA prices rather than gaining additional volume, indicating that an increase of 5% to 7% was desired[128].

(135) During a pre-meeting to the Fourth [organisation] meeting held on 26 April 1995, the group discussed how to ensure the continuation of the European arrangements. The minutes reflect that *"[a]fter a relatively long period of initial difficulties and misunderstandings in the companies' reporting [,] the members were satisfied with the statistics such as they were drawn up"*[129].

(136) A note found during the inspections at Akzo's offices[130], and containing hand-written sales statistics of Akzo for the years 1993-1995, mentions in the left hand upper corner (translation) *"communication to Ho[echst] on 1/6/95"*.

(137) The fifth [organisation] meeting was held on 27 October 1995[131].

1996

(138) The sixth [organisation] meeting was held on 26 April 1996[132].

(139) On 10 October 1996, the three competitors met at the Schiphol Airport Conference Room to discuss a number of topics, including market shares in the EEA and whether any compensation was necessary. If reparations were deemed necessary, the details of reparations would have been discussed at a subsequent meeting involving only the more junior level representatives for each of the producers[133].

(140) On 24 October 1996, a pre-meeting was held the evening before the official Seventh [organisation] Meeting[134]. According to Akzo, by this time the consolidated statistics addressing the market in the EEA often revealed that Hoechst had "oversold". The actual [organisation] meeting was chaired by Atochem, who was the then appointed secretary of the "unofficial" cartel meetings[135].

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125 See pages 1665-1668 of the file. See 6104-6109 of the file.
126 See page 7875 of the file. See also page 1040 of the file.
127 See page 7875 of the file.
128 See page 7875 of the file.
129 See pages 1662-1664 of the file. See pages 6110-6112.
130 See pages 3479-3488 of the file.
131 See pages 1658-1661 of the file. See pages 6113-6116 of the file.
132 See pages 1654-1657. See pages 6120-6122 of the file. See pages 1272-1275 of the file.
133 See page 7877 of the file.
134 See pages 1276-1291 of the file.
135 See pages 1651-1653 of the file.

(141) Akzo and Atochem held bilateral talks on 9 April 1996 to discuss customers in Europe with regard to whom they had disputes. For example, supply to Tessenderlo was an issue. It was agreed that Atochem would be their sole supplier and that Akzo should refrain from selling to them even though they would be repeatedly approached by them[136].

1997

(142) On 30 January 1997, the Eighth official [organisation] meeting took place at the Zurich Airport. Akzo chaired the meeting[137].

(143) In the summer of 1997 (19 August 1997), Akzo met with Hoechst to discuss the Metsa account. Hoechst wanted a minimum of 5 000 tpa of that account stating that it was only agreed that Eka would have 15 000 tpa. Akzo, who had 20 000 tpa of the Metsa account denied Hoechst the requested 5 000 tpa. Other matters were discussed including Hoechst's growing sales imbalance vis-à-vis Atochem and cost sharing of the EcoTox Task Force.

(144) Akzo further submits that somewhere in 1997 or 1998, Hoechst did obtain a portion of the Metsa account[138].

(145) According to Atochem, two meetings were organised in September or October 1997 where Atochem's new MCAA head of division was presented to Akzo and Clariant on their request.

(146) During these meetings there was friction with regard to the quotas and their compensation. This is confirmed by Atochem's then MCAA head of division in his statements[139].

(147) The Ninth [organisation] meeting took place on 28 October 1997[140].

(148) The producers had agreed that Hoechst would purchase Nitrokemia's capacity and divide the costs in proportion to their EEA market share. Because of the poor quality, Hoechst/Clariant refused to do so in 1997. Akzo agreed subsequently to purchase 1500 tons of MCAA in exchange for which Nitrokemia would not sell into Western Europe[141].

1998

(149) A meeting was organised between representatives of Akzo and Clariant on 21 January 1998. Akzo claims it has no recollection of the purpose of that meeting[142]. According to Clariant, this meeting was to introduce one of its new representatives to Akzo[143]. On

136 See page 7878 of the file.
137 See pages 1647-1650 of the file. See pages 6123-6126 of the file.
138 See page 7879 of the file.
139 See page 1029 of the file.
140 See pages 1643-1646 of the file. See pages 6127-6130 of the file.
141 See page 7879 of the file.
142 See page 7880 of the file.
143 See page 1195 of the file.

30 January 1998, the participants met for the Tenth official [organisation] meeting. According to Akzo, no pre-meeting was held[144].

(150) On 14 May 1998, another meeting was organised between Akzo and Clariant in Frankfurt[145]. According to Akzo, the meeting was arranged to introduce Clariant's new MCAA manager to the Akzo representatives. Clariant submitted a contemporaneous note containing the points that were discussed at this meeting between them[146]. It follows from this document that specific customers were discussed, in particular their total requirements as well as prices to individual customers. In relation to a specific customer, it is mentioned that *"through a pro forma offer from Clariant, Akzo had to reduce its price; no further activities by Clariant"*.

(151) The document shows that the participants also discussed the possibility of a price increase as from 1 October 1998: *"European prices: slight erosion in the market. In July to be decided whether possible increase of DM0.10/kg on 1.10.98 enforceable. Total market of West Europe for 1998: 95,000to"*. Finally, the participants also discussed compensation purchases: *"Akzo has sorted out to a large extent the imbalances by additional purchases from Ato at market price; Clariant must still achieve compensation [with regard to] Ato[chem]"*.

(152) In the summer of 1998, Akzo and Clariant discussed the increase in consumption of Metsa to 30 000 tpa. Akzo indicated to Clariant that it would put any volume that it would sell to Metsa over its attributed proportion of 20 000 tpa into Akzo's European statistics. According to Akzo, Clariant was not satisfied with this and bid on the Metsa contract itself. As a result it obtained 5 000 tpa and reneged on its agreement to bring that tonnage within the arrangements. Akzo and Atochem were brought closer together according to Akzo[147].

(153) A note submitted by Clariant in relation to a meeting between Atochem and Clariant shows that both parties discussed compensation issues and market opportunities at a meeting held in Roissy on 3 June 1998[148].

(154) On 14 September 1998, the three producers met in Düsseldorf[149]. According to Akzo, the meeting was organised by Clariant. A list was drawn up with problems to be addressed (mainly bilateral issues between Clariant and Akzo). Compensation issues were discussed and it was decided that Clariant had to provide Atochem with compensation to even out their sales imbalance[150]. Atochem clarifies that the

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144 See pages 1639-1642 of the file. See page 1196 of the file. See pages 6131-6134 of the file.

145 A contemporaneous document relating to this meeting is inserted at page 70-71 (translation at 83-84) of the file. See also pages 131 and 1212 of the file.

146 See pages 70-71 of the file. See also pages 83-84 of the file.

147 See page 7880 of the file.

148 See page 1196 of the file. See pages 72 and 85 of the file. In the note it is stated that "Balance 1997 West Europe: Clariant will buy 500 to from Ato in the second half of 1998" and "balance 1998 West Europe: After the first quarter, Clariant is positioned approx. 300 to above the targets against Ato. This should be compensated during the further course of the year in the market, and not through direct connections"; see also pages 131, 140, 147, 198 of the file.

149 See pages 131 and 1211 and 7880-7881 of the file.

150 See page 7881 of the file.

imbalances on the European market for 1998 were considered so important[151] that Atochem wished to be compensated through direct purchases by Clariant rather than through the exchange of customers, which would have proven difficult. This was in fact accepted and implemented between September 1998 and April 1999, according to Atochem.

(155) A note attached to the sales chart exchanged in 1998, relating to "year to date 3rd qua[r]ter 1998" and addressed to representatives of Akzo and Clariant by Atochem's MCAA manager states:

"I studied very quickly the details of the different sales. Because of the big gap between our sales and our target and the consequence for you to buy big quantity from me end of 1998 which is of course not satisfactory for everybody, I really would like to insist strongly on the fact that in the same time you must slow down your sales to some customers where your position is st[r]onger than last year and so right now. I mean AQUALON France, LAMBERTI and AVEBE. AVEBE was an ATO position in the past and not a CLARIANT position, I would like for the rest of the year to replace you in AVEBE and take a position for next year. We will have discussed this proposal on the phone before you receive this letter. I hope we will find an agreement on that proposal"[152].

(156) The Eleventh official [organisation] meeting was held on 21 October 1998[153]. Clariant confirms that a meeting was held at the Airport Mövenpick Hotel in Zürich on 20 October 1998, prior to the official [organisation] meeting at the Business Centre in Zurich Airport on 21 October 1998[154].

(157) In December 1998, Clariant and Atochem met at Clariant's offices. According to Clariant, the main subject of that meeting was to introduce Atochem's new MCAA product manager to Clariant. Clariant submits that a similar meeting was probably held with Akzo[155].

1999

(158) In early 1999, the participants discussed the market shares in the EEA which had not been substantially altered since 1994. Upon examination, everyone seemed to be satisfied with the existing shares[156].

(159) The Twelfth official [organisation] meeting and farewell event for Atochem's product manager was held on 29 January 1999[157]. Akzo submits that a pre-meeting was held in Geneva on 28 January 1999, which is confirmed by Clariant[158]. In the evening, a

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151 Atochem speaks of 1000 tons whereas "normally" compensations would vary between 100 tons and 150 tons per quarter (trimester).

152 See pages 457 and 463 of the file.

153 See pages 1635-1638 of the file. See also pages 6135-6138 of the file.

154 See pages 131, 141 and 1212 of the file.

155 See pages 131 or 1196 of the file.

156 See also page 1196 of the file.

157 See pages 1631-1634 of the file. See pages 6133-6142 of the file.

158 See page 131 of the file. (Although Clariant mentions 28 January 1998, it is clear from the chronological order from the list that 1999 is meant instead of 1998; this has been subsequently rectified, see page 1196 of the file. The meeting is also confirmed by Mr **[…]** of Atofina who also

dinner was hosted by Akzo for Clariant during which certain issues remaining unresolved after the pre-meeting may have been discussed. During the pre-meeting, the parties discussed sales and balance issues, as follows from a note drafted by Akzo and addressed to Atochem and Clariant[159]. The note refers to the *"agreements made on 28th January in Geneva"* and confirms that all three participants were present at that meeting. Apart from showing how individual customers were allocated[160], the note expressly mentions, in relation to the European market, the undertakings' respective shares of the market:

"Europe: Clariant = A = 45%

Akzo = B = 30%

ATO = C = 25%

[…]

This is at least valid for 1998 and 1999 and A will repair"

(160) The note also refers to the "*agreements made on 7th May 1999 in Paris*", expressly mentioning the presence of all three undertakings. In relation to the European market, it states that the following was agreed:

"any in-balance to be repaired within the next quarter;

to meet within the month following the quarter after [organisation] numbers known (30th July 1999: Amsterdam; 5th November 1999: Frankfurt; 28 January 2000: Paris)[161];

To repair separately in Europe […] wherever the in-balance would occur;

Including week 20 Clariant will continue buying product from Akzo. By the end of May 1999 Clariant will be in balance towards Akzo up to and including quarter 1 - 1999 both Europe […]

(161) On 7 May 1999, the three producers met in a meeting room at Charles De Gaulle Airport[162] to discuss restructuring the arrangements so that one producer was not always "long" in its sales position, while another producer was always "short". According to Akzo, they failed to agree on a structural solution and Akzo states that it declared that it would give Clariant one more opportunity to provide a solution, otherwise the competitor co-operation would have to stop. However, the above-mentioned note clearly demonstrates that the three cartel members did in fact reach an agreement on compensation issues during that meeting.

