

COMMISSION DECISION

of 26/10/2004

relating to a proceeding under Article 81 of the EC Treaty

(Case F-1/38.338 – PO/Needles)

(Only the German and English texts are authentic)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002¹, Regulation implementing Articles 81 and 82 of the Treaty,

Having regard to the Commission Decision of 15 March 2004 to open a proceeding 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 17², Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Council Regulation No 17(3), and subsequently Commission Regulation (EC) No 2842/98 of 22 December 1998 on the hearing of parties in certain proceedings under Articles 85 and 86 of the EC Treaty,

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

WHEREAS:

I. FACTS

A. Introduction

- (1) The Commission is able to demonstrate that three undertakings and their respective subsidiaries, namely William Prym GmbH & Co. KG and Prym Consumer GmbH & Co. KG, Coats Holdings Ltd and J & P Coats Ltd, Entaco Ltd and Entaco Group Ltd entered into a series of written, formally bilateral, agreements between 10 September 1994 (the Heads of Agreement were signed in June but entered into force on 10 September 1994) and 31

¹ OJ L1, 04.01.2003, p. 1-25

² OJ 13, 21.2.1962, p. 204/62; the Regulation was repealed by Regulation (EC) No 1/2003.

December 1999, amounting in practice to a tripartite agreement under which those undertakings shared or contributed to sharing product markets (by segmenting the European market for hard haberdashery products) and geographic markets (by segmenting the European market for needles). In addition, the undertakings participated in bilateral or trilateral meetings between 10 May 1993 and 8 November 2001 (Coats' participation was limited to preliminary meetings). These concerted practices and agreements constitute an infringement of Article 81(1) of the EC Treaty and had the object and the effect:

for William Prym GmbH & Co. KG and Prym Consumer GmbH & Co. KG and Entaco Ltd and Entaco Group Ltd:

- of sharing the European hard haberdashery market by limiting the business activity of Entaco Ltd to the hand sewing and special needles business, a fact which amounts to product market sharing between the hand sewing and special needles market and the wider markets for needles as well as other hard haberdashery markets.
- of segmenting the European market for needles by restricting Entaco Ltd to the United Kingdom, the Republic of Ireland and (partially)³ Italy and by preventing that undertaking from entering the Continental European markets for needles (with the exception of so-called label accounts), thereby effectively reserving those markets for William Prym GmbH & Co. KG and its subsidiaries, a fact which amounts to geographic market sharing in the needles market.

For Coats Holdings Ltd and J & P Coats Ltd:

- notably, of protecting the undertakings' own needle brand (Milward) at the retail level from competition on behalf of Entaco Ltd by way of i) an exclusive supply and purchasing agreement with Entaco Ltd covering the United Kingdom and (partially) Italy, ii) and by way of imposing on Entaco Ltd an obligation to respect the geographic market sharing agreement that undertaking had entered into with William Prym GmbH & Co. KG and its subsidiaries.

- (2) The Commission bases this Decision upon the existence of inter-conditional clauses contained in the above-mentioned series of written formally bilateral agreements and upon certain contemporaneous documents. These clauses were renewed over time. In this context it should be highlighted that the reply to the Statement of Objections submitted on behalf of Entaco Ltd, the leniency applicant, confirms all of the Commission's findings in these proceedings.

³ As it is demonstrated in this Decision, the wording "partially" is used regarding Italy as on the one hand J&P Coats made Entaco into its exclusive supplier for Italy, but on the other hand in the Section F "implementation" it can be seen that Prym also supplied Coats in Italy and that Coats played Entaco against Prym in this country.

B. The undertakings involved

William Prym GmbH & Co. KG

- (3) William Prym GmbH & Co. KG (hereafter Prym) is a German company founded in 1936, which claims⁴ to be Europe's leading brand of hard haberdashery and sewing products. It has three main divisions: Prym Tec GmbH & Co. KG which markets contact elements, surface technology, components for the electrical/electronics industry, Prym Fashion GmbH & Co. KG, which markets metal fasteners and zips to industrial customers and Prym Consumer GmbH & Co. KG, which markets a range of hand sewing needles, knitting pins, safety pins, and consumer haberdashery to the consumer markets. The turnover of William Prym GmbH & Co. KG amounted to approximately EUR [CONFIDENTIAL] in 2001. Following the divestiture of its subsidiary Prymetall GmbH & Co. KG on 31 December 2001, the undertaking achieved a turnover of EUR [CONFIDENTIAL] in 2003. In January 1977, Coats Patons Ltd acquired a 24.9% holding in William Prym-Werke KG (the legal predecessor of William Prym GmbH & Co. KG)⁵ which was subsequently divested in 1994.⁶ Mr Axel Prym is the Managing Director of Prym. Prym's turnover in the European haberdashery market amounted to roughly EUR [CONFIDENTIAL] in 2002.⁷

Prym Consumer GmbH & Co. KG

- (4) Prym Consumer GmbH & Co. KG (hereafter Prym Consumer) markets a range of hand sewing needles, knitting pins, safety pins, and consumer haberdashery to the consumer markets. Prym Consumer achieved a turnover of approximately EUR [CONFIDENTIAL] in 2002, of which roughly [CONFIDENTIAL]% was sold in Europe.⁸ Apart from Prym, its subsidiary Prym Consumer is the undertaking mainly involved in the agreements and concerted practices described below. Prym Consumer is the 100% parent company of Newey Group plc, its English subsidiary. Prym Consumer held 10.1% of the share capital of Entaco Ltd between September 1994 and March 1997 via its subsidiary Newey Group plc. Mr Axel Prym is also the Managing Director of Prym Consumer.

Entaco Limited

- (5) Entaco Ltd (hereafter Entaco) was incorporated in April 1991 following a management buy-out by former employees of Needle Industries Ltd (notably, Mr Victor Barley, Managing Director of Entaco from 1991 to 1997). Needle Industries Ltd (hereafter NIL) was a wholly-owned subsidiary of Coats

⁴ This claim is certainly founded regarding the market for needles, but is more questionable for the wider hard haberdashery market (e.g. YKK is the European market leader for the zip business).

⁵ F-1/38.036, p. 473. By circular letter dated 20 January 1977, Coats Patons Ltd informed that it had acquired a 24.9% holding in William Prym-Werke KG via its German subsidiary MEZ AG Freiburg (at the time 96% owned by Coats Patons Ltd).

⁶ F-1/38.036, p. 177, 182. With regard to Prym's assets divestiture, see F-1/38.338, p. 3908.

⁷ F-1/38.338, p. 5583. Adding Prym Fashion and Prym Consumer turnover in Europe.

⁸ F-1/38.338, p. 5583. Prym Consumer's turnover in Europe in 2002 amounted to approximately €[CONFIDENTIAL].

Viyella plc (later known as Coats plc, currently called Coats Holdings Ltd) until February 1991. Under the terms of the management buy-out, Entaco acquired NIL's manufacturing assets and packaging materials, while Coats Viyella plc retained NIL's needle finishing and packaging business. NIL continued to be active in this business until 1994, when Entaco also acquired the finishing and packaging business on 10 September 1994. At a meeting prior to that acquisition on 20 July 1994 between Messrs Victor Barley and Mr Leonard Haigh of Entaco and Mr John Griffiths of Prym, the latter stated that the company 3i Group plc should agree to the sale of 10.1% of Entaco to Prym⁹. 3i Group plc is essentially a venture capital undertaking which served purely as a financial vehicle for the management buy-outs in both 1991 and 1997. 3i Group plc held 10% of the issued share capital of Entaco for the period April 1991 to April 1994 and 20% for the period April 1994 to March 1997.¹⁰ As suggested by Mr John Griffiths in the above-mentioned meeting, Prym Consumer, via its subsidiary Newey Group plc, acquired 10.1% of the issued share capital of Entaco in September 1994 and maintained this shareholding until March 1997. A secondary management buy-out was undertaken in March 1997 resulting in the incorporation of a new undertaking, Entaco Group Ltd, which served as the investment vehicle for that buy-out. Entaco Group Ltd became the parent company of Entaco as of March 1997 and possesses 100% of the share capital of Entaco. In 2002 Entaco, the undertaking involved in the agreements and concerted practices, achieved a turnover of £7m. The main business activities of Entaco are the manufacture of hand sewing needles, medical devices, commercial fishing systems and associated wire products. Hand sewing needles represented approximately [CONFIDENTIAL] of the undertaking's business in 2002.¹¹ According to Mr Martin Ellis (Managing Director of Entaco from 1997 until June 2004), both 3i Group plc and Newey Group plc exerted very little influence on the day-to-day management of Entaco.¹²

Entaco Group Limited

- (6) Entaco Group Ltd (hereafter Entaco Group) was incorporated as a result of the secondary management buy-out in March 1997 described above. Entaco Group became the parent company of Entaco as of March 1997 and owns 100% of the share capital of Entaco. Following the secondary management buy-out in March 1997, 3i Group plc acquired 45% of the issued share capital of Entaco Group. 3i Group's holding was reduced to 30% in July 2002.

Coats Holdings Ltd

- (7) Coats Holdings Ltd (hereafter Coats) is the legal successor of Coats Ltd The undertaking was known as Coats Patons Ltd from 1961 until 1986, when it

⁹ F-1/38.036, p. 157.

¹⁰ F-1/38.036, p. 542. The "Agreement for the sale and purchase of 10.1% of the entire issued share capital of Entaco Ltd and certain future Shareholder relationships" between Messrs Victor Barley, Leonard Haigh, 3i Group plc, Entaco Ltd, Newey Group plc and Prym Consumer GmbH & Co KG concerned the sale and purchase of shares in Entaco.

¹¹ F-1/38.338, p. 1176. Entaco's reply to an Article 11 letter dated 15.5.2003.

¹² F-1/38.338, p. 1176, Entaco's reply to Article 11 letter sent by the Commission on 15.5.2003.

changed its name to Coats Viyella plc. In 2001 the undertaking changed its name to Coats plc (when the inspections took place). As of 3 November 2003, the undertaking was known as Coats Ltd until 1 July 2004, when it adopted its current denomination: [CONFIDENTIAL]¹³ Until February 1991 Coats was a needle manufacturer via its 100% subsidiary, Needles Industries Ltd (NIL).¹⁴ NIL was active in the manufacturing and packaging of needles, knitting pins, fish hooks and medical sutures until Coats sold to Entaco, by way of a management buy-out, the needle manufacturing assets (in 1991) and the packaging and finishing business (in 1994) for NIL's English and Chinese needle stocks.¹⁵ Accordingly, since 1994 Coats has been a distributor of needles at the wholesale and retail level.¹⁶ In 2002, the last year of published accounts, Coats' turnover amounted to £1,156m. The Coats division, which concentrates almost entirely on the sale of thread and haberdashery products, had a turnover in that period of £848m. Coats' turnover in the European Union for haberdashery products amounts to EUR [CONFIDENTIAL]¹⁷, including zips with a turnover of EUR [CONFIDENTIAL 0-200]m¹⁸ and other hard haberdashery products with a turnover of EUR [CONFIDENTIAL 0-100]m¹⁹.

J & P Coats Limited

- (8) J & P Coats Ltd (hereafter J & P Coats) is a 100% owned subsidiary of Coats Holdings Ltd which is active in the UK market and is one of the Coats Group holding and finance companies. Since 1991, Coats' entire involvement in hard haberdashery market in the EEA has been handled by J & P Coats.²⁰ J & P Coats entered into two Supply and Purchase agreements with Entaco in 1994 and 1997. J & P Coats' world-wide sales amounted to EUR [CONFIDENTIAL][0 - 200]m in 2001, out of which approximately EUR [CONFIDENTIAL 0-200]m was achieved in the EEA.²¹

C. The product

- (9) The industry concerned is the manufacturing and packaging business of needles such as hand sewing needles, craft needles, knitting needles and crochet hooks. Needles are sold in bulk or in single packs. A needle is a small slender usually steel instrument for sewing that has an eye for thread or surgical sutures at one end. It is also any of various devices used for carrying thread and making stitches as in crocheting or knitting.

¹³ F-1/38.036, p. 177, 182. With regard to the Prym's assets divestiture, see F-1/38.338, p. 3908.

¹⁴ Coats retained the needle finishing and packaging assets of NIL until 10 September 1994, when the remaining assets were sold to Entaco.

¹⁵ F-1/38.338, p. 3907. Apart from needles, fish hooks, sutures etc, sold to Entaco Ltd, created by the management buy-out by NIL management, the knitting pin assets were sold to Joh. Moritz Rump & Partner GmbH & KG in 1991.

¹⁶ F-1/38.036, p. 796. See also D&B.

¹⁷ F-1/38.338, p. 3909

¹⁸ F-1/38.338, p. 3909

¹⁹ F-1/38.338, p. 3903

²⁰ F-1/38.338, p. 3906. Coats' reply to the Commission's Article 11 request for information dated 20.6.2003.

²¹ F-1/38.337, p. 11003.

- (10) Examples of so-called “craft” needles are as follows: between, embroidery, chenille, tapestry and beading needles.²²
- (11) Other needles may be described as “specialist” needles and “special” needles.²³ Examples of “special” hand-sewing needles are as follows: contoured, mattress, canvas, handiwork kit, bodkins, leathers and skins, veils, beadwork, saddlery, beading, trapunto and nets. They are sold in a blister pack or packet.
- (12) A description of different kinds of needles is set out below:
- Hand sewing needle: a needle for sewing by hand. Examples of hand sewing needles are: sharps, between, darning, milliners, embroidery, tapestry, tired eyes - book or card. Such needles can be purchased assorted or individual.
 - Machine needle (for home use): a needle used in connection with a sewing machine to mechanically unite or fasten by stitches that also has a flat and round base. Different kinds exist, such as standard, jersey, leather, jeans, twin. They are normally purchased as book and blister pack.
 - English tapestry needle: a needle used for a heavy hand-woven reversible textile as found in e.g. hangings, curtains and upholstery and characterised by complicated pictorial designs or for a non-reversible imitation of tapestry used chiefly for upholstery, or for embroidery on canvas resembling woven tapestry (so-called needlepoint tapestry). The English tapestry needle is described as having a well shaped, clipped, small, oval eye; a very thin layer of nickel plate and is not polished; the point of the needle is rounded or ball-point.²⁴
 - Chenille needle: a needle used for a wool, cotton, silk, or rayon yarn with protruding pile.
 - Embroidery needle: a needle used for the art or process of forming decorative designs with hand or machine needlework.
 - Beading needle: a needle used to furnish, adorn, or cover with beads or beading.
 - Crewel needle: a needle used for slackly twisted worsted yarn which is used for embroidery.
 - Mattress needle: a needle used for a fabric case filled with resilient material (as cotton, hair, feathers, foam rubber, or an arrangement of coiled springs) used either alone as a bed or on a bedstead.
 - Sharp & between needle: a needle with a small eye for sewing by hand.

²² F-1/38.036, p. 206.

²³ F-1/38.036, p. 300.

²⁴ F-1/38.036, p. 2447.

- Darner needle (short, long, yarn): a needle used to mend with interlacing stitches or to embroider by filling in with long running or interlacing stitches.
 - Knitting needle: a device for carrying thread and making stitches as in crocheting or knitting with which one forms by interlacing yarn or thread in a series of connected loops.
 - Crochet hook: a needle used for needlework consisting of the interlocking of looped stitches formed with a single thread and a hooked needle.
- (13) Examples of other products, which form part of a typical needle manufacturers' product range, are as follows: pins²⁵; safety pins²⁶; thimbles²⁷; sewing accessories²⁸; and scissors²⁹.

D. The relevant markets

D.1. Structure of the markets

- (14) Prym, Entaco and Coats are the main suppliers in the European needle and have been so for at least the decade preceding the present proceedings. For this time-period Prym can be described as the clear market leader. Only one major non-European manufacturer is active in the field of needles: Needle Industries (India) Private Ltd, an Indian undertaking which was a subsidiary of Coats until the 1970's. This undertaking entered the European market in the early 1990's with its needle brand "Pony".³⁰ Two smaller undertakings are the French Ets Jacquemet SA and Bohin SA.
- (15) Over the period 1991 to 2001, the market concentration increased with two main undertakings dominating the manufacture of needles in the European Union, i.e. Prym Consumer and Entaco. Indeed, Entaco became a major player in the needle manufacturing industry in 1991 by acquiring the needle manufacturing assets of a subsidiary of Coats, namely NIL. In so doing, Entaco became the second producer of needles in Europe, whilst Coats ended its manufacturing activity by this divestiture to concentrate on distribution. In 1994 Entaco acquired NIL's remaining needle packaging and finishing

²⁵ A small pointed piece of wire with a head used especially for fastening cloth. Different sorts of pins exist, e.g. brass pins, silver head pins, plastic headed pins, glass headed pins, and cross over clips.

²⁶ A pin in the form of a clasp with a guard covering its point when fastened.

²⁷ Often used when hand sewing, is a pitted cap or cover worn on the finger to push the needle in sewing and can be made in the following way: nickel-plated brass line, luxury line (gilded in fine gold), special "Patchwork" line - blister pack, book and case.