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participated: he states that the atmosphere was tense because of problems relating to compensation for 1998 and relating to a customer in Scandinavia and one in Germany, see page 1059 of the file.)

159 See page 80 of the file.

160 It also shows that not all figures would be declared to [organisation], indicating that [organisation] was not involved in the agreements.

161 [organisation] is the previous name of [organisation], as explained above.

162 See page 132 of the file. See also page 1059 of the file.

(162) According to Clariant, another tri-partite meeting was held on 25 May 1999 in a meeting room of the Sheraton Airport in Frankfurt concerning "*the Agreement*"[163]. This is confirmed by Akzo and Atochem[164]. According to Akzo, Clariant had not arrived with a proposal and Akzo walked out of the meeting. Atofina submits that this was the last tripartite meeting that was organised as part of the arrangements and equally states that the meeting failed[165].

(163) Clariant states that it held a meeting with Akzo on 14 June 1999 at which Akzo was informed of the termination of the arrangements[166].

(164) A few more meetings were organised between Clariant, Atochem and Akzo (together or bilaterally) between June 1999 and December 1999. The subject matter of these meetings however concerns the dismantling of the arrangements[167].

(165) The thirteenth official [organisation] meeting, scheduled for 17 August 1999, was cancelled. The participants all officially terminated their services agreement with [organisation] during the last quarter of 1999. The last complete set of statistics issued by [organisation] therefore relate to the third quarter of 1999.

5. APPLICATION OF ARTICLE 81 OF THE TREATY AND ARTICLE 53(1) OF THE EEA AGREEMENT

5.1.Relationship between the EC Treaty and the EEA Agreement

(166) The arrangements set out above applied to all the territory of the EEA for which a demand for MCAA existed, as the cartel members had sales in practically all the Member States and in the EFTA States parties to the EEA Agreement.

(167) The restrictive arrangements set out above therefore applied to all countries in the EEA at that time, that is to say the 15 Member States together with Norway, Liechtenstein and Iceland. The arrangements in question extended to Austria, Sweden and Finland prior to their accession to the European Union on 1 January 1995.

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

(169) In so far as the arrangements affected competition in the common market and trade between Member States, Article 81 of the EC Treaty is applicable. As regards the operation of the cartel in EFTA States which are part of the EEA and its effect upon trade between the Community and Contracting Parties to the EEA or between Contracting Parties to the EEA, this falls under Article 53 of the EEA Agreement.

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163 See page 1213 of the file.
164 See pages 132 and 1197 of the file.
165 See page 1019 of the file.
166 See page 1197 of the file.
167 See pages 94-95, 111-112 and page 1034 of the file.

(170) Prior to the accession of Spain and Portugal to the European Union in 1986, the effects of the arrangements within those two countries are not subject to Article 81 of the Treaty. However, by deviating and distorting trade patterns, the cartel affected competition within the Community, hence Community competition rules applied also to the Spanish and Portuguese branches of Akzo, Atochem and Hoechst.

5.2.Jurisdiction

(171) In this case, the Commission is the competition authority to apply both Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement on the basis of Article 56 of that Agreement since the cartel had an appreciable effect on trade between Member States[168].

5.3. Application of Article 81 of the EC Treaty and Article 53 of the EEA Agreement

5.3.1. Article 81 of the Treaty and Article 53(1) of the EEA Agreement.

(172) Article 81(1) of the Treaty prohibits as incompatible with the common market all agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which directly or indirectly fix purchase or selling prices or any other trade conditions, limit or control production and markets, or share markets or sources of supply.

(173) Article 53(1) of the EEA Agreement (which is modelled on Article 81(1) of the Treaty) contains an identical prohibition on agreements etc. but substitutes the conditions of (a) affecting trade "between Member States" with "between contracting parties" (in this context "contracting parties" means the Community and the individual (then) EFTA-States), and (b) preventing, restricting or distorting competition "within the common market" with "within the territory covered by the…[EEA] agreement".

5.3.2. Agreements and concerted practices

(174) Article 81(1) of the Treaty and Article 53 (1) of the EEA Agreement prohibit agreements, decisions of associations and concerted practices.

(175) An agreement can be said to exist when the parties adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. It does not have to be made in writing; no formalities are necessary, and no contractual sanctions or enforcement measures are required. The fact of agreement may be express or implicit in the behaviour of the parties. Furthermore, it is not necessary, in order for there to be an infringement of Article 81(1) of the Treaty, for the participants to have agreed in advance upon a comprehensive common plan. The concept of *agreement* in Article 81(1) of the Treaty would apply to the inchoate understandings and partial and

[168] See 5.1 « effect upon trade between Members States and between EEA contracting parties ».

conditional agreements in the bargaining process which lead up to the definitive agreement.

(176) In its judgement in Joined Cases T-305/94 etc. Limburgse Vinyl Maatschappij N.V. and others v Commission (PVC II)[169], the Court of First Instance stated (at paragraph 715) that "it is well established in the case law that for there to be an agreement within the meaning of Article [81(1) EC] of the Treaty it is sufficient for the undertakings to have expressed their joint intention to behave on the market in a certain way".

(177) Article 81 of the Treaty[170] draws a distinction between the concept of *"concerted practice"* and that of *"agreements between undertakings"* or of *"decisions by associations of undertakings"* in order to bring within the prohibition of that article any form of co-ordination between undertakings which, without having reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical co-operation between them for the risks of competition.

(178) The criteria of co-ordination and co-operation laid down by the case law of the Court, far from requiring the elaboration of an actual plan, must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition, according to which each economic operator must determine independently the commercial policy which he intends to adopt in the common market. Although that requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it strictly precludes any direct or indirect contact between such operators, the object or effect of which is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market[171].

(179) Thus, conduct may fall under Article 81(1) of the Treaty as a *concerted practice* even where the parties have not explicitly subscribed to a common plan defining their action in the market but knowingly adopt or adhere to collusive devices which facilitate the co-ordination of their commercial behaviour[172]. Furthermore, the process of negotiation and preparation culminating effectively in the adoption of an overall plan to regulate the market may well also (depending on the circumstances) be correctly characterised as a concerted practice.

(180) Although in terms of Article 81(1) of the Treaty the concept of a concerted practice requires not only concertation but also conduct on the market resulting from the concertation and having causal connection with it, it may be presumed, subject to proof of the contrary, that undertakings taking part in such a concertation and remaining active in the market will take account of the information exchanged with

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169 ECR [1999] II-931.

170 The case law of the Court of Justice and the Court of First Instance analysed under this heading in relation to the interpretation of the terms « agreements » and « concerted practices » in Article 81 of the Treaty expresses principles well established before the signature of the EEA agreement. It therefore applies equally to these terms in so far as they are used in Article 53 of the EEA Agreement. References to Article 81 of the Treaty therefore apply also to Article 53 of the EEA Agreement.

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

172 See judgment of the Court of First Instance in case T-7/89 *Hercules v Commission* [1991] ECR II-1711, at paragraph 256. See also case 48/69, *Imperial Chemical Industries v Commission* [1972] ECR 619 at paragraph 64 and joined cases 40-48/73, etc. *Suiker Unie and others v Commission* .

competitors in determining their own conduct on the market, all the more so when the concertation occurs on a regular basis and over a long period. Such a concerted practice is caught by Article 81(1) of the Treaty even in the absence of anti-competitive effects on the market[173].

(181) Moreover, it is established case law that the exchange, between undertakings, in pursuance of a cartel falling under Article 81(1) of the Treaty, of information concerning their respective deliveries, which not only covers deliveries already made but is intended to facilitate constant monitoring of current deliveries in order to ensure that the cartel is sufficiently effective, constitutes a concerted practice within the meaning of that article[174].

(182) In the present case, the facts described in Part I of this Decision demonstrate that during the entire period of the cartel, Hoechst (Clariant since 1997), Akzo and Atochem made the following arrangements with regard to the EEA market for MCAA: allocation of customers and stabilisation of their market shares and sales volumes (see recitals 84-86, 95, 102, 104, 112, 113, 116, 118, 125); fixing of prices (see recitals 87, 89, 105, 106, 111, 114, 126, 129, 134, 151); ensured implementation of the volume and customer allocation by a monitoring system based on regular meetings, the exchange of confidential information on prices, customers and sales volumes and a compensation scheme (see recitals 91, 92, 102, 139, 140, 143-144, 146, 152).

(183) This overall scheme qualifies as an agreement between undertakings within the meaning of Article 81 of the Treaty in the sense that during the regular bilateral and multilateral meetings, the undertakings concerned expressed their joint intention to conduct themselves on the market in a specific way, as the evidence exposed in the factual part of this Decision demonstrates. This behaviour consisted essentially of following a jointly preconceived customer and volume allocation system, price co-operation and refraining from aggressive competition with regard to customers allocated to the other participating competitors.

(184) The term agreement applies not only to the overall scheme, but also to the implementation of what had been agreed in pursuance of the same common purpose of controlling the market. As such, one of the actions taken to ensure the implementation of the overall plan was the sharing of market information which made it possible to review implementation of the allocation agreement as well as the adoption of a compensation scheme in order to "correct" deviations from the agreement (see recitals 91-92, 102, 104, 114, 127, 143-144, 146, 148).

(185) Some factual elements of the illicit arrangement could also aptly be characterised as a concerted practice. While there was clearly an agreement behind the actions taken to ensure implementation through the exchange of confidential market information and the adoption of a compensation scheme, the operation of this arrangement through the actual regular exchange of sales volume, price and customer information between the

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

174 See, in this sense, the judgment of the Court of First Instance in Case T-147/89 *Société Métallurgique de Normandie v Commission* [1995] ECR II-1057 , Case T-148/89 *Trefilunion v Commission* [1995] ECR II-1063 and Case T-151/89 *Société des treillis et panneaux soudés v Commission* [1995] ECR II-1191, at paragraph 72.

undertakings could also be regarded as adherence to a concerted practice to facilitate the co-ordination of the parties' commercial behaviour. As such, the producers in question were able to monitor current market shares, current prices and customer demand in order to ensure adequate effectiveness of the agreement as well as the joint control of the market. Even if some "agreements" reached in the meetings could not be exactly qualified as agreements, they would at least meet the criteria to be considered as a concerted practice.

(186) It is not necessary, however, particularly in the case of a complex infringement of long duration as in this case, for the Commission to characterise it as exclusively one or other of these forms of illegal behaviour[175]. The concepts of agreement and concerted practice are fluid and may overlap. Indeed, it may not even be possible realistically to make any such distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while considered in isolation some of its manifestations could accurately be described as one rather than the other. It would however be artificial analytically to sub-divide what is clearly a continuing common enterprise having one and the same overall objective into several discrete forms of infringement. A cartel may therefore be an agreement and a concerted practice at the same time. Article 81 of the Treaty lays down no specific category for a complex infringement of this type[176].

(187) In its PVC II judgement[177], the Court of First Instance confirmed that "[i]n the context of a complex infringement which involves many producers seeking over a number of years to regulate the market between them, the Commission cannot be expected to classify the infringement precisely, for each undertaking and for any given moment, as in any event both those forms of infringement are covered by Article [81] of the Treaty".

(188) Indeed, an "*agreement*" for the purpose of Article 81(1) of the Treaty does not require the same certainty as would be necessary for the enforcement of a commercial contract at civil law. Moreover, in the case of a complex cartel of long duration, the term "*agreement*" can properly be applied not only to any overall plan or to the terms expressly agreed but also to the implementation of what has been agreed on the basis of the same mechanisms and in pursuance of the same common purpose. As the Court of Justice (upholding the judgement of the Court of First Instance) has pointed out in Case C-49/92P *Commission v Anic*[178] at paragraph 81, it follows from the express terms of Article 81(1) of the Treaty that that agreement may consist not only in an isolated act but also in a series of acts or course of conduct.

(189) On the basis of the above considerations, the Commission considers that the complex of infringements in this case present all the characteristics of an agreement and/or a concerted practice in the sense of Article 81 of the Treaty.

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175 See also the Court of First Instance in the PVC II judgment, where it is stated that *« [i]n the context of a complex infringement which involves many producers seeking over a number of years to regulate the market between them, the Commission cannot be expected to classify the infringement precisely, for each undertaking and for any given moment, as in any event both forms of infringement are covered by Article [81] of the Treaty »*.

176 Judgment of the Court of First Instance in case T-7/89 *Hercules v Commission*, at paragraph 264.

177 Paragraph 696.

178 [1999] ECR I-4125.

5.3.3. Single and continuous infringement

(190) A complex cartel may thus properly be viewed as a single continuing infringement for the time frame in which it existed. The agreement may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. The validity of this assessment is not affected by the possibility that one or more elements of a series of actions or of a continuous course of conduct could individually and in themselves constitutes a violation of Article 81(1) of the Treaty.

(191) The manufacturers of MCAA adhered, over a long period of time, to a common scheme which laid down the lines of their action in the market and restricted their individual commercial conduct. As demonstrated above (see recitals 84-165), the infringement consisted of a complex cartel presenting characteristics of an agreement and a concerted practice in the sense of Article 81 of the Treaty. It would be artificial to split up such continuous conduct, characterised by a single purpose, by treating it as consisting of several separate infringements, when what was involved was a single infringement which progressively would manifest itself in both agreements and concerted practices.

(192) Although a cartel is a joint enterprise, each participant in the agreement may play its own particular role. One or more may exercise a dominant role as ringleader(s). Internal conflicts and rivalries, or even cheating may even occur, but will not however prevent the arrangement from constituting an agreement/concerted practice for the purposes of Article 81(1) of the Treaty where there is a single common and continuing objective.

(193) The mere fact that each participant in a cartel may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants but which share the same unlawful purpose and the same anti-competitive effect. An undertaking which takes part in the common unlawful enterprise by actions which contribute to the realisation of the shared objective is equally responsible, for the whole period of its adherence to the common scheme, for the acts of the other participants pursuant to the same infringement. This is certainly the case where it is established that the undertaking in question was aware of the unlawful behaviour of the other participants or could have reasonably foreseen or been aware of them and was prepared to take the risk (judgment of the Court of Justice in Commission v Anic, at paragraph 83).

(194) In fact, as the Court of Justice stated in its judgement in Commission v Anic[179], the agreements and concerted practices referred to in Article 81(1) of the Treaty necessarily result from collaboration by several undertakings, who are all co-perpetrators of the infringement but whose participation can take different forms according, in particular, to the characteristics of the market concerned and the position of each undertaking on that market, the aims pursued and the means of implementation chosen or envisaged. It follows that infringement of that article may result not only from an isolated act but also from a series of acts or from a continuous conduct. That interpretation cannot be challenged on the ground that one or several elements of that

[179] Paragraph 83.

series of acts or continuous conduct could also constitute in themselves an infringement of Article 81 of the Treaty[180].

(195) In this case, the conduct in question constitutes a single and continuous infringement of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement.

(196) For the period from at least January 1984 to at least 7 May 1999, the evidence referred to in this Decision shows the existence of a single and continuous collusion in the EEA market for MCAA between Hoechst (Clariant since 1997), Akzo and Atochem[181]. Indeed, the parties expressed their joint intention to behave on the market in a certain way and adhered to a common plan to limit their individual commercial conduct in following a jointly preconceived customer and volume allocation system, exchange sales information and co-operate on prices. The agreement to follow this plan with a view to restricting competition can therefore be traced back to at least January 1984. The collusion was in pursuit of a single anti-competitive economic aim: preventing any competition on customers and prices by agreeing on customer and volume allocation in the MCAA market, as well as on price increases. The participants in this unlawful conduct knew that it was part of an overall plan in pursuit of that common unlawful object.

(197) The fact that the organisation of the cartel arrangements has varied over time, and in particular was "formalised" in 1993 after the more difficult operation of the arrangements in the early 1990s, has not lead to any modification of the objective and the method of the common scheme. Moreover, it certainly has not lead to the termination of the infringement. Rather, the Commission considers that the period between 1990 and 1993 can be appropriately viewed as a period of crisis characterised by increased mistrust and tension between the cartel participants to which the cartel participants reacted by taking the necessary steps to ensure the proper continuation of the arrangement.

(198) Throughout the duration of the infringement, the arrangements were focused on volume and customer allocation in order to maintain market shares. In addition, there is also evidence of price increase agreements. The organisational modifications made to the arrangements in 1993 only show the continued intention of the parties to maintain and reinforce the existing arrangements.

(199) Given the common design and common object which the producers consistently pursued of eliminating competition in the MCAA market, the Commission considers that the conduct in question has as its object the restriction of competition within the meaning of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement. That conduct is described in detail in the factual part of this Decision.

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180 Paragraphs 78-81, 83-85 and 203.

181 1 January 1984 until 7 May 1999 as far as Akzo and Atochem are concerned, 1 January 1984 until 30 June 1997 as far as Hoechst is concerned, 1 July 1997 until 7 May 1999 as far as Clariant is concerned and 15 June 1993 until 7 May 1999 as far as Eka Nobel AB (transformed into Eka Chemicals AB after its merger with Akzo in 25 February 1994) and its subsidiary in Skoghall are concerned.

5.3.4. Restriction of competition

(200) The complex of agreements in the present case had the object of restricting competition in the Community and in the EEA.

(201) Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement expressly mention as examples of restriction of competition agreements which

- directly or indirectly fix selling prices or any other trading conditions;

- limit or control production, markets or technical development;

- share markets or sources of supply.

(202) In the complex of agreements and arrangements considered in this case, the following elements can be identified as relevant in order to find a breach of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement:

– allocating volume quotas;

– allocating customers;

– agreeing concerted price increases;

– agreeing on a compensation mechanism in order to ensure the "proper" implementation of the quota system;

– exchanging information on sales volumes and prices so as to monitor the implementation of the arrangements; and

– participating in regular meetings and other contacts in order to agree the above restrictions and to implement and/or modify them as required.

(203) These kinds of arrangements have as their object the restriction of competition within the meaning of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement.

(204) The fact that the parties took explicit action to conceal their meetings and to avoid detection of their agreements and documents illustrates that they had perfect knowledge as to the illegality of these arrangements (see recitals 81, 83, 93).

(205) In order to conclude that Article 81(1) of the Treaty and 53(1) of the EEA Agreement apply, there is no need to consider the actual effects upon competition of an agreement once it is established that the agreements had the object of restricting competition[182].

(206) In this case, however, the Commission considers that, on the basis of the elements which are put forward in this Decision, it has also proven that the anti-competitive

[182] Judgment of the Court of First Instance in Joined Cases T-25/95 etc *Cimenteries CBR and Others v Commission* [2000] ECR II-491, at paragraph 3927. See also judgment in Joined Cases T-374/94, T-375/94, T-384/94 and T-388/94, *European Night Services and others v Commission* [1998] ECR II-3141, at paragraph 136.

cartel agreements have been implemented and that therefore actual anti-competitive effects of the cartel arrangements have taken place:

(a) The implementation of the cartel agreements was ensured by the monitoring scheme instituted by the conspirators whereby they regularly exchanged confidential sales volumes and prices information. In the absence of proof to the contrary, it may be presumed that the competitors in question took into account the information exchanged in determining their own conduct in the market (see recitals 95, 102-105, 108, 111-112, 116, 125, 129, 136, 141, 143-144, 152, 155, 159);

(b) The implementation of the cartel's decisions was also ensured by frequent contacts between competitors. The periods of crisis which occurred in particular in the early 1990s may be considered normal in the life cycle of a long-lasting cartel (see recitals 64, 102-104, 106, 113, 116, 134, 136, 150, 154);

(c) The regular review of market shares development at the multilateral meetings made it possible to monitor eventual deviations in order to re-establish the agreed percentages (see recitals 90, 116, 118, 121, 124, 127, 131, 136, 139, 143, 150, 160). The market share development of the participants shows that these shares remained relatively stable throughout the period of infringement and generally respected the agreed volume quotas (see recitals 86, 124, 158-161);

(d) With regard to customer allocation, the decisions of the cartel members in this regard were implemented by making certain customers turn to another cartel member by quoting an artificially high price as well as by regularly reviewing the contract situation and compensating lost volumes at other customers or by cross sales between the undertaking who oversold and the undertaking who lost volume (see recitals 87, 92, 95, 102, 104, 154);

(e) There is also occasional evidence of the implementation of price increases agreed at meetings with competitors (see recitals 88, 89, 126, 151).

(207) The fact that the participants sometimes did not completely respect the arrangements does not imply that they did not implement the cartel agreement. As the Court of First Instance stated in Cascades, "an undertaking which, despite colluding with its competitors follows a more or less independent policy on the market may simply be trying to exploit the cartel for its own benefit"[183].

(208) By its very nature, the implementation of a cartel agreement of the type described above leads automatically to an important distortion of competition, which is of

[183] T-308/94 *Cascades v Commission* [1998] ECR II-925, paragraph 230.

exclusive benefit to producers participating in the cartel and is highly detrimental to customers and, ultimately, to the general public.

5.3.5. Effect upon trade between Member States and between EEA Contracting Parties

(209) The continuing agreement between the producers had an appreciable effect upon trade between Member States and between contracting parties to the EEA.

(210) Article 81(1) of the Treaty is aimed at agreements which might harm the attainment of a single market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the common market. Similarly, Article 53(1) of the EEA Agreement is directed at agreements which undermine the realisation of a homogeneous European Economic Area.

(211) According to the Court of Justice in Bagnasco, "in order that an agreement may affect trade between Member States, it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law that it may have influence, direct and indirect, actual or potential, on the pattern between Member States"[184]. In any event, Article 81(1) of the Treaty "does not require that agreements referred to in that provision have actually affected trade between Member States, it does require that it be established that the agreements are capable of having that effect"[185].

(212) As demonstrated in the section "inter-state trade", the MCAA market is characterised by an important volume of trade between Member States. There is also a considerable volume of trade between the Community and the EFTA States belonging to the EEA.

(213) The application of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement to a cartel is not, however, limited to that part of the members' sales which actually involve the transfer of goods from one State to another. Nor is it necessary, in order for these provisions to apply, to show that the individual conduct of each participant, as opposed to the cartel as a whole, affected trade between Member States[186].

(214) In this case, the cartel arrangements covered virtually all trade throughout the Community and the EEA. The existence of volume quotas and customer allocation mechanisms and price fixing agreements must have resulted, or were likely to result, in the automatic diversion of trade patterns from the course they would otherwise have followed[187].

(215) Insofar as the activities of the cartel related to sales in countries that are not members of the Community or the EEA, they lie outside the scope of this Decision.

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184 See judgment in Joined Cases C-215/96 and C-216/96, *Bagnasco*, [1999] ECR I-135), at points 47 and 48.