²⁸ Examples of accessories are as follows: needle threader, magnet, tape measure, wrist pincushion, tailor's chalk, chalk pencil, pattern tracer, machine spools, machine bulbs, marking kit, textile glue, and stitch ripper.

²⁹ A cutting instrument that exists in different types, e.g. embroidery scissors, plastic handle scissors.

³⁰ F-1/38.338, p. 6678. Reply dated 29.10.2003 to an Article 11 questionnaire sent to Needle Industries (India) Private Ltd on 16.10.2003. F-1/38.338, p. 6454. Needle Industries (India) Private Ltd was incorporated in 1949 and has since been involved in the manufacture and marketing of hand sewing needles, hand knitting needles, snap fasteners, hooks & eyes, plastic headed pins, safety pins and other related products. Needle Industries (India) Private Ltd is not linked to Coats' former subsidiary NIL.

business which Coats had retained in 1991. Entaco has a EUR [CONFIDENTIAL] turnover in the European needle market. According to Prym Consumer's reply to the Commission's Article 11 questionnaire dated 20 May 2003³¹, Prym Consumer is the clear market leader in the European needle market with a turnover of EUR [CONFIDENTIAL]. However, in its reply dated 28 May 2004 to the Commission's Statement of Objections, Prym stated that Prym Consumer only has a turnover of EUR [CONFIDENTIAL] in the narrowly defined market of hand sewing needles (estimated at EUR [CONFIDENTIAL]).³² It has to be underlined that Prym only produces hand sewing and craft needles and does not manufacture industrial needles. Prym has not explained its latest reduced estimate of its own turnover. Jacquemet SA originally produced knitting pins, but stopped manufacturing in the late 1990's and started importing knitting pins and needles from India. It sells a limited number of hand sewing needles, mainly in France. Bohin SA sells needles mainly in the French market, and has a turnover of EUR 3m.

- (16) At the retail level, Coats possesses its own brand called Milward and had a turnover of EUR [CONFIDENTIAL 0-5]m in 2002 (EUR [CONFIDENTIAL 0-5] in the United Kingdom and EUR [CONFIDENTIAL 0-5]m in Italy) and therefore competes at the retail level with Prym retail brands such as Newey.³³
- (17) Prym Consumer and Entaco are also the leading players in the world-wide needle manufacturing market, with growing competition by the Indian company Needle Industries (India) Private Ltd, a former subsidiary of Coats until the early 70's, with its "Pony" brand.
- (18) In the European pin market, Prym is the leading player with competition limited to a German Group, Joh. Moritz Rump & Partner GmbH & KG, which formed a joint venture with Prym until 1999.
- (19) On the other hand, the distribution of needles and pins in Europe is dominated by Coats, and comprehensive agreements exist between Coats³⁴ and Prym³⁵ concerning the distribution of hard haberdashery products throughout the European Union. In 1975 Coats, as manufacturer and distributor of sewing and handicraft threads, knitting yarns and zip fasteners, and Prym, as manufacturer and distributor of hard haberdashery for domestic and industrial use, agreed³⁶ to cooperate in the area of sales and distribution in a large number of countries world-wide by acting as joint trading companies or exclusive distributors of each other's products, according to their respective

³¹ F-1/38.338, p. 5585. Prym's reply in a table titled "Umsatz Kennzahlen" dated 11.08.2003 to Question 5 of Commission's questionnaire dated 20.05.2003.

³² Prym's reply dated 28.05.2004 to the Commission's Statement of Objections (Sherman & Sterling) (p. 4).

³³ Coats' reply dated 28.05.2004 to the Commission's Statement of Objections (p. 74).

³⁴ The agreements with Entaco were signed by Mr M Flower on behalf of J & P Coats Ltd but it is the Coats plc group that distributes hard haberdashery products in Europe.

³⁵ It was Prym Consumer that signed the agreements with Entaco and Entaco Group Ltd but Prym is also active in the manufacturing and distribution business.

³⁶ F-1/38.036, p. 422.

market strength in each Member State.³⁷ [CONFIDENTIAL] under which both undertakings agreed “to continue existing arrangements [...] and wherever possible to expand these to additional markets. They also agreed that wherever and whenever one of the parties requires products manufactured or sourced by the other [...] for distribution in any market [...] then the highest priority will be given to obtaining such products from the other party [...]”.³⁸ [CONFIDENTIAL], unlimited in time, with the “mutual objective to establish and hold dominant shares of the markets in which they operate and to grow those markets and market shares”.³⁹ In Austria, Coats and Prym established a joint distribution company in March 1979, Harlander Prym Vertriebsgesellschaft GmbH (HPVG), which sells an entire range of hard haberdashery products.⁴⁰ The two undertakings also [CONFIDENTIAL], but the project was subsequently abandoned. It can be concluded from this structure that distribution of needles and pins in Europe is highly concentrated and controlled by two of the main suppliers of hard haberdashery products, Coats and Prym.

D.2. The relevant product markets

1. Supply

- (20) Various types of needles belong to the overall market of haberdashery products that encompasses hard and soft haberdashery products. The market for needles can be divided into further sub-markets, namely hand sewing needles and craft needles according to Entaco.⁴¹ In its reply to the Statement of Objections, Coats distinguishes between domestic (i.e. hand sewing and craft needles) and industrial machine needles. Prym furthermore distinguishes between domestic and industrial machine needles and considers the sub-market for hand sewing needles a separate relevant market. However, Prym does not address the issue of craft needles.
- (21) In responding to a question relating to the criteria of substitutability between the different hard haberdashery products, Prym stated in its Article 11 reply dated 11 August 2003 that “it is completely irrelevant if a button which has fallen off is sewn back on with a darning needle or a sewing needle”.⁴² It appears that at that stage of the proceedings Prym did not distinguish between hand sewing needles and craft needles since darning needles are craft needles.

³⁷ According to the minutes of the meeting on 16/17 November 1975, Coats was to be Prym’s distributor in Italy, Finland, Sweden, Denmark, and Portugal. Joint selling and distribution was to be discussed for Austria, Germany, and Spain. Prym was moreover to take over Coats domestic sales including fasteners and elastics in Holland. In Belgium and France Prym supplied other customers than Coats but joint selling and distribution seem to have been discussed for these two countries between the two parties, F-1/38.036, p. 424-428.

³⁸ F-1/38.036, p. 1824.

³⁹ F-1/38.036, p. 1819, 2774.

⁴⁰ F-1/38.338, p. 807, letter from Slaughter & May of 22.2.2002.

⁴¹ F-1/38.338, File 7. Entaco’s reply dated 10.6.2003 to an Article 11 letter dated 15.5.2003.

⁴² F-1/38.338, p. 5595, File 19. Prym’s reply dated 11.8.2003 to an Article 11 letter (Question 9) dated 20.5.2003. „Ob ein abgefallener Knopf mit einer Stopf- oder Nähnaedel wieder angenäht wird ist völlig egal“.

In addition, in the same reply Prym indicated that their turnover was EUR [CONFIDENTIAL] for “needles” without making further distinction.

- (22) Prym argues in its reply to the Statement of Objections that it competes with Entaco only at the wholesale level and only in the area of production and distribution of hand sewing needles. Other than hand sewing needles, Entaco only produces surgery needles and fishing tackle. Prym does not produce these latter needles. As a consequence, Prym’s view is that the relevant market should be restricted to hand sewing needles.
- (23) However, this argument cannot be sustained since Entaco restricted its product range to special needles as a result of the product market sharing agreement with Prym (detailed below). Indeed Entaco manufactured a larger scale of needles and anticipated to market pins before entering into the product market sharing agreement, what proves that Entaco kept the capacity to compete at least on the whole needle product range during the infringing period. Therefore the relevance of the market cannot be based in this specific case on an artificial division organised by two parties to infringing agreements.
- (24) In addition, it has to be borne in mind that the Distribution and Purchasing agreements between Prym and Entaco encompass both hand sewing and craft needles, which are the object of the agreements.⁴³
- (25) As a consequence it could be reasonably concluded that hand sewing needles and craft needles form part of the same market and that machines needles can be distinguished.
- (26) A nearby segment of hard haberdashery products is constituted of other sewing and knitting products including pins and knitting pins.
- (27) Entaco in its reply to a Commission Article 11 questionnaire does not consider these two segments as substitutable from either the producer’s or consumer’s point of view, “*i.e. a manufacturer cannot make a needle on the same machinery as a pin and a consumer cannot use a pin in place of a needle*”.
- (28) Prym considers that “*substitutability between different Prym and Prym Consumer products is very limited and not welcome*”.⁴⁴
- (29) The hard haberdashery market moreover includes:
- zip fasteners, designed for use in the apparel, footwear and other speciality segments, and for home consumers’ use.
 - other fastening products.