185 See judgment in Case C-306/96 *Javico v YSLP*, [1998] ECR I-1983, at paragraphs 16 and 17; see also paragraph 136 of the judgment in Joined Cases T-374/94 etc, *European Night Services.*

186 Judgment in Case T-13/89, *Imperial Chemical Industries v Commission* [1992] ECR II-1021, at paragraph 304.

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

5.3.6. Addressees of the decision

(216) In order to identify the addressees of this Decision, it is necessary to determine to which legal entities responsibility for the infringement should be imputed.

5.3.6.1. Principles applicable

(217) The subject of Article 81 of the Treaty and Article 53 of the EEA Agreement is the "undertaking", a concept that is not identical with the notion of corporate legal personality in national commercial company or fiscal law. The term "undertaking" is not defined in the Treaty, nor in the EEA Agreement. It may refer to any entity engaged in a commercial activity. In the context of large corporate groups, the whole group or individual subgroups or subsidiary companies may be treated as an "undertaking" for the purposes of Article 81 of the Treaty and/or Article 53 of the EEA Agreement.

(218) In order to determine whether a parent company should be held responsible for the unlawful conduct of a subsidiary, it is necessary to establish that the subsidiary "does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company"[188].

(219) It may be presumed that a wholly owned subsidiary, in principle, necessarily follows the policy laid down by the parent company[189].

(220) It is established case-law that the fact that the subsidiary has separate legal personality is not sufficient to exclude the possibility that its conduct may be attributed to the parent company[190]. However, a parent company cannot be held responsible for the behaviour of its subsidiaries before those subsidiaries became part of the group[191].

(221) Also, when an infringement of Article 81(1) of the Treaty and/or Article 53(1) of the EEA Agreement is found to have been committed, it is necessary to identify the natural or legal person who was responsible for the operation of the undertaking at the time when the infringement was committed, so that that person can answer for it. Liability for a fine may thus pass to a successor where the corporate entity, which committed the violation, has ceased to exist in law.

(222) When an undertaking has committed an infringement of Article 81(1) of the Treaty and/or Article 53(1) of the EEA Agreement and later disposes of the assets that were the vehicle of the infringement and withdraws from the market concerned, the undertaking in question will still be held responsible for the infringement if it is still in existence[192].

(223) If the undertaking which has acquired the assets carries on the violation of Article 81(1) of the Treaty and/or Article 53(1) of the EEA Agreement, liability for the

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188 Case 48/69 *Imperial Chemical Industries*, at paragraphs 132 and 133.

189 See judgment of the Court of Justice in Case 107/82 *AEG v Commission* [1983] ECR 3151, paragraph 50.

190 See judgment in Case 48/69 *Imperial Chemical Industries v Commission,*; PVC II judgment

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

192 Case T-95/89 *Enichem Anic SpA v. Commission (Polypropylene)*, ECR II 1623, and Case C-49/92 P *Commission v. Anic* .

infringement should be apportioned between the seller and the acquirer of the infringing assets[193].

5.3.6.2. Addressees

Akzo

(224) It is established in the factual part of this Decision that Akzo Nobel Chemicals BV (between 1 January 1984 and 30 June 1997) and Akzo Nobel Functional Chemicals BV (between 1 July 1997 and 7 May 1999) directly participated in the cartel.

(225) In 1997, Akzo Nobel Chemicals BV started the process of concentrating its chemical businesses in the Netherlands as separate legal entities, all being 100% subsidiaries of Akzo Nobel Chemicals BV. As from 1 July 1997 Akzo Nobel Functional Chemicals BV has been a separate legal entity. Akzo Nobel Chemicals became a holding company and still legally exists. Taking into account the 100% shareholding structure, the Commission considers that Akzo Nobel Chemicals BV is liable for Akzo Nobel Functional Chemicals BV's direct participation in the infringement.

(226) It is established that Akzo Nobel Nederland BV controls the entire capital of Akzo Nobel Chemicals BV. The Commission considers Akzo Nobel Nederland BV to be liable for the illicit activities of its subsidiary Akzo Nobel Chemicals BV (and as from 1 July 1997, Akzo Nobel Functional Chemicals BV). In addition, it is established[194] that employees of Akzo Nobel Nederland BV, such as **[Akzo Nobel Nederland employees]**, directly participated in the infringement.

(227) In turn, Akzo Nobel NV fully controls Akzo Nobel Nederland BV. Taking into account the 100% shareholding structure between those two legal entities, the Commission considers Akzo Nobel NV to be jointly and severally liable with Akzo Nobel Nederland BV for the infringement. In this specific case however, there are additional elements which demonstrate the direct implication of Akzo Nobel NV in the infringement. First, as mentioned above, Mr **[Akzo Nobel employee]** of Akzo Nobel Nederland BV was directly involved in the infringement. He in turn, directly reported[195] to Mr **[Akzo Nobel employee]** who was a member of the Board of Management of Akzo Nobel NV between 1994 and 2000 and President of Akzo Chemicals BV (and its predecessor Akzo Salt and Basic Chemicals BV) between 1991 and 1994. In both positions, he must therefore have been aware of the infringement.

(228) Secondly, on an organisation level, the MCAA activities of the Akzo group were, until 1993-1994, organised in a "Chemicals" Division, which reported directly to the "Board of Management" of the ultimate parent company, Akzo Nobel NV. As of 1993-1994, the organisation of the Akzo group adopted a two-layer structure: a corporate centre and directly underneath approximately 20 Business Units. The MCAA activities are the responsibility of the Business Unit "Functional Chemicals". The General Manager of this Business Unit is directly appointed by the Board of Management of Akzo Nobel NV, and as such continued to report back to Akzo Nobel NV.

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193 Commission decision 89/190/EEC in Case IV/31.865, PVC, OJ L 74, 17.3.1989, p. 1, recital 43.

194 See for instance pages 7855, 7859-7860, 7874 in the file. See also pages 182-197 and 6388 of the file.

195 Mr **[Akzo Nobel employee]** retired in 2000 (see page 6705 of the Commission's file).

(229) For the period between 15 June 1993 and 25 February 1994, date of the merger between Nobel Industrier AB and Akzo NV, Eka Nobel AB (a 100% subsidiary of Nobel Industrier AB), and its wholly owned subsidiary Eka Nobel Skoghall AB[196], were independently responsible for their direct participation in the infringement.

(230) The merger with Akzo NV on 25 February 1994 meant that Nobel Industrier AB became a wholly owned subsidiary of Akzo Nobel NV. In 1995, Eka Nobel Skoghall AB changed its name into Akzo Nobel Base Chemicals AB. In 1996, Eka Nobel AB changed its name into Eka Chemicals AB and Nobel Industrier AB changed its name into Akzo Nobel AB. In 2003, Akzo Nobel AB became Akzo Nobel Chemicals Holding AB, a 100% owned subsidiary of Akzo Nobel Chemicals International BV, which in turn is a fully-owned subsidiary of Akzo Nobel NV.

(231) Both Eka Chemicals AB (the former Eka Nobel AB) and its fully owned subsidiary Akzo Nobel Base Chemicals AB (the former Eka Nobel Skoghall AB) directly participated in the infringement from 15 June 1993 (and as part of the Akzo group from 25 February 1994). Indeed, in addition to fully controlling Akzo Nobel Base Chemicals AB, Eka Chemicals AB also had one of its employees, Mr **[Eka Chemicals employee]**, directly participating in the infringement.

(232) Taking into account the 100% shareholding that existed at the time of the infringement between Akzo Nobel Base Chemicals AB, Eka Chemicals AB, Akzo Nobel AB (the former Nobel Industrier AB) and Akzo Nobel NV, the Commission holds Akzo Nobel NV jointly and severally liable for the infringement committed by Eka Chemicals AB and Akzo Nobel Base Chemicals AB for the period after 25 February 1994.

(233) In addition, there are other elements showing Akzo Nobel NV's direct liability for the infringements committed in relation to the Swedish MCAA business. In 1994, on an organisational level (within the Akzo group), the responsibility for Eka Nobel AB's MCAA business, including the MCAA production plant in Skoghall (Sweden), became the responsibility of Akzo Nobel Chemicals BV's (the former Akzo Chemicals BV) Business Unit Functional Chemicals. Eka Chemicals AB's employee, who was directly involved in the infringement, Mr **[Eka Chemicals employee]**, became directly employed by Akzo Nobel Nederland BV, reporting to the General Manager of the Business Unit Functional Chemicals, Mr **[Akzo Nobel employee]**. As established earlier, Mr **[Akzo Nobel employee]** reported back to the ultimate parent company Akzo Nobel NV.

(234) In its reply to the Statement of Objections, Akzo argues that the Commission should not hold Akzo Nobel NV, the group's parent company, and Akzo Nobel AB liable for the infringements.

(235) Although Akzo accepts that it can be presumed that a wholly owned subsidiary is controlled by its parent company and the burden of proving that the parent company did not exercise decisive control over the subsidiary lies with Akzo and not the Commission, it argues that Akzo Nobel NV and Akzo Nobel AB should not be held responsible in that they were not involved in the infringement, nor were they aware of it.

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196 Eka Nobel Skoghall AB changed its name into Akzo Nobel Base Chemicals AB on 1 June 1995.

(236) Akzo argues that Akzo Nobel NV is a pure holding company and its size and structure prevents it from exercising decisive influence over subsidiaries. The involvement of the Board of Management of Akzo Nobel NV is restricted to major and broad financial and strategic decisions with business units and sub business units such as MCAA enjoying full responsibility for their own business conduct.

(237) Akzo submits that similar considerations apply in relation to the holding company Akzo Nobel AB, which did not exert decisive control over the subsidiaries directly participating in the infringement.

(238) Akzo also argues that the additional elements, namely reporting lines and the positions of certain Akzo personnel, on which the Commission relies (see recitals 226, 227, 228, 231, and 233) are not sufficient to establish the liability of Akzo Nobel NV and Akzo Nobel AB. Akzo submits that reporting obligations within the Akzo group relate essentially to financial reports and forecasts. Furthermore, Akzo also argues that information on anticompetitive behaviour was restricted to the individuals directly involved given that such activities were expressly forbidden by the Akzo group.

(239) The Commission does not accept these arguments put forward by Akzo. They do not constitute sufficient evidence to rebut the presumption that Akzo Nobel NV (and Akzo Nobel AB) exercised decisive influence over its subsidiaries. Nor does the Commission consider that official minutes submitted by Akzo are sufficient to reverse the presumption[197]. Given the secret nature of the agreement it is not to be expected that the arrangements were widely discussed or that minutes of any discussions would be recorded.

(240) Furthermore, Akzo Nobel NV is not simply an investment vehicle which serves merely to invest capital in companies whose commercial operations it then leaves to those companies, withdrawing capital as soon as it considers that an investment in other companies, possibly not belonging to the Akzo Nobel group, would provide a better return. As Akzo Nobel itself describes the functions of Akzo Nobel NV, at least since 1993 this legal entity served as the "corporate centre" of the Akzo Nobel group of companies. This corporate centre, again in the words of Akzo Nobel, "*coordinates the most important tasks with regard to [the] general strategy of the group, finance, legal affairs and human resources*"[198]. Through these functions, Akzo Nobel NV was able to exercise decisive influence over the commercial policy of its group subsidiaries, all of which were directly or indirectly 100% owned by Akzo Nobel NV, and, it may be assumed, it in fact did so[199]. Akzo has provided no evidence to refute this assumption and has, in fact, confirmed that Akzo Nobel NV does in practice exercise decisive influence over the most important commercial decisions for the entire group of Akzo Nobel companies.

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197 Akzo's response to the Statement of Objections.

198 Paragraph 39 of Akzo's response to the Statement of Objections.

199 See the judgments of the Court of Justice in Case 107/82 *AEG v Commission* , at paragraph 50, and in Case C-286/98 P, *Stora v Commission* [2000] ECR I-9925, at paragraph 29.

(241) The lack of commercial autonomy of the group's operating companies or, as Akzo Nobel calls them, business units is also clear from the so-called "Authority Schedules" submitted by Akzo Nobel[200]. These schedules show that **[business secrets]**.

(242) The fact that Akzo Nobel NV was not itself involved in the production and sale of MCAA is not determining for the question whether it should be considered to constitute a single economic unit with the operational units in the group that were directly involved in the production and sale of MCAA. Division of tasks is a normal phenomenon within a group of companies. An economic unit by definition performs all of the main functions of an economic operator within the legal entities of which it is composed. Group companies and business units that are dependent on a corporate centre for the basic orientation of their commercial strategy and operations, for their investments and finances, for their legal affairs and for their leadership cannot be considered to constitute an economic unit in their own right.

(243) In the case of Akzo, it is, moreover, evident from the corporate structure of the group that the economic unit producing and selling MCAA must include Akzo Nobel NV. As indicated in recitals 11, 12 and 40 above, Akzo has MCAA activities in Sweden and in the Netherlands. Akzo has not argued that the legal entities responsible for its MCAA activities in Sweden constitute a separate and autonomous economic unit from the legal entities responsible for its MCAA activities in the Netherlands. Indeed, Akzo's MCAA business is a single business, whether the MCAA is produced in Sweden or the Netherlands[201]. However, the only ownership link existing between the MCAA activities in Sweden and the Netherlands is the fact that Akzo Nobel NV owns the MCAA business in both the Sweden and the Netherlands. This again demonstrates that Akzo's MCAA business can only operate as a single economic unit through the participation of Akzo Nobel NV.

(244) In conclusion, Akzo Nobel NV, Akzo Nobel Nederland BV, Akzo Nobel Chemicals BV Akzo Nobel Functional Chemicals BV, Akzo Nobel Base Chemicals AB, Eka Chemicals AB and Akzo Nobel AB should therefore all be addressees of this Decision.

Eka

(245) As indicated above at recitals 229 and 231, Eka Nobel AB (which then became Eka Chemicals AB) and its fully owned subsidiary Eka Nobel Skoghall AB (which later became Akzo Nobel Base Chemicals AB) participated independently in the infringement from 15 June 1993 until forming part of the Akzo Group on 25 February 1994. The Commission has also taken account of the 100% shareholding of Nobel Industrier AB (which then became Akzo Nobel AB) in Eka Nobel AB which existed at the time of this independent infringement. Accordingly, Akzo Nobel AB, Eka Chemicals AB and Akzo Nobel Base Chemicals AB are the three companies which should be held liable for their independent participation in the infringement from 15 June 1993 until 25 February 1994.

Hoechst

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200 Akzo's response to the Statement of Objections.

201 See Akzo's response to the Statement of Objections, paragraph 9.

(246) Hoechst AG directly participated in the infringement from at least January 1984 until June 1997, when it sold its MCAA business to Clariant AG.

(247) Hoechst has argued in its response to the Statement of Objections that it cannot be held liable for the alleged infringements as liability for competition law infringements was transferred in its entirety to Clariant on the basis of explicit contractual arrangements.

(248) The Commission rejects this argument. It is clear from the case law referred to above at recitals 221, 222 and 223 that Hoechst, having participated directly in the infringement, is to be held responsible for the period in which it was involved prior to the transfer of the MCAA business. In terms of the addressees of the Decision, Hoechst's liability under competition law for its infringing behaviour is not affected by contractual arrangements existing between the parties or the particular structure of the transaction.

(249) Hoechst AG should accordingly be an addressee of this Decision.

Clariant

(250) Clariant GmbH directly participated in the infringement from July 1997 until at least May 1999.

(251) The Commission also addressed the Statement of Objections to Clariant AG on the basis of the 100% shareholding that existed at the time of the infringement between Clariant GmbH and Clariant AG. This creates a presumption that Clariant AG exercised decisive influence over its subsidiary. In its response to the Statement of Objections Clariant has attempted to rebut this presumption by arguing that the Decision should be addressed to Clariant GmbH alone on the grounds that:

(a) Clariant AG was not involved in the cartel and had no knowledge of the infringement;

(b) Clariant AG did not exercise decisive control over the commercial policy and conduct of its subsidiary;

(c) those involved in the infringement acted directly in contradiction to the Clariant group compliance policy; and

(d) the Commission should have regard to the particular circumstances of Clariant's case, namely that it inherited an infringement when it bought the MCAA business from Hoechst; this was carried on by the MCAA business unit without the knowledge of Clariant AG, was discovered only by enforcement of Clariant's Group compliance policy and was immediately reported to the Commission once discovered.

(252) The Commission does not consider that these arguments and the documents submitted constitute evidence sufficient to rebut the presumption that Clariant AG exercised decisive influence over its wholly owned subsidiary Clariant GmbH.

(253) In relation to the particular circumstances on which Clariant seeks to rely, the Commission notes that Clariant AG has been able to exercise sufficient influence, by enforcement of the Group's compliance policy, to bring the infringement to an end.

(254) Furthermore, the fact that Clariant AG was not itself involved in the production and sale of MCAA is not determining for the question whether it should be considered to constitute a single economic unit with the operational units in the group that were directly involved in the production and sale of MCAA. Division of tasks is a normal phenomenon within a group of companies.

(255) The Decision should accordingly be addressed to Clariant GmbH and Clariant AG.

Atofina and Elf Aquitaine SA

(256) Atofina SA was created in 1983 from the merger of Cloè Chimie, Atochimie and the biggest part of the chemical activity of the group Péchiney Ugine Kuhlmann, under the name Atochem SA. In 1992, its name was changed into Elf Atochem and in April 2000, into Atofina SA, after a 1999-takeover of the Atochem's parent company Elf Aquitaine by TotalFina. On 1 October 2004 Atofina SA again changed name to Arkema SA. It is however the same legal person which directly participated in the infringement and the administrative procedure.

(257) The Commission also addressed the Statement of Objections to Elf Aquitaine SA on the basis of the 98% shareholding that existed at the time of the infringement between Atofina and Elf Aquitaine SA. In its response to the Statement of Objections Elf Aquitaine argued that the Decision should be addressed solely to Atofina on the following grounds:

(a) Elf Aquitaine has never directly or indirectly participated in the MCAA cartel;

(b) Elf Aquitaine is a pure holding company with no operational functions;

(c) Atofina enjoys complete autonomy in its commercial policy and conduct on the market;

(d) documents in the Commission's file refer exclusively to Atochem or Atofina with third parties also considering Atochem/Atofina to be the operator on the market;

(e) the Commission should have regard to a number of factors rather than relying exclusively on the 98% shareholding existing between Atofina and Elf Aquitaine as it has done in the case of Akzo;

(f) Elf was not involved in the Commission's investigatory procedure, received no request for information from the Commission, was not subject to on the spot investigations and was not contacted by the Commission prior to receiving the Statement of Objections; and

(g) the previous decisional practice of the Commission confirms that Elf Aquitaine should not be an addressee. In particular, the Commission decision concerning Organic peroxides[202] was addressed to Atofina alone.

(258) The Commission considers the 98% shareholding of Elf Aquitaine in Atofina is sufficient in itself to impute liability to Elf Aquitaine. The Commission does not consider that the above arguments constitute sufficient evidence that the presumption, arising from the 98% shareholding, is rebutted. The arguments above are assertions

[202] Commission Decision *Organic peroxides* Case COMP/E-2/37.857.

which are not supported by evidence to a sufficient degree to rebut the presumption that Elf Aquitaine is responsible for the acts of its subsidiary Atofina. The Commission does not consider that documents providing general or background corporate information are sufficient to rebut the presumption.

(259) In particular the fact that Elf Aquitaine was not subject to on site inspections and did not receive any request for information does not go to the issue of the liability of parent companies for the acts of their subsidiaries. Inspections and requests for information are purely investigatory steps which the Commission is not obliged to address to undertakings before issuing a Statement of Objections.

(260) Equally, the fact that in a previous case the Commission addressed its decision to Atofina alone does not prevent the Commission in this case from addressing its decision to both Atofina and Elf Aquitaine. The Commission has discretion to impute liability to a parent company in such circumstances and the fact that it has not done so in a previous decision does not prevent it from doing so in this case.[203]

(261) Furthermore, the fact that Elf Aquitaine was not itself involved in the production and sale of MCAA is not determining for the question whether it should be considered to constitute a single economic unit with the operational units in the group that were directly involved in the production and sale of MCAA. Division of tasks is a normal phenomenon within a group of companies.

(262) Accordingly, this Decision should be addressed to Atofina and Elf Aquitaine.

5.3.7. Duration of the infringement

(263) Although it cannot tell the exact date on which the agreement began, Clariant situates the origin of the arrangements in the late 1970s, early 1980s[204]. In addition, it has submitted lists of persons involved and/or aware of the existence of the agreement based on the knowledge and recollection of its MCAA manager which include persons who only were involved in the arrangements in the eighties[205].

(264) Akzo submits that the arrangements originated *"possibly as early as in the late 1970s"* and confirms that multilateral meetings between the three large European MCAA producers started in the early 1980s. According to Akzo, it is in the period after 1983 that competitor contacts gradually evolved into more regular contacts and became more solidified[206].

(265) Atofina submits that the arrangements originated in the 1980s[207]. It confirms the existence of the arrangements at least from the beginning of 1984 when it became active on the MCAA market after having acquired Rhône-Poulenc's MCAA business in 1983[208]. Its then MCAA product manager confirms that he participated in nearly all

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203 See Case T-347/94 ECR *Mayr-Melnhof Kartongesellschaft mbH v Commission*, [1998] II–1751, paragraphs 367-8. Although this covers mitigating circumstances, the principle that the Commission is not bound to follow a particular exercise of discretion in a previous decision is equally applicable.

204 See page 6385 of the file.

205 See pages 1198-1210 of the file.

206 See page 7850 of the file.

207 See pages 1013 and 1016 of the file.

208 See pages 1016, 1044, 1050-1052 of the file.

cartel meetings between 1984 and 1992, which took place between three or four times a year on a rotating basis between the three countries of the participating members[209].

(266) For the purpose of the current proceedings, the Commission therefore considers the arrangements between Hoechst, Atofina and Akzo to have started at the latest on 1 January 1984, the earliest date confirmed by the statements of all parties. Indeed, Akzo has stated that the arrangements consisted of regular contacts and were operational at least from the period after 1983. Atofina confirms that it entered into the arrangements when it acquired the MCAA business on 1 January 1984.

(267) The involvement of Clariant in the collusion will be taken from 1 July 1997, when it acquired the MCAA business from Hoechst.

(268) The last known multilateral meeting in which illicit issues were discussed is the meeting of 7 May 1999. During this meeting, it was agreed that compensation issues needed to be dealt within the next quarter[210]. The Commission will therefore consider the infringement to have lasted at least until 7 May 1999 as far as Akzo, Atofina and Clariant are concerned.

(269) As far as Eka is concerned, Akzo has submitted that it started to participate in the arrangements at least as from the meeting of 15 June 1993[211]. Despite there being certain evidence in the Commission's file indicating that Eka had also participated in certain bilateral and occasional multilateral meetings with its European competitors since the early 1990s[212], these contacts witness the cartel members' efforts to convince Eka to join the MCAA club and behave in the market. In any case, the evidence shows that subsequent to the meeting of 15 June 1993, Eka participated in all known cartel meetings, such as for example the meeting of 21-22 September 1993 and the meeting of August 1994. During these meetings, it did not publicly distance itself from what was discussed, thus leading the other participants at least to believe that it subscribed to what was decided and that Eka would comply with it[213]. The Commission therefore accepts Akzo's submissions that Eka participated in the arrangements from 15 June 1993 until its merger with Akzo on 25 February 1994. After that, the entities concerned continued to participate in the infringement as part of the Akzo group.