⁴³ F-1/38.036, p. 668.

⁴⁴ F-1/38.338, p. 5595, File 19. Prym’s reply dated 11.8.2003 to an Article 11 letter (question 9) dated 20.5.2003.

- (30) Soft haberdashery includes thread and products made of textile for the leather and garment industry.
- (31) The fact that the needle industry is organised in the European Needlemakers' Association (ENA) for needle products, excluding other hard haberdashery products and the fact that the concerted practices and agreements at stake focused on needles also demonstrate the fact that the market for needles is a separate market from the other types of hard haberdashery products on the supply side.
- (32) Technical differences also serve to explain and confirm the existence of separate relevant markets:
- (33) It is to be noted that the European Communities' TARIC (the Customs Code) differentiates between Code 9606 ("Buttons, press fasteners, snap fasteners and press studs, button moulds and other parts of these articles; buttons blanks"), Code 9607 ("Slide fasteners and parts thereof"), the latter covering zip fasteners and Code 73191000 ("Needles").

2. Demand

- (34) The main customers of the traditional range of needles and pins are to be found in the garment industry, the leather goods industry, the shoe industry and the cardboard industry.⁴⁵
- (35) The demand side is essentially an industrial and wholesale demand since the needles or pins are a tool for a further manufacturing activity and must be adapted to this activity. There is a demand on the retail side, but it is essentially an after-market for repairing clothes or leather goods.
- (36) Needles or pins are used as tools on a different relevant product than other hard haberdashery products since they do not represent an accessory part of the final product, as do e.g. fasteners. Needles and pins are not as dependent on fashion trends as fasteners are.
- (37) In its reply to the Commission's Article 11 questionnaire, Coats as the main distributor of needles and pins in the European Union, considers that "*sewing needles, fasteners, buttons, scissors, pins - knitting pins - crochet hooks, other hard haberdashery are separate market segments from a demand point of view*".
- (38) Coats distinguishes further between products sold in individual packages and products sold in bulk. However such further distinction does not prove necessary or indeed useful in the present case as it relates to both the wholesale and the retail level.

⁴⁵

F-1/38.036, p. 1539.

D.3. The relevant geographic market

1. Supply

- (39) Unlike fasteners, needles and pins have very low transports costs varying from [CONFIDENTIAL] to [CONFIDENTIAL]% of the needles total production costs, depending on the importing country within the Community market, with a medium range varying between [CONFIDENTIAL] and [CONFIDENTIAL]%⁴⁶. Entaco and Prym supply needles to more than 70 countries world-wide [CONFIDENTIAL]. Non-European companies distribute in Europe directly through sales agents without owning large wholesale facilities. However, needles and pins sold in Europe are mainly produced in the European Union by European manufacturers. Over the period 1994 to 2001, the market share structure was very stable in all Member States, with the constant presence of the main groups.
- (40) According to needle manufacturers, no specific national standards for needles and pins exist which could represent an obstacle to trade.

2. Demand

- (41) On the demand side, price differentials are only significant regarding two groups of countries: price differentials of more than 40% exist between on the one hand the United Kingdom and Italy with the lowest prices both on the wholesale and the retail levels and on the other hand the other European countries. Coats supplied a table which indicates these price differentials as regards sewing needles (see Table 1).

**Table 1: Prices of sewing needles in Euro in Europe
(per “Needles-sharps box of 10 cards”)**

Countries	List price 2002	Average price to the wholesaler 2002	Average price to retailers 2002
Austria	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
Denmark	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
Finland	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
Germany			
Sweden			
Spain	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
Portugal	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
UK	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
Italy	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]

⁴⁶ F-1/38.338, p. 3922-3923. Coats’ Article 11 reply dated 1 August 2003.

- (42) In its reply to the Commission's Article 11 questionnaire, Coats explains that these price differentials reflect differences in supply costs and market demand, including customer power. However, currency fluctuations between Pound Sterling and the Euro are also an important factor in this context. In this context it is also noteworthy that, as developed further below under Section F (Description of the events), the UK and to a lesser extent Italy were 'reserved' for Entaco as a result of the geographic market sharing agreements in place between the undertakings. During the period of infringement, Coats sourced its needle requirements for the UK and Italy directly from Entaco while in the other European countries Coats sourced its needle requirements from Prym which in turn sourced them from Entaco. Higher prices in these latter countries would appear to be a logical consequence of this arrangement. It is as a consequence not possible to simply split the Community market on the basis of the price differentials illustrated in Table 1.
- (43) For all the above-mentioned reasons the Commission can conclude that the market for needles is at least a European wide market.

D.4. Interstate trade

- (44) Intra-Community trade is dynamic in the needle sector. According to EUROSTAT import-export figures (COMEXT database), intra-Community trade represented EUR 10.42m in 2002, approximately one third of the needles industry production value. The UK and Germany are by far the largest exporters to other Member States, a fact which is underlined by the presence of the two largest needles manufacturers in these two Member States.

D.5. Economic size of the relevant markets

- (45) The Commission will analyse the economic size of the market on three levels: the production, the wholesale and the retail levels. In 2002, the EU-wide turnover of the market for needles at the production level amounted to approximately EUR 30m. Prym, in its replies to the Commission's Article 11 request, to the Statement of Objections as well as in an additional submission dated 2 July 2003, confirmed that its needle turnover in the Community amounted to EUR [CONFIDENTIAL] (sales made at both the wholesale and retail level). Entaco acknowledged a turnover of EUR [CONFIDENTIAL 0-10] m in the European needle market, exclusively with sales at the wholesale level. Coats had a turnover with its own brand "Milward" of EUR [CONFIDENTIAL 0-5] m in 2002 in the EEA sewing needle market with sales made at the retail level. The Commission has information indicating that Bohin SA has a turnover of EUR 3m in the European needle market, although mainly in France. At the time the infringing agreements were in force, a further undertaking, Jacquemet SA, was active in the European needle market. Regarding the wholesale level the market for hand sewing and craft needles is to be regarded as very close to EUR 30m at the wholesale level. Since Coats, the leading wholesaler for needles, distributed mainly needles produced by Prym and Entaco, the market value at this level must be superior to the combined sales of Prym and Entaco at the production level. Regarding the retail level, according to a statement made by Mr Martin Ellis during the

Hearing on 18 June 2004, Entaco estimated that a multiplier of six should be applied to sales at the wholesale level in order to assess the size of the market at retail level. As for example, Mr Martin Ellis estimated the market for hand sewing needles only at the retail level as approximately EUR 30m. This remark was made following a definition given by Mr Axel Prym of a relevant sub-market in the needle sector, namely the hand sewing needle market which would have an EU-wide turnover of EUR [CONFIDENTIAL]. Evidently discrepancies exist in relation to the figures provided by the undertakings concerned and especially regarding estimates of market values at the wholesale and the retail level.⁴⁷ In conclusion, given the facts and undertakings' submissions outlined above, the Commission's estimate of EUR 30m for the needle market at the production level must therefore be regarded as an accurate but conservative estimate⁴⁸. At the wholesale level, the market is considered as very close to EUR 30m. At the retail level, the market for hand sewing needles only should also be estimated as amounting to approximately EUR 30m, therefore the global market for needles at the retail level would therefore be much larger. However, in the present case which relates to a product market sharing infringement between the main producers of needles, as well as pins, knitting pins and even of other hard and soft haberdashery products in the case of Prym Consumer and Coats, a larger scope than strictly the relevant needle market (or for that matter the hand sewing needle market) must be considered. Indeed, as is demonstrated in this Decision, the undertakings' goal in committing this infringement was to prevent the entry of Entaco into other haberdashery markets. While it is unlikely that Entaco would have had the capacity to undermine Coats' or Prym's market positions in the zip fasteners market, it is likely that Entaco's entry would have been highly detrimental to price stability in the accessory markets, the other fasteners market and in the above defined relevant market of "other sewing and knitting products including pins, knitting pins/knitting needles". The EU-wide turnover in this latter market amounts to a further EUR 30m. In 2002, the zip fastener market represented a turnover EU-wide of EUR[CONFIDENTIAL 300-600] m.⁴⁹

- (46) According to data collected by EUROSTAT in the EUROSTAT database, in 2000 the production sold for base metal hooks, eyes eyelets used for clothing, footwear, awnings, handbags, travel goods or other made-up articles excluding snap hooks, rivets, press studs and push buttons represented EUR 723m, which gives an indication of the production value for a part of the European "other fastener market". In order to assess the size of the whole market (including the snap, hooks, press and push buttons products) the Commission has used further information at its disposal: the size of the German market in 2000 for the press and push buttons products, i.e. around DM 200m, EUR 100m⁵⁰. As the German market represents approximately a

⁴⁷ The Commission is aware of the fact that Coats, Entaco and Prym did not produce machine needles during the infringing period and therefore does not take it into consideration for the present decision.