(270) As far as Hoechst is concerned, its participation in the infringement ended with the sale of its MCAA business to Clariant at the end of June 1997. The Commission will consider Hoechst to have participated in the infringement until end June 1997.

(271) None of the undertakings have contested the duration of the infringement in their responses to the Statement of Objections.

(272) The duration taken into account for each respective undertaking involved should therefore be as follows:

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209 See page 1053 of the file.

210 See pages 7882-7883, 1059, 132 of the file.

211 See pages 7861-7863 of the Commission's file.

212 See pages 6345, 6372 and pages 7856-7858 of the file.

213 Judgment of the Court of 7 January 2004 in Joined Cases C-204/00P, C-205/00P, C-211/00P, C-213/00P, C-217/00P and C-219/00P, *Aalborg Portland and others v Commission (Cement)*, paragraphs 81 and following, not yet reported.

– Hoechst AG: from 1 January 1984 to 30 June 1997;

– Atofina SA/Elf Aquitaine SA : from 1 January 1984 to 7 May 1999[214];

– Akzo Nobel Chemicals BV, Akzo Nobel Functional Chemicals BV, Akzo Nobel Nederland BV, Akzo Nobel NV: from 1 January 1984 to 7 May 1999;

– Akzo Nobel Base Chemicals AB, Eka Chemicals AB, Akzo Nobel AB: from 15 June 1993 to 7 May 1999[215];

– Clariant GmbH/Clariant AG : from 1 July 1997 to 7 May 1999.

5.4.Remedies

5.4.1. Article 3 of Regulation No 17 and Article 7 of Regulation (EC) No 1/2003

(273) Where the Commission finds there is an infringement of Article 81(1) of the Treaty or Article 53(1) of the EEA Agreement it may require the undertakings concerned to bring such infringement to an end in accordance with Article 3 of Regulation No 17 and Article 7 of Regulation (EC) No 1/2003.

(274) The Commission considers that the infringement ceased on 7 May 1999. However, for the avoidance of doubt, the undertakings which remain active in the MCAA market and to which this Decision is addressed should be required to bring the infringement to an end, if they have not already done so, and henceforth to refrain from any agreement, concerted practice or decision of an association which might have the same or similar object or effect.

5.4.2. Article 15(2) of Regulation No 17 and Article 23(2) of Regulation (EC) No 1/2003

5.4.2.1. General considerations

(275) Under Article 15(2) of Regulation No 17 and Article 23(2) of Regulation (EC) No 1/2003, the Commission may by decision impose upon undertakings fines 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 81(1) of the EC Treaty and/or Article 53(1) of the EEA Agreement.

(276) In fixing the amount of any fine the Commission must have regard to all relevant circumstances and particularly the gravity and duration of the infringement, which are the two criteria explicitly referred to in Article 15(2) of Regulation No 17 and Article 23(3) of Regulation (EC) No 1/2003.

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214 Atofina SA is the name of the undertaking since 2000. It was previously called Atochem SA, until 1992, and Elf Atochem SA, from 1992 until 2000 (see under Addressees).

215 From 15 June 1993 to 25 February 1994, Eka Nobel AB (now Eka Chemicals AB) Eka Nobel Skoghall AB (now Akzo Nobel Base Chemicals AB) and Nobel Industrier (now Akzo Nobel AB) participated independently in the infringement. After 25 February 1994, they participated as part of the Akzo Group.

(277) In doing so, the Commission will set fines at a level sufficient to ensure deterrence. Moreover, the role played by each undertaking party to the infringement will be assessed on an individual basis. In particular, the Commission will reflect in the fine imposed any aggravating or attenuating circumstances and will apply, as appropriate, the Leniency Notice.

5.4.2.2. The amount of the fine

1. The basic amount

(278) The basic amount of the fine is determined according to the gravity and duration of the infringement.

Gravity

(279) In its assessment of the gravity of the infringement, the Commission takes account of its nature, its actual impact on the market, where this can be measured, and the size of the relevant geographic market.

Nature of the infringement

(280) It follows from the facts set out above that this infringement consisted of market sharing and price fixing practices, which are by their nature very serious violations of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement.

(281) The cartel constituted a deliberate infringement of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement. With full knowledge of the illegality of their actions, the leading producers combined to set up a secret and institutionalised system designed to restrict competition.

(282) The cartel arrangements permeated the whole industry and operated entirely to the benefit of the participating producers and to the detriment of their customers and ultimately the general public.

The actual impact of the infringement on the MCAA market in the EEA.

(283) The infringement was committed by undertakings which, during the period of infringement, held between them almost the entire market for MCAA in the EEA. Moreover, the arrangements were specifically aimed at maintaining the respective market shares of the parties and establishing prices at levels higher than they would otherwise have been. Given that these arrangements were implemented, they had a material impact on the market.

(284) There is no need to quantify in detail the extent of this impact. Indeed, this cannot always be measured in a reliable manner, since a number of external factors may simultaneously have affected the market, so making it extremely difficult to draw precise conclusions on the relative importance of all possible causal effects.

(285) However, the cartel agreements considered above were implemented. The parties maintained agreed market shares through a volume and customer allocation system.

Throughout the duration of the cartel, the parties exchanged information on their sales volumes and prices. The monitoring of this data initially operated on an informal basis but developed into a more formalised and structured system after 1993. Regular multilateral and bilateral meetings were organised amongst the parties in order to closely monitor the implementation of the arrangements. In addition, customer allocation was observed by respecting established customer accounts and the cartel participants also agreed to implement price increases. Furthermore, the parties developed a compensation mechanism to ensure that volume quotas would be respected and that the agreements would be properly implemented.

(286) In view of the above and the effort invested by each participant in the complex organisation of the cartel, there is no doubt that the anti-competitive agreement was implemented throughout the period of the infringement. Such continuous implementation over a period of fifteen years must have had an impact on the market.

The size of the relevant geographic market

(287) The cartel covered the whole of the common market and, following its creation the whole of the EEA. Almost every part of the common market and the EEA was under the influence of the collusion. For the purposes of determining gravity, the Commission therefore considers the entirety of the Community and, following its creation, the EEA to have been affected by the cartel.

Conclusion of the Commission on the gravity of the infringement

(288) Taking into account the nature of the behaviour under scrutiny, its actual impact on the MCAA market and the fact that it covered the whole of the common market and, following its creation, the whole of the EEA, the Commission considers that the undertakings concerned by this Decision have committed a very serious infringement of Article 81(1) of the Treaty and 53(1) of the EEA Agreement.

Classification of cartel participants

(289) Within the category of very serious infringements, the proposed scale of likely fines makes it possible to apply differential treatment to undertakings in order to take account of the effective economic capacity of the offenders to cause significant damage to competition. This is appropriate where, as in this case, there is considerable disparity in the market share of the undertakings participating in the infringement.

(290) In the circumstances of this case, which involves several undertakings, it will be necessary, when setting the basic amount of the fines, to take account of the specific weight, and therefore the real impact on competition, of each undertaking's offending conduct.

(291) For this purpose the undertakings concerned can be divided into different categories according to their relative importance in the market concerned.

(292) The Commission considers it appropriate in this case to use the EEA market shares of the undertakings participating in the infringement as a basis for comparison to determine their respective weight. The comparison is based on shares of the EEA

market for the product in the last full calendar year of the infringement (1998) (see Table 5 above). For Hoechst the relevant year is 1996.

(293) Akzo with an estimated EEA market share of 44% is the largest producer and accordingly is placed in the first category.

(294) Hoechst and subsequently Clariant were the second largest producers of MCAA. Hoechst's estimated share of the EEA market was 28% with Clariant's share at 34%. They are accordingly placed in the second category.

(295) Atofina with an estimated EEA market share of 17% is placed in the third category.

(296) On the basis of the above, the basic amounts of the fines determined for gravity should be as follows:

– First Category (Akzo): EUR 30 million

– Second Category (Hoechst, Clariant): EUR 21 million

– Third Category (Atofina/Elf): EUR 12 million

(297) As Eka also participated independently in the infringement it is appropriate to impose a fine for that conduct, the basic amount of which should be EUR 1,33 million[216].

Sufficient deterrence

(298) In order to ensure that the fine has a sufficient deterrent effect and takes account of the fact that large undertakings have legal and economic knowledge and infrastructures which enable them more easily to recognise that their conduct constitutes an infringement and be aware of the consequences stemming from it under competition law, the Commission will further determine whether any further adjustment of the basic amount is needed for any undertaking.

(299) With respective world-wide turnovers of EUR 84,5 thousand million, and EUR 13 thousand million in 2003, Atofina/Elf Aquitaine, and Akzo are much larger players than Clariant or Hoechst (see recitals 13, 18, 22, and 25 above). In this respect, the Commission considers that the appropriate starting point for the fines based on the criterion of the relative importance in the market concerned requires further upward adjustment to take account of the size and the overall resources of Atofina/Elf Aquitaine, and Akzo respectively.

(300) On the basis of the above, the Commission considers that the need for deterrence requires the starting point for the fines determined in recital 296 to be increased by a multiplier of 2,5 to EUR 30 million as regards Atofina/Elf Aquitaine, and by a multiplier of 1,5 to EUR 45 million as regards Akzo.

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216 In reaching this figure the Commission has had regard to the starting amount of Akzo and the respective periods of duration for Akzo and Eka. It is calculated by taking Akzo's starting amount of EUR 30 million. This equates to a 15 year infringement. Eka has infringed only for 8 months. The ratio between the periods of infringement is 1:22.5. The starting amount of Akzo (EUR 30 million) is multiplied by 1/22.5 to give a starting amount for Eka of EUR 1,33 million.

Duration of the infringement

(301) As stated above in recital 272 Akzo (Akzo Nobel Chemicals BV, Akzo Nobel Functional Chemicals BV, Akzo Nobel Nederland BV, Akzo Nobel NV) and Atofina participated in the infringement from at least 1 January 1984 to 7 May 1999 equating to a period of just over 15 years and four months. The Swedish side of Akzo's business (Akzo Nobel Base Chemicals AB, Eka Chemicals AB, Akzo Nobel AB), participated from 25 February 1994 to 7 May 1999. This equates to a period of approximately 5 -years and 2 months. Prior to joining the Akzo Group, Eka Nobel, Eka Nobel Skoghall and Nobel Industrier (now respectively Eka Chemicals AB, Akzo Nobel Base Chemicals AB and Akzo Nobel AB) participated independently in the infringement from 15 June 1993 to 24 February 1994, a period of just over 8 months. Hoechst's participation in the infringement ceased with the sale of its MCAA business to Clariant at the end of June 1997. Its involvement in the cartel thus totals 13 years and 6 months. Clariant's participation is restricted to the period from 1 July 1997 when it acquired the business from Hoechst to 7 May 1999. It was accordingly involved in the cartel for just over 1 year and 10 months.

(302) The cartel lasted for more than 15 years and therefore constitutes an infringement of a long duration. The starting amounts of the fines should consequently be increased by 10% for each full year of infringement. They should further be increased by 5% for any remaining period of 6 months or more but less than a year. The fine to be imposed on Akzo for its 15 year participation (Akzo Nobel Chemicals BV, Akzo Nobel Functional Chemicals BV, Akzo Nobel Nederland BV, Akzo Nobel NV) should therefore be increased by 150%. Although the Swedish side of the business (Akzo Nobel Base Chemicals AB, Eka Chemicals AB and Akzo Nobel AB) was involved for 5 years, meaning the fine should be increased by 50%, there will be no double counting for the purposes of calculating the increase in respect of duration. A single increase for duration of 150% will be applied to Akzo[217]. No increase for duration is applied to Eka for its independent infringement, given that it was involved in the cartel for less than a year. This leads to a percentage increase of the starting amount for each undertaking in the following amounts;

- Akzo – - 150%
- Atofina/Elf - - 150%
- Hoechst - 135%

[217] However, although a single increase for duration of 150% is imposed, the Swedish side of Akzo's business cannot be held jointly and severally liable with the Dutch side of Akzo for an increase for duration for a period in which they did not participate in the cartel. As both the Swedish and Dutch sides of Akzo (namely Akzo Nobel NV, Akzo Nobel Nederland BV, Akzo Nobel Chemicals BV, Akzo Nobel Functional Chemicals BV, Akzo Nobel Base Chemicals AB, Eka Chemicals AB and Akzo Nobel AB) participated in the infringement for at least 5 years, they will be held jointly and severally liable for a part of the fine comprising the starting amount and a multiplier plus an increase for duration of 50%. As the Dutch side of Akzo was involved in the infringement for 10 years more than the Swedish side, Akzo Nobel NV, Akzo Nobel Nederland BV, Akzo Nobel Chemicals BV, and Akzo Nobel Functional Chemicals BV will be jointly and severally liable for the other part of the fine, i.e. an amount comprising only the 100% increase for duration attributable to the above Dutch companies for the additional 10 years of infringement.

- Clariant - 15%

Conclusion on the basic amounts

(303) The basic amounts of the fines should therefore be as follows:

– Hoechst: EUR 49,35 million

– Clariant: EUR 24,15 million

– Akzo: EUR 112,50 million

– Atofina/Elf: EUR 75,00 million

– Eka: EUR 1,33 million

2. Aggravating circumstances

Role of leader in, or instigator of, the infringement

(304) Atofina and Akzo have submitted that Hoechst played a leading role in the cartel[218] . They argue that as the market leader Hoechst had a particular interest in organising the market to maintain its market share and was in particular responsible for the formalisation of the arrangements in 1993.

(305) In its response to the Statement of Objections Hoechst has argued that it had no greater incentive than the other participants to organise the cartel, that the formalisation of the cartel after 1993 was readily accepted by all participants and that the cartel was cooperation between equal parties.

(306) The Commission rejects the arguments of Atofina and Akzo. In view of the totality of the evidence, as presented in the factual part of this decision, the picture is of a joint initiative cartel which was operated for the mutual benefit of all parties involved. All cartel members participated actively in the infringement by exchanging sales and price data and attending regular meetings both on a bilateral and multilateral basis. Notably all participants took turns in hosting and chairing cartel meetings (see recitals 66 and 85).

(307) On this basis the Commission does not consider that a particular ringleader can be identified.

Recidivism/repeat offence

(308) At the time the infringement took place, two of the addressees of this decision had already been subject to previous Commission decisions in cartel cases.

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218 See recital 69 above and their respective responses to the Statement of Objections.

(309) Hoechst was an addressee of Decision 94/599/EC ("PVC 2") on 27 July 1994 and Decision 69/243/EEC ("Dyestuffs") on 24 July 1969.

(310) Atochem was an addressee of Decision 94/599/EC ("PVC 2") on 27 July 1994.

(311) The fact that Hoechst and Atochem have repeated the same type of conduct, albeit in a different sector from those in which it had previously incurred penalties, shows that the first penalties did not prompt these undertakings to change their conduct. The Commission considers that this constitutes an aggravating circumstance.

(312) Hoechst has submitted a number of arguments against this proposition. First, it claims that a certain coherence between the first and second infringement is required and that the previous decisions cited are not relevant to the decision at hand. This is partly on the basis that the businesses, products and personnel involved in the decisions cited were different from the MCAA business and staff and partly on the age of the Dyestuffs decision. The Commission rejects this argument. The Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty[219] ('the Guidelines') refer to 'repeated infringements of the same type by the same undertaking'. The requirement of infringements that are of the 'same type' is satisfied by the fact that the previous decisions cited and the present decision are cartel cases, which involved similar infringements of Article 81, namely collusion on prices, market allocation and exchange of information. There is no requirement that the business, products and personnel should be consistent between decisions. It suffices that the undertaking is the same, a requirement that is also plainly satisfied.

(313) Hoechst argues secondly that the principle of *ne bis in idem* should apply in view of the Sorbates decision[220]. The principle of *ne bis in idem* restricts the possibility of an undertaking being sanctioned twice for the same infringement based on the same facts. Accordingly, as the Commission has already taken account of the cited decisions as an aggravating factor in the Sorbates case the Commission is prevented from doing so in the present case without breaching the principle of *ne bis in idem*. The Commission rejects this argument. The Guidelines, which have been found to be compatible with Community law[221], specifically provide for fines to be increased on the basis of repeat infringements. The Guidelines do not provide that an aggravating factor can be applied only once in relation to a previous infringement of the same type. If undertakings continue to commit the same type of infringement and previous penalties have not prompted a change in conduct then the Commission considers this to be an aggravating circumstance in the case at hand irrespective of whether it has been regarded as an aggravating circumstance in previous cases. In any event, the Commission does not consider that the principle of *ne bis in idem* is relevant to the issue of aggravating circumstances. Hoechst is not being sanctioned twice for the same facts.

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219 OJ C9, 14.1.1998, p. 3.

220 Commission decision of 1 October 2003 *Sorbates* COMP/E-1/37.370.

221 Case T-220/00 *Cheil Jedang v Commission* [2003] ECR II-02473, paragraph 56.

(314) These aggravating circumstances justify an increase of 50% for Hoechst and an increase of 50% for Atochem[222] in the basic amount of the fine to be imposed on them.

3. Attenuating circumstances

Exclusively passive role in the infringement

(315) Atofina and Elf Aquitaine state in their replies to the Statement of Objections that they played a passive or "follow-my-leader" role in the infringement which was lead by Hoechst.

(316) The Commission rejects this argument. As indicated, Atochem participated actively in the infringement in exchanging sales and price data as well as attending regular meetings designed to ensure the implementation of the cartel arrangements. Indeed Atochem, along with the other parties, assumed its share of the responsibility for acting as the secretariat, which operated on a rotating basis, for the collection of sales data.

(317) The Commission therefore concludes that Atofina is not in a position to benefit from a reduction in the fine on the basis of an allegedly passive or "follow-my-leader" role in the cartel.

Effective cooperation outside the 1996 Leniency Notice

(318) Evidence submitted and statements made voluntarily by Akzo[223] have allowed the Commission to conclude that Eka Nobel AB, Eka Nobel Skoghall AB and Nobel Industier AB (now respectively Eka Chemicals AB, Akzo Nobel Base Chemicals AB and Akzo Nobel AB) were independently involved in the cartel for an eight month period between 15 June 1993 and 25 February 1994. When Akzo submitted that information, the Commission had not established Eka's infringement during that period. The result of information provided by Akzo is that the above companies, which already formed part of the Akzo group when Akzo provided this information, face the imposition of a fine with a starting amount of EUR 1,33 million. However, having regard to this particular circumstance and in line with the principle of fairness, Eka Chemicals AB, Akzo Nobel Base Chemicals AB and Akzo Nobel AB (and at least indirectly Akzo Nobel NV) should not be penalised for this infringement period; otherwise, for that specific period, Akzo, as a group, would pay a higher fine than it would have done without its cooperation. Therefore, the fine imposed on Eka Chemicals AB, Akzo Nobel Base Chemicals AB and Akzo Nobel AB for the period 15 June 1993 to 25 February 1994 is reduced to zero.

Other attenuating circumstances

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222 The increase for recidivism applies only to Atofina (Atochem) and not to its parent company, Elf Aquitaine, as the latter was not in control of Atofina at the time of the infringement. The multiplying factor applied to Elf, namely 2,5 is not included in the calculation. Instead a multiplying factor of 1,5, which would have been applied had Atofina been the sole addressee of the Decision (given its worldwide turnover of EUR 17,8 thousand million), will be used for the purposes of calculating recidivism. A separate fine will accordingly be addressed to Atofina alone for this amount.

223 See recital 269 above and pages 7861-7863 of the file.

(319) Hoechst submits that it has already been fined for this infringement in the US, claiming that it should not be exposed to "double jeopardy" given the principle of *ne bis in idem* or considerations of natural justice.

(320) This argument is rejected. Fines imposed in other jurisdictions, including the US, do not have any bearing on the fines to be imposed for infringing Community competition rules. The exercise by the United States (or any other third country) of its jurisdiction over cartel behaviour can in no way limit or exclude the Commission's jurisdiction under Community competition law. It is noted that by virtue of the principle of territoriality, Article 81 of the Treaty is limited to restrictions of competition in the common market and Article 53 of the EEA Agreement is limited to restrictions of competition in the EEA market. In the same way, the US antitrust authorities only exercise jurisdiction to the extent that the conduct has a direct and intended effect on United States. Recent case law supports the Commission's position[224].

(321) There is therefore only one attenuating circumstances applicable to the participants in this infringement affecting the MCAA market. The basic amount for Eka Chemicals AB, Akzo Nobel Base Chemicals AB and Akzo Nobel AB relating to the independent infringement running from 15 June 1993 to 25 February 1994 is reduced to zero.

4. Application of the Leniency Notice

(322) Clariant, Atofina and Akzo have co-operated with the Commission at different stages of the investigation into the infringement for the purpose of obtaining the favourable treatment set out in the Leniency Notice. The Commission examines in the following section whether the parties concerned satisfied the conditions set out in the Leniency Notice.

(323) In this case it is the 1996 Leniency Notice which applies, as all undertakings who applied for leniency did so before 14 February 2002, the date from which the 2002 Leniency Notice replaced the 1996 Leniency Notice.

Opportunity to file an application under the Leniency Notice

(324) In its reply to the Statement of Objections Hoechst also claims that it was prevented from making a leniency application as it had sold its MCAA business to Clariant before the start of this case in 1999. Hoechst also argues that it should be covered by the leniency application submitted by Clariant.

(325) The Commission rejects both of these arguments. The purpose of the Leniency Notice is to encourage undertakings involved in cartel activities to come forward on a

[224] Para 38 of Hoechst's reply to the Statement of Objections; Case T-223/00 *Kyowa Hakko Kogyo and Kyowa Hakko v Commission* [2003] ECR II-2553; Case T-224/00 *Archer Daniels v Commission* [2003] ECR II-2597; judgment of 29 April 2004 in Joined Cases T-236/01, T-239/01, T-244/01, T-245/01, T-246/01, T-251/01 and T-252/01 *Tokai et al v Commission* (not yet reported), paragraphs 130-138.

voluntary basis and cooperate with the Commission. This objective would be undermined if the Commission were to allow undertakings who have not voluntarily come forward and cooperated with the Commission to escape responsibility for their actions by claiming they were no longer able to make an application. Hoechst was involved in the MCAA cartel for a period of thirteen and a half years before it sold its MCAA business to Clariant at the end of June 1997. The 1996 Leniency Notice applied from July 1996 and Hoechst therefore had the opportunity to make a leniency application when it still owned the MCAA business.