⁴⁸ F-1/38.338, p. 2917. Source VBT annual report 2000/2001, p.8; The German market for needles represented in 2001 DM 207m, approximately €100m. However, in these statistics, the terminology "needles" is used with a very broad meaning and appears to include pins as well.

⁴⁹ F-1/38.339, YKK Article 11 reply dated 25 April 2003.

⁵⁰ F-1/38.338, p. 2917. Source: VBT annual report 2000/2001, p.8.

quarter⁵¹ of this EU-wide market, a conservative estimate of the total market for other fasteners in the Community must be superior to EUR 1 billion and inferior to EUR 1.5 billion, since it is necessary to add to the EUR 723m, roughly EUR 400m for the press and push buttons and an unknown amount for the remaining products.

D.6. Conclusion

- (47) In conclusion, for the purpose of this Decision, the Commission has identified three relevant product markets i) the European market for hand sewing and craft needles (including notably special needles), in which the product and geographic market sharing took place from 10 September 1994 until 31 December 1999 ii) the European market of “other sewing and knitting products including pins, knitting pins/knitting needles”, and iii) the European market for other hard haberdashery products including zips and other fasteners, in which two markets the product market sharing took place from 10 September 1994 to 13 March 1997. The market for hand sewing and craft needles must be distinguished from the market for industrial machine needles which were not manufactured by the undertakings during the infringement period. Prym maintains that hand sewing and craft needles are to be regarded as separate relevant markets. However, this view cannot be sustained as the other undertakings do not support that view and the infringing agreements refer to both types of needles.

E. Procedure

- (48) The present findings arise out of investigations carried out by the Commission on 7 and 8 November 2001 pursuant to Article 14(3) of Regulation No 17 at the premises of several Community producers of hard and soft haberdashery (notably Entaco Ltd, Coats plc, William Prym GmbH & Co. KG and the German association of fastening technology producers VBT (Fachverband Verbindungs- und Befestigungstechnik)). By means of said investigations and subsequent enquiries under Article 11 of Regulation No 17⁵², the Commission obtained documentary evidence indicating that infringements of Article 81 of the EC Treaty had been committed by the following undertakings: William Prym GmbH and Co. KG, Prym Consumer GmbH & Co. KG, Coats Holdings Ltd, J & P Coats Ltd and Entaco Ltd. The investigations were a result of information provided by Mr Martin Ellis of Entaco between 23 August 2000⁵³ and 6 August 2001⁵⁴. The relevant services of the Commission considered these pieces of information as a leniency application by Mr Martin Ellis of Entaco in a letter dated 21 August 2001.⁵⁵

⁵¹ Estimate based upon a comparison between the German and European markets for zip fasteners (€90m/400m). Source VBT annual report 2000/2001.

⁵² Sent to the undertakings concerned between April and June 2003: on 14.04.03, 15.05.03, 20.05.03, 12.06.03 and 13.06.03.

⁵³ F-1/38.036, p. 3.

⁵⁴ F-1/38.036, p. 51.

⁵⁵ F-1/38.036 p. 61.

- (49) On 14 April 2003, the Commission sent requests for information under Article 11 to the following hard and soft haberdashery manufacturers in the European Community: Coats plc⁵⁶, William Prym GmbH & Co. KG⁵⁷, Entaco Ltd⁵⁸ and to the association VBT⁵⁹.
- (50) The Commission sent further requests for information under Article 11 to Entaco Ltd on 15 May 2003⁶⁰, to the VBT on 12 June 2003⁶¹ and to Coats plc⁶² and Prym GmbH & Co. KG⁶³ on 20 May 2003. A further request for information was sent to Needle Industries (India) Private Ltd on 16 October 2003.⁶⁴
- (51) On 15 March 2004, the Commission addressed a Statement of Objections to Prym, Entaco and Coats in accordance with Article 2 of Regulation No 2842/98⁶⁵, which was received by Entaco on 16 March 2004 and by Coats and Prym on 17 March 2004. The deadline to reply to the SO was the 13 May 2004. Coats and Prym were granted an extension of this deadline until 28 May 2004. Entaco's reply was received on 5 May 2004. Coats' and Prym's replies were received on 28 May 2004. Access to the file was provided to the parties in electronic form. Each received a CD-Rom with the documents on the Commission's file on 26 March 2004.
- (52) The Hearing took place on 18 June 2004. Coats Ltd and J & P Coats Ltd were represented by Mr Derment, Director Corporate Development. Entaco was represented by Mr Rawal, Production Director. Prym was represented by Mr Axel Prym, member of the board. All three parties were accompanied by former senior executives of the respective companies. These former executives of the parties were mainly involved in the presentations and the question sessions (Mr Martin Flower, former chairman of Coats, Mr Martin Ellis, former managing director of Entaco and Mr John Griffiths, former director and former member of the board of Prym).

F. Description of the events

F.1. Background and initial contacts

Initial contacts

- (53) The earliest indication of the tripartite nature of the agreements between Coats, Prym, Entaco and a number of their subsidiaries corresponds to the divestiture of NIL by Coats in 1991 and can be found as early as 1990, when

⁵⁶ F-1/38.338, Article 11 request for information, p. 3, reply to the request for information, p. 614, 616.

⁵⁷ F-1/38.338, Article 11 request for information, p. 46, reply to the request for information, p. 1354.

⁵⁸ F-1/38.338, Article 11 request for information, p. 17, reply to the request for information, p. 83.

⁵⁹ F-1/38.338, Article 11 request for information, p. 31, reply to the request for information, p. 2307.

⁶⁰ F-1/38.338, Article 11 request for information, p. 571, reply to the request for information, p. 1175.

⁶¹ F-1/38.338, Article 11 request for information, p. 1318, reply to the request for information, p. 2567.

⁶² F-1/38.338, Article 11 request for information, p. 2267, reply to the request for information, p. 3899.

⁶³ F-1/38.338, Article 11 request for information, p. 2279, reply to the request for information, p. 5571.

⁶⁴ F-1/38.338, Article 11 request for information, file 20, reply to the request for information, file 20.

⁶⁵ Regulation No. 2842/98/EEC of the Commission of 22 December 1998 on the hearing of parties in certain proceedings under Articles 85 and 86 of the EC Treaty (OJ L 354, 30.12.1998, pp.18-21).

Prym offered [CONFIDENTIAL]⁶⁶ for the purchase of NIL's entire manufacturing and packaging facilities as well as the Milward needle brand. NIL's manufacturing business was eventually sold for [CONFIDENTIAL] to a management buy-out known as Entaco, by virtue of an agreement dated 2 May 1991. Entaco was subsequently led by a former employee of Coats: Mr Victor Barley (former Managing Director of NIL). In 1994, Entaco also acquired NIL's remaining finishing and packaging business for [CONFIDENTIAL]⁶⁷ – thus acquiring NIL entirely for a total sum of [CONFIDENTIAL]. In this context it must be borne in mind that Coats retained the Milward needle brand which was valued at [CONFIDENTIAL]⁶⁸ and that Coats sold NIL's knitting pin assets to Joh. Moritz Rump and Partner GmbH & Co KG (which formed a joint venture with Prym until 1999) for [CONFIDENTIAL]. However, even by subtracting these latter sums from Prym's original offer, a shortfall of approximately [CONFIDENTIAL] between Prym's and Entaco's offers remains. In such circumstances, it is difficult to contemplate how Coats could consider that *"the MBO [Entaco] offered the best value"*, as was stated in its reply to the Statement of Objections.⁶⁹

- (54) A number of statements prove the involvement of Entaco, Coats and Prym in the early stage of the market sharing agreements which consisted of a series of formally bilateral agreements⁷⁰, in practice amounting to a tripartite agreement between the Prym, Entaco and Coats groups.
- (55) At a meeting between Prym, Coats Patons Ltd/NIL and Entaco which took place on 11 February 1993, the following was stated in the minutes of the meeting sent by fax on 18 February 1993 by Prym to Entaco: "[...] *Background of the Coats/Prym relationship – Prym seem to be responsible for hard haberdashery. He [Mr John Griffiths of Prym] believed that there was a moral obligation on Coats to tidy up the present NI⁷¹ situation, so that the original intention of Coats controlling the manufacture of soft haberdashery and Prym being the supplier of hard haberdashery could finally be achieved.*"⁷²
- (56) A letter from Mr Victor Barley of Entaco to Mr John Griffiths of Prym dated 10 May 1993 explicitly outlines the underlying interests of the three undertakings in sharing the European market and the initial proposals, stating the following: *"The main objective of Prym really is to remove or neutralise*

⁶⁶ Annex 8 of Prym's reply to the Statement of Objections.