(326) Furthermore, Hoechst is not covered by Clariant's application because, although the MCAA business unit may be the same, when Hoechst sold the business to Clariant, the business changed hands from one legal entity (Hoechst) to another (Clariant), and no relation whatsoever existed or remained as a result between the two legal entities. In other words, the MCAA business was owned consecutively by two independent legal entities, which were never part of a single economic entity. For Hoechst to benefit from the Leniency Notice it would have been necessary for it to make its own leniency application.

Non-imposition of a fine or a very substantial reduction of its amount ("Section B" of 1996 Leniency Notice)

-Clariant

(327) Clariant submits that it meets the conditions set out in the Leniency Notice in order to obtain a reduction of at least 75% of the fine or even an exemption from the fine that would otherwise have been imposed.

(328) Clariant was the first member of the cartel to provide evidence in statements and documents on the agreement on MCAA, in particular those submitted on 22 December 1999, 18 January 2000, 16 February 2000, 18 April 2000, 6 September 2000 and 8 November 2000. The statements and documents provided by Clariant have been quoted throughout this Decision and proved to be very useful in demonstrating the existence, functioning, duration and implementation of the cartel agreement.

(329) The Commission considers that Clariant informed the Commission about a secret cartel. The Commission had not at that time undertaken an investigation, nor did it have sufficient information to establish the cartel.

(330) Clariant was the first to adduce decisive evidence of the cartel's existence. It also put an end to its involvement in the illegal activity, provided the Commission with all relevant information and maintained complete and continuous co-operation throughout the investigation. Clariant did not compel another undertaking to participate in the cartel, nor did it act as an instigator or play a determining role in the illegal activity.

(331) The Commission accordingly considers that Clariant meets the conditions of point B of the 1996 Leniency Notice and that it qualifies for the non imposition of any fine. In accordance with Section B of the 1996 Leniency Notice, Clariant should be granted 100% reduction of the fine that would otherwise have been imposed had it not cooperated with the Commission.

(332) In its reply to the Statement of Objections Clariant submitted that Clariant AG should be covered by the leniency application made by its subsidiary, Clariant GmbH. The Commission accepts this argument. Both Clariant AG and Clariant GmbH are part of a single economic entity. Indeed, Clariant GmbH is a fully owned subsidiary of Clariant AG. In this instance, therefore, there is a clear economic link between the two legal entities. Accordingly, Clariant AG benefits from Clariant GmbH's leniency application.

-Atofina and Akzo

(333) Neither Atofina or Akzo were the first to provide the Commission with decisive information on the MCAA cartel. Consequently, neither undertaking can benefit from Section B of the Leniency Notice and a very substantial reduction in the fine.

Substantial reduction in a fine ("Section C")

-Atofina and Akzo

(334) Again, neither Atofina or Akzo were the first to provide the Commission with decisive information on the MCAA cartel. Because they failed to satisfy point (b) of Section B neither undertaking can benefit from Section C of the Leniency Notice and a substantial reduction in the fine.

Significant reduction of a fine ("Section D")

(335) Both Atofina and Akzo co-operated with the Commission. The extent of their co-operation is considered below to assess their level of entitlement to a significant reduction in the fine. Undertakings qualifying under this section may benefit from a reduction of 10-50% of the fine that would otherwise have been imposed in the absence of such cooperation.

-Atofina

(336) Atofina closely cooperated with the Commission, submitting information and evidence on 3 May 2000 and 26 May 2000 soon after the start of the Commission's investigation into the MCAA cartel. Atofina's leniency application therefore enables the company to benefit from Section D of the Leniency Notice.

(337) Atofina qualifies for a significant reduction in a fine as it was the second undertaking to provide the Commission, before the Statement of Objections was issued, with information and evidence that materially contributed to the establishment of the existence of the MCAA cartel.

(338) Additionally, Atofina did not contest the facts that the Commission relied upon to establish the existence of the MCAA cartel in its Statement of Objections.

(339) The Commission concludes that Atofina fulfils the conditions set out in the first and second indent of point 2 of Section D of the Leniency Notice.

(340) The information and evidence provided by Atofina was detailed and extensively relied upon by the Commission in this decision. In order to fully take into account the value

of the information given in relation to the cartel arrangements, and the fact that Atofina did not contest the facts, the Commission will accordingly grant a 40% reduction of the fine that would have been imposed if it had not co-operated with the Commission.

-Elf Aquitaine

(341) In its reply to the Statement of Objections Elf Aquitaine SA submitted that it should be covered by the leniency application made by its subsidiary, Atofina. The Commission accepts this argument. Both Elf Aquitaine and Atofina are part of a single economic entity. Indeed, Atofina is owned for 98% by Elf Aquitaine since 1984. In this instance, therefore, there is a clear economic link between the two legal entities. Accordingly, Elf Aquitaine benefits from Atofina's leniency application.

-Akzo

(342) Akzo qualifies for a significant reduction in a fine as it was the third undertaking to provide the Commission, before the Statement of Objections was issued, with information and evidence that corroborated the existence of the MCAA cartel. This was principally in the form of a memorandum submitted by Akzo on 25 July 2001, as supplemented by its memoranda of 21 December 2001 and 21 February 2003 along with supporting documents. Akzo's leniency application enables the company to benefit from Section D of the Leniency Notice.

(343) Furthermore, Akzo did not contest the facts that the Commission relied upon to establish the existence of the MCAA cartel in its Statement of Objections.

(344) The Commission concludes that Akzo fulfils the conditions set out in the first and second indent of point 2 of Section D of the Leniency Notice.

(345) The information and evidence provided by Akzo was detailed and has been relied upon by the Commission in this Decision. In order to fully take into account the value of the information given in relation to the cartel arrangements, and the fact that Akzo did not contest the facts, the Commission will accordingly grant a 25% reduction of the fine that would have been imposed if it had not co-operated with the Commission.

(346) Akzo is entitled to a lesser reduction than Atofina as it was the third undertaking to provide information and evidence to the Commission.

Conclusion on the application of the Leniency Notice

(347) In conclusion, with regard to the nature of their co-operation and in the light of the 1996 Leniency Notice, the following addresses of this Decision should be granted reductions of their respective fines as follows:

- Clariant AG/Clariant GmbH: a reduction of 100%

- Atofina/Elf Aquitaine: a reduction of 40%

- Akzo (meaning Akzo Nobel Chemicals BV, Akzo Nobel Nederland BV, Akzo Nobel NV, Akzo Nobel Functional Chemicals BV, Akzo Nobel Base Chemicals AB, Eka Chemicals AB, Akzo Nobel AB): a reduction of 25%

5. The final amounts of the fines imposed in these proceedings

(348) In conclusion, the fines to be imposed, pursuant to Article 15(2) of Regulation No 17 and Article 23(2) of Regulation (EC) No 1/2003, should be as follows:

- Akzo Nobel Chemicals BV, Akzo Nobel Nederland BV, Akzo Nobel NV, Akzo Nobel Functional Chemicals BV, Akzo Nobel Base Chemicals AB, Eka Chemicals AB, and Akzo Nobel AB: EUR 84,38 million

- Hoechst AG: EUR 74,03 million

- Elf Aquitaine SA and Arkema SA (formerly known as Atofina SA), jointly and severally liable: EUR 45,00 million

- Arkema SA (formerly known as Atofina SA): EUR 13,50 million

- Clariant AG and Clariant GmbH jointly and severally liable: EUR 0

(349) Akzo Nobel Base Chemicals AB, Eka Chemicals AB and Akzo Nobel AB should be held jointly and severally liable up to an amount of EUR 50,63 million. The other Akzo companies listed in recital 348 should be held jointly and severally liable for the full amount of the fine.

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings infringed Article 81 of the Treaty by allocating volume quotas, allocating customers, agreeing concerted price increases, agreeing on a compensation mechanism, exchanging information on sales volumes and prices, and, participating in regular meetings and other contacts to agree and implement the above restrictions. The following undertakings' behaviour also constituted an infringement of Article 53(1) of the EEA Agreement as from 1 January 1994.

(a) Akzo Nobel Chemicals BV, Akzo Nobel Functional Chemicals BV, Akzo Nobel Nederland BV and Akzo Nobel NV, from 1 January 1984 to 7 May 1999;

(b) Akzo Nobel Base Chemicals AB, Eka Chemicals AB and Akzo Nobel AB, from 15 June 1993 to 7 May 1999;

(c) Hoechst AG, from 1 January 1984 to 31 June 1997;

(d) Elf Aquitaine and Arkema SA (formerly known as Atofina SA), from 1 January 1984 to 7 May 1999;

(e) Clariant AG, Clariant GmbH, from 1 July 1997 to 7 May 1999.

Article 2

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

(a) Akzo Nobel Chemicals BV, Akzo Nobel Nederland BV, Akzo Nobel NV, Akzo Nobel Functional Chemicals BV, Akzo Nobel Base Chemicals AB, Eka Chemicals AB and Akzo Nobel AB EUR 84,38 million;

(b) Hoechst AG EUR 74,03 million;

(c) Elf Aquitaine SA and Arkema SA (formerly known as Atofina SA) jointly and severally EUR 45,00 million;

(d) Arkema SA (formerly known as Atofina SA) EUR 13,50 million;

(e) Clariant AG and Clariant GmbH jointly and severally EUR 0.

Akzo Nobel Base Chemicals AB, Eka Chemicals AB and Akzo Nobel AB shall be jointly and severally liable for payment of the fine imposed in point (a) of the first paragraph, up to an amount of EUR 50,63 million. The other Akzo companies listed in that point shall be jointly and severally liable for the full amount of the fine.

The fines shall be paid **in euro**, within three months of the date of the notification of this Decision to the following account:

Account N°

001-3953713-69 of the European Commission with FORTIS BANK SA, Rue Montagne du Parc, 3 at B-1000 Brussels (IBAN Code: BE71 0013 9537 1369; SWIFT Code: GEBABEBB)

After expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision was adopted, plus 3,5 percentage points, i.e. 5,59%.

Article 3

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

They shall refrain from repeating any act or conduct described in Article 1, and from any act or conduct having the same or similar object or effect.

Article 4

This Decision is addressed to:

1. Akzo Nobel NV

Velperweg 76

NL - 6824 BM Arnhem

The Netherlands

2. Akzo Nobel Nederland BV

Velperweg 76

NL - 6826 BM Arnhem

The Netherlands

3. Akzo Nobel AB

Sickla industrieväg 6, nacka

SE – 100 61 Stockholm

Sweden

4. Akzo Nobel Chemicals BV

Stationsplein 4

NL – 3800 AE Amersfoort

The Netherlands

5. Akzo Nobel Functional Chemicals BV

Barchman Wuytierslaan 10

NL – 3800 AE Amersfoort

The Netherlands

6. Akzo Nobel Base Chemicals AB

Anholmen

SE – 663 29 Skoghall

Sweden

7. Eka Chemicals AB

SE – 44580 Bohus

Sweden

8. Hoechst AG

Legal Department

K703

Industriepark Hoechst

D – 65926 Frankfurt-am-Main

Germany

9. Elf Aquitaine SA

2, place de la Coupole

La Défense

F – 92078 Paris

France

10. Arkema SA (formerly known as Atofina SA)

4-8 cours Michelet

La Défense 10

F – 92800 Puteaux

France

11. Clariant AG

Rothausstrasse 61

CH – 4132 Muttenz 1

Switzerland

12. Clariant GmbH

Am Unisyspark 1

D – 65843 Sulzbach/Taunus

Germany

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

Done at Brussels,

For the Commission
Neelie Kroes
Member of the Commission