⁶⁷ F-1/38.036, p. 811

⁶⁸ F-1/38.036, p. 197. The Milward brand was estimated for £200,000 in 1994 by Entaco (letter from Mr Victor Barley)

⁶⁹ Para 3.1.7 of Coats' reply to the Statement of Objections.

⁷⁰ F-1/38.036, p. 580: 1994 Distribution Agreement between Entaco and Prym Consumer; F-1/38.338 p. 6253: 1994 Purchasing Agreement between Entaco and Prym Consumer; p. 687: 1997 Distribution Agreement between Prym Consumer and Entaco Group; p. 651: 1997 Purchasing Agreement between Prym Consumer and Entaco Group; F-1/38.338, File 20: 1994 Supply and Purchase Agreement between J & P Coats and Entaco; F-1/38.036, p. 1741: 1997 Supply and Purchase Agreement between J & P Coats Ltd and Entaco Group.

⁷¹ NIL.

⁷² F-1/38.036, p. 228.

Entaco's entry into the haberdashery market. We would propose the following which we consider takes this objective into account:

1) That Prym allow Entaco to be the purchaser of the Needle Industries business and brands. The business consists of the NI⁷³ company as a going concern, minus its property assets, debtors and creditors (which would be realised by Coats), and the removal by Coats of any surplus employees not required by Entaco and Prym.

Entaco would make an agreement with Coats to supply all their needle requirements for a period of time (let's say 5 years). During the period of the supply agreement Entaco would not supply Milward brand to any other company than Coats and its subsidiaries. If, after 5 years, Coats chose to end the supply agreement, then Entaco would be free to offer Milward as its house brand to other customers. If Coats continued with the supply agreement after 5 years, then the previously suggested arrangement would continue.

2) During the first 5 years of the supply agreement, or subsequently if the supply agreement was continued, Entaco would not introduce any other house brand – be it John James, English Needles, whatever – and would only concentrate on supplying private, own label business.

3) With the supply agreement Entaco would wish to secure and maintain all the Coats sewing needle business previously supplied by NIL. Entaco recognises that certain accounts (for example, Cucirini Cantoni Coats in Italy) buy both Prym and Milward merchandise. Under an agreement between Prym Consumer and Entaco both companies would be anxious to maintain the status quo. Therefore, percentages would be worked out to indicate what level, for example, of CCC's business each company had and those percentages would be maintained throughout the length and time of the agreement and, where they varied, some form of correction would be applied.

(57) Taking all these initial points into consideration, it seems to me that this would give Prym and Coats some protection with regard to their brands. We would further support Prym by dropping the current plans that we have to introduce wider ranges of hard haberdashery and would restrict our activities to needles, excluding safety pins, pins and four-piece fasteners.”⁷⁴

(58) The underlying interests of the undertakings in a common Entaco/Prym/Coats involvement are detailed in the letter of 30 June 1993. Mr John Griffiths of Prym wrote to Mr Martin Flower, CEO of Coats, informing him that Prym and Entaco wished to make an offer to purchase certain assets of NIL in order to supply Coats with its packaged hand sewing needle requirements on a long term basis. Prym and Entaco originally proposed to form a joint venture for the purpose of the acquisition of NIL. The reasons for this was that the sales of hand sewing needles in the Western world were declining steadily and that the current production capacity of Prym and Entaco together was more than adequate to meet present European and North American demand. Mr John Griffiths of Prym stated the following in this letter: “Up to the present Needle

⁷³ NI presumably means Needle Industries Ltd.

⁷⁴ F-1/38.036, p. 217.

Industries has sourced part of its requirements from Entaco, but this arrangement is of a short term nature. In order to protect its own position Entaco is already selling bulk needles in North America with packaged needles and will shortly launch those in Europe. This if allowed to proceed, can only have a detrimental effect on the sales and prices of Needle Industries and Prym particularly if accompanied by other hard haberdashery imported from the Far East. A further competitor in the hard haberdashery market in Europe is the last thing we need! It would be sensible therefore for the three parties involved – Coats/NIL, Entaco and Prym – to cooperate to ensure that the European needle market does not suffer from further self inflicted wounds!”⁷⁵

- (59) At a further meeting between Coats, Prym and Entaco on 6 October 1993 concerning the possible acquisition of the NIL packaging business, Mr John Griffiths of Prym informed Coats that the initial plan for an Entaco/Prym joint venture had been dropped and that Entaco would prefer Prym to make a direct investment in Entaco. The reason for this according to Mr Victor Barley was that “*it would be more acceptable to the market if Entaco could present a face of independence*”. Mr M Ülgen of Coats confirmed that “*he had no problem with this new approach, subject to two points: i) That Entaco did not sell competitive products to competition at lower prices than they gave Coats. ii) That Martin Flower [CEO of Coats] was in agreement.*”⁷⁶
- (60) In this context it is noteworthy that the reasons given (no “*further competitor*”, avoidance of “*self inflicted wounds*”) for the common involvement of Coats, Entaco and Prym were not contested by representatives of Coats. Furthermore, Mr Meriç Ülgen of Coats agreed to Mr Victor Barley’s proposal that Entaco should acquire NIL on its own rather than within the framework of an Entaco/Prym joint venture, due to the necessity of presenting “*a face of independence*” to the market.

Background of Entaco’s involvement

- (61) In its reply to the Statement of Objections dated 5 May 2004, Entaco provided the following statement regarding its role and objectives in the market sharing agreements: “*Entaco has always been a small company by most standards, and certainly by comparison with Coats and Prym. [...] Since its formation the needles business of Entaco has centred on the manufacture of goods. Although Entaco has had some direct sales accounts to the end user on average they have been insignificant in relation to its total business. There were major difficulties for Entaco in gaining market share between 1991 and 1994 the main obstacles being the lack of sales force, the lack of known brands, its limited product range and the established market dominance of Coats and Prym. Entaco would point out that it is difficult for a new market entrant to establish itself in the market for needles as the distribution channels are under the effective control of Coats and Prym. By the time of the acquisition of the packaging business in 1994 it was clear that the only way*

⁷⁵ F-1/38.036, p. 212.

⁷⁶ F-1/38.036, p. 198.

*that Entaco could survive in the market was to join in the long standing 'partnership' arrangements between Prym and Coats".*⁷⁷

- (62) The statement by Entaco that *"in the market for needles [the] distribution channels are under the effective control of Coats and Prym"* makes reference to a long-standing relationship between Coats and Prym, as already mentioned above, which resulted in comprehensive agreements concerning the distribution of haberdashery products throughout the European Union, as evidenced by e.g. the 1975 Principle of Agreement, the 1995 Cooperation Agreement and the 1997 Umbrella Agreement between Coats and Prym and their various subsidiaries. Indeed in 1975 Coats and Prym agreed to cooperate in the area of sales and distribution in a large number of countries world-wide by acting as joint trading companies or exclusive distributors of each other's products, according to their respective market strength in each Member State. The Principles of Agreement dated 16/17 November 1975 includes market sharing clauses, notably a commitment by Prym *"not to introduce its zip fastener"* in Italy notwithstanding the fact Coats is a competitor in the zip fastener market.⁷⁸ As early as April 1977, Coats made a clear reference in a letter to NIL dated 10 April 1977 to a Coats/Prym Agreement and a NIL/Prym marketing Committee which ensured *"that transactions were conducted within the spirit as well as the letter of the Coats/Prym Agreement"*. It is further stated that the *"basic principle you [NIL] should bear in mind is that Prym are to be regarded as partners and not as friendly rivals. [...] In the event of any significant disagreement or any uncertainty as to the application of the Coats/Prym Agreement to specific markets or to specific problems, you should always consult the appropriate Market Manager in Glasgow [Coats]."*⁷⁹ In addition, in its reply to the Statement of Objections dated 28 May 2004 Prym provided the Commission with further evidence [CONFIDENTIAL].
- (63) [CONFIDENTIAL] under which both undertakings agreed *"to continue existing arrangements [...] and wherever possible to expand these to additional markets. They also agreed that wherever and whenever one of the parties requires products manufactured or sourced by the other [...] for distribution in any market [...] then the highest priority will be given to obtaining such products from the other party [...]."*⁸⁰
- (64) [CONFIDENTIAL] Mr David Gilliver of Coats stated *"Coats Craft distribution strategy in Europe is to cooperate wherever possible with leading suppliers of branded products such as Prym and not to introduce own brands. If a partnership arrangement is implemented then Coats would withdraw existing own brands"*⁸¹. This statement illustrates the fact that after 1995, Coats and Prym were still acting in a spirit of sharing markets with non-compete strategies. [CONFIDENTIAL], unlimited in time, with the *"mutual*

⁷⁷ F-1/38.338, p. 10102-10103.

⁷⁸ F-1/38.036, p. 425.

⁷⁹ F-1/38.036, p. 412. The products referred to in this fax were: a Milward branded range of hard haberdashery; domestic machine needles; and knitting pins and crochet hooks.

⁸⁰ F-1/38.036, p. 1824.

⁸¹ F-1/38.036, p. 1725-1729 (KO 9)

objective to establish and hold dominant shares of the markets in which they operate and to grow those markets and market shares”. This series of agreements between Coats and Prym and the various cartels or infringing clauses contained in these agreements do not form part of the objections raised by the Commission. There do nevertheless shed some light on the long-standing cooperation between these two undertakings.

Background of Coats’ involvement

- (65) The role played by Coats in the early stages of the market sharing infringements which are considered infringements by the Commission, is clearly demonstrated in a fax⁸² dated 11 August 1994 from Mr Meriç Ülgen of Coats to Mr John Griffiths of Prym (copied to Mr Martin Flower, CEO of Coats). It makes reference to the market sharing agreement between Prym and Entaco, the Heads of Agreement which was signed in June 1994 and entered into force on 10 September 1994, as will be described below. In this fax Mr Meriç Ülgen stated the following: *“Thank you for sending me a copy of the Heads of Agreement between Prym and Entaco under cover of your fax dated 25 July 1994. Overall we have no objection, excepting only paragraph (a) of Prym’s side of the agreement which allows Entaco to work with Prym’s subsidiary company, the Newey Group Plc & subsidiaries, and to develop “Newey” as a more significant needle brand in the UK. Victor [Barley of Entaco] strongly stated in his negotiations with Olli Lauren [Coats] that he needs as secure an offtake of Milwards needles from Coats as possible. In agreeing to this Olli Lauren stated that, in return, Entaco should not approach Coats’ retail or wholesale customers and especially not to offer better prices. Either of these actions would jeopardise Coats offtake from Entaco. Please refer to para 1.2 of the draft basis of supply agreement with Victor. I was therefore somewhat surprised when I read the aforementioned paragraph in your Heads of Agreement with Entaco. I do not believe we can accept such a clause and ask that it be removed as a condition of the sale proceeding as planned. We suggest that a tripartite signing should take place at which Prym, Entaco and Coats are present and jointly agree to both the sale contract and the Heads of Agreement by the end of August. Please may we discuss this with you in more detail when we meet in London on 29 August.”*⁸³
- (66) In a further fax dated 30 August 1994, Mr Olli Lauren of Coats Patons Crafts (a member of the at the time Coats Viyella Group) stated the following to Mr Victor Barley of Entaco regarding a possible development of Prym’s “Newey” brand as a more significant sewing needle brand: *“Coats is not happy about this clause and finds it to be against the spirit of the negotiations. If Coats is to commit to purchasing all its sewing needles from Entaco it is not fair or ethically correct to proactively develop a competitor to the Milward brand. We feel that we cannot be held responsible for not purchasing volumes as discussed should Newey take accounts away from Milward. It was our understanding that you would refrain from developing*

⁸² F-1/38.036, p. 180-181.

⁸³ F-1/38.036, p. 180-181 (RMR 31)

business that would hurt Milward during the period of supply agreement. It is our intention to develop a long term and smooth relationship with Entaco. If Entaco is to develop either itself directly or indirectly as a competitor to Coats this will not promote a seamless relationship. I do understand that you wish to secure your position once the supply agreement elapses but transferring business from us to other brands may force us to act in a manner that neither party wants.”⁸⁴

- (67) These two documents clearly demonstrate that Coats intervened in the drafting of the Heads of Agreement by threatening Entaco and Prym on the one hand with the non-implementation of the Entaco/Coats Supply and Purchase agreement and on the other hand with non-implementation of the sale of NIL’s remaining finishing and packaging business.
- (68) Coats in its reply to the Statement of Objections argued that it “*was not involved in the negotiation of the Heads of Agreement and did not sign them*”. Coats develops its argumentation by stating that the signing of the Coats/Entaco Supply and Purchase Agreement was not a condition for the entry into force of the Heads of Agreement and contends that the fact Coats received the Heads of Agreement on 25 July 1994 does not make them a party to the Heads of Agreement.
- (69) However, the Commission is aware of the fact that Coats was informed of the content of the Heads of Agreement as early as 16 June 1994. It was stated in a letter dated 16 June 1994 from Mr John Griffiths of Prym to Mr Victor Barley of Entaco that: “*I [Mr John Griffiths] have spoken to Martin Flower [Coats CEO] and advised him of the situation and have requested that he sets his people in motion*”.⁸⁵ According to this letter, the Heads of Agreement was signed on 16 June or shortly before (“*As promised I am now returning a signed copy of the Heads of Agreement for your records*”)⁸⁶. This (as well as the above mentioned faxes dated 11 August 1994 and 30 August 1994) proves that Coats was clearly informed at the date of signature of the Heads of Agreement and that some action on its behalf was requested and therefore at least expected by Prym.
- (70) Coats was therefore not only informed at the date of signature but more importantly three months before the entry into force of the Heads of Agreement. There was, however, no actual need for Coats to sign the Heads of Agreement as originally suggested by Mr Meriç Ülgen because the signing of the Supply and Purchase Agreement between J & P Coats and Entaco ultimately had the same effect. Indeed, contrary to Coats’ arguments, the Heads of Agreement was effectively conditional upon the signature of the Supply and Purchase Agreement between J & P Coats and Entaco because inter-conditional clauses contained in the various agreements ensured that the signing of the J & P Coats/Entaco Supply and Purchase Agreement brought into force the Prym Consumer/Entaco “Agreement for the sale and purchase

⁸⁴ F-1/38.036, p. 177.

⁸⁵ F-1/38.036, p. 340.

⁸⁶ F-1/38.036, p. 340 (RMR 66)

of 10.1% of the entire issued share capital of Entaco Ltd and certain future Shareholder relationships”, which in turn brought into force the Prym/Entaco Heads of Agreement.

- (71) The Prym Consumer/Entaco “Agreement for the sale and purchase of 10.1% of the entire issued share capital of Entaco Ltd and certain future Shareholder relationships” was conditional upon the Coats/Entaco Supply and Purchase Agreement by virtue of the following clause:

“2 Conditionality

*2.1. This Agreement shall be conditional upon the completion of the Coats Viyella [Supply and Purchase Agreement] Agreement and the Other Agreements”.*⁸⁷

- (72) This conditionality clause and the entry into force of the Heads of Agreement being not in June 1994 but on 10 September 1994 clarifies the remark made by Mr Meriç Ülgen relating to a tripartite signing on 11 August 1994. He was referring to the fact that the signing of the Heads of Agreement was ultimately dependant upon the signing of the J & P Coats/Entaco Supply and Purchase Agreement on 10 September 1994 as this latter agreement was conditional upon the Prym Consumer/Entaco “Agreement for the sale and purchase of 10.1% of the entire issued share capital of Entaco Ltd and certain future Shareholder relationships” on 10 September 1994 and as it will be developed further below, upon the Prym Consumer/Entaco Distribution and Purchasing agreements (since there exist inter-conditional clauses between the J & P Coats/Entaco Supply and Purchase Agreement and the Prym Consumer/Entaco Distribution and Purchasing agreements) signed on 10 September 1994. In conclusion, it therefore certainly made sense for Coats to envisage a tripartite signing of the Heads of Agreement in August 1994.
- (73) Clearly the underlying reasons for this acquisition were to avoid making Entaco an aggressive competitor and in the case of a divestiture of NIL by Coats that this divestiture ensured that no further competition arose.

F.2. Meetings and agreements

- (74) This heading gives an overview of the meetings between the undertakings and lists the agreements signed between Entaco, Prym, Coats (and Needle Industries before 1991) and their various subsidiaries.
- (75) The Commission has identified agreements in place from June 1994 (the Heads of Agreement were signed in June but entered into force on 10 September 1994) to December 1999 between the main European undertakings in the needle business i.e. Entaco, Coats⁸⁸ and Prym Consumer in practice amounting to a tripartite agreement under which these undertakings shared or contributed to sharing product (by segmenting the European market for hard

⁸⁷ F-1/38.036, p 146

⁸⁸ It should be noted that the agreements were formally signed by J & P Coats, a wholly owned holding and finance company of Coats plc. However, the distributor referred to in the 1994 and 1997 distribution, supply and purchasing agreements is Coats plc.

haberdashery products) and geographic markets (by segmenting the European market for needles).

The meetings

- (76) According to documents copied by the Commission during the investigation, trilateral meetings between Entaco, Prym and Coats took place on 5 separate occasions altogether, bilateral meetings between Prym and Coats on 23 occasions and bilateral meetings between Entaco and Prym took place on 29 occasions between January 1993 and November 2001. NIL only participated in one meeting with Entaco, Prym and Coats before it was acquired entirely by Entaco. Coats was mainly associated to the tripartite meetings before the signing or entry into force of the agreements signed on 10 September 1994 and renewed in 1997.
- (77) In its reply to the Statement of Objections, Coats argued that the Commission was alleging that the undertaking had participated in tripartite meetings between 1995 and 2001. However, the Statement of Objections merely provided a factual table containing all meetings between 1993 and 2001, indicating which undertakings participated in which of the meetings. Coats participated in some of the preliminary meetings in 1993 and in 1994 in which the tripartite agreement was defined and exchanged faxes and letters with Prym and Entaco⁸⁹. After 10 September 1994 and respectively 10 September 1997, once the Heads of Agreement between Prym and Entaco, the Supply and Purchase agreement between Coats and Entaco and the Distribution and Purchasing agreements between Prym and Entaco were in force, the mechanism with its inter-conditional clauses did not require Coats to attend meetings regarding the day-to-day business of the market sharing agreements between Prym and Entaco.
- (78) Under Table 2 below, the different members and participants are listed for each meeting: It can be seen that the most frequent and regular participants were Prym and Entaco, but that Coats was present at two meetings where infringements were very clearly expressed and detailed.

⁸⁹ F-1/38.036, p. 177

Table 2

Date	Prym/Prym Consumer	Entaco	Coats	Infringements Market sharing (MS)
07.01.1993	X	X		X (MS)
11.02.1993	X	X	X and NIL	X (MS)
17.06.1993	X	X	X	
11.08.1993	X	X	X	X (MS)
24.08.1993	X	X		
06.10.1993	X	X	X	
20.07.94	X	X		X (MS)
21.12.1994	X	X		X (MS)
14.03.1995	X	X		X (MS)
11.06.1995	X		X	
21.09.1995	X	X		
06.10.1995	X	X	X	
04.1996	X	X		
18.04.1996	X	X		
02.05.1996*	X	X		X (MS)
11.06.1996	X		X	
18.04.1997	X	X		X (MS)
29.04.1997	X		X	
04.06.1997	X	X		
27.08.1997	X	X		X (MS)
09.09.1997	X	X		X (MS)
28.10.1997	X	X		X (MS)
18.03.1998	X	X		X (MS)
27-28.03.1998	X	X		X (MS)
04.06.1998	X	X		X (MS)
15.07.1998	X		X	
25.08.1998	X	X		X (MS)
24.11.1998	X		X	
14.04.1999	X	X		X (MS)
21.10.1999	X	X		
29.11.1999	X		X	
30.11.1999	X	X		
18.01.2000	X		X	
21.02.2000	X (Newey)	X		
10.07.2000	X		X	
14.07.2000	X	X		
07.08.2000	X		X	

29.08.2000	X		X	
4/5.09.2000	X		X	
06.09.2000	X		X	
18.09.2000	X		X	
23.11.2000	X		X	
19.01.2001	X		X	
22.01.2001	X		X	
06.02.2001	X		X	
07.02.2001	X			
03.2001	X		X	
19.01.2001	X		X	Umbrella Agreement
26.04.2001	X	X		
07.11.2001	X		X	
07.11.2001	X		X	
08.11.2001	X		X	
11.07. year?	X		X	

*As from 2.5.1996, the frequency of meetings foreseen between Entaco and Prym is once in Stolberg, once in Brussels and once in Studley each year.⁹⁰

X means that a participant participated at the meeting in question.

(Newey) means that this undertaking was duly invited but was excused

(79) Participants from each company at the above meetings were as follows:

- Prym: Messrs Axel Prym, John Griffiths, L Griesmeyer, Dr Nölle
- Entaco: Messrs Victor Barley, M Ellis
- Coats/NIL: Messrs Victor Barley⁹¹, T Waites, G Wright

The agreements

(80) The infringing agreements listed hereunder were entered into between the following undertakings:

Prym and Entaco

- Heads of Agreement 16 June 1994 (signature)/10 September 1994 (in force)

Prym Consumer and its subsidiaries and Entaco

⁹⁰ F-1/38.036, p. 302.

⁹¹ F-1/38.338, p. 84. Mr Victor Barley was the Managing Director of Needle Industries from 1986-91, the Managing Director of Entaco from 1991-97, and the Non-Executive Chairman of Entaco from 1997 until April 2003.

- Agreement for the sale and purchase of 10.1% of entire issued share capital of Entaco Limited and certain future Shareholder relationships (10 September 1994)
- Agreement relating to the sale of 11,222 ordinary shares in the capital of Entaco Limited (13 March 1997)

Prym Consumer and Entaco

- Distribution Agreements (10 September 1994/1 April 1997)
- Purchasing Agreements (10 September 1994/1 April 1997)

Coats and Entaco

- Agreement for the sale and purchase of certain businesses carried on by Needle Industries Limited (2 May 1991)

J & P Coats and Entaco

- Agreement for the sale and purchase of a business (10 September 1994)
- Supply and Purchase Agreements (10 September 1994/10 September 1997)

1. Bilateral agreements between Entaco and Prym (including its subsidiaries)

The Heads of Agreement

- (81) The Heads of Agreement between Entaco and Prym⁹² signed in June 1994 (it entered into force on 10 September 1994) was drawn up between Prym and Entaco regarding the purchase of the (packaging and finishing) activities of NIL (formerly owned by Coats, at the time called Coats Viyella plc) and took effect from the date of such purchase⁹³. The agreement, as stated in its preamble, was to remain in effect only as long as Prym held not less than 10.1% of the ordinary shares of Entaco⁹⁴.
- (82) According to this agreement, Prym committed itself to assist in developing Entaco as a specialist needle manufacturer. Prym agreed to allow Entaco to work with Prym's subsidiary company, the Newey Group Plc. & subsidiaries, and to develop "Newey" as a more significant sewing needle brand "*with the objective of obtaining more sewing needle business in the UK and Republic of Ireland*". Prym instructed its US subsidiary Prym-Dritz Inc that all sewing needle products required by Prym-Dritz should be purchased from Entaco. Prym agreed to purchase their Newey Turquoise brand sewing needle

⁹² F-1/38.036, p. 539. See p. 163 and 340 shows that it was signed by John Griffiths in June 1994.

⁹³ 10 September 1994

⁹⁴ Prym Consumer – on behalf of its subsidiary Newey – purchased 10.1% of Entaco's shares on 10 September 1994 and sold these shares on 13 March 1997.

requirements for France; the total annual requirements for crewel needles; and Prym's requirements for beading and other specialist needles from Entaco.⁹⁵

- (83) In return "*Entaco is committed to support Prym in developing and expanding the European Haberdashery market for Prym branded products and [...]*

*Entaco agrees: a) during the period of the agreement, to restrict its manufacturing and distribution activities in the haberdashery sector to needles only, and not to widen its activities to include pins, safety pins, four-piece fasteners, knitting pins, or any other haberdashery product without the prior agreement of Prym*⁹⁶; and "*b) to appoint Prym as its exclusive distributor for all packaged hand sewing needles, other than Coats brands in Europe with the exception of the UK and Republic of Ireland.*"⁹⁷

- (84) The "Agreement for the sale and purchase of 10.1% of entire issued capital of Entaco Ltd and certain future Shareholder relationships" contains as well the following clause⁹⁸:

"2 Conditionality

2.1. This Agreement shall be conditional upon the completion of the Coats Viyella Agreement and the Other Agreements".

Clause 1.1 of the same agreement defines the Coats Viyella Agreement as follows:

"The agreement entered into between (1) J & P Coats Limited (2) Patons & Baldwin Limited and (3) the Company [Entaco] relating to the acquisition by the Company of its needle business and all matters and agreements (including but not limited to supply agreements [the Supply and Purchase agreement signed on 10 September 1994]) ancillary thereto".

The "Other Agreements" are defined as "*the distribution agreement and purchasing agreement of today's date [10 September 1994] made in the case between (1) the Company [Entaco] and (2) the Purchaser [Newey, Prym Consumer's subsidiary]*".

- (85) These clauses imply that the signing of the Coats Viyella Agreements (including notably the Supply and Purchase agreement between Entaco and Coats and the sale of NIL to Entaco) between Entaco and Coats and the Distribution and Purchasing agreement between Entaco and Prym were a condition of the entry into force of the Heads of Agreement, since those signatures were a condition of the purchase of Entaco's shares by Prym, which itself was a condition of the entry into force of the Heads of Agreement.

- (86) A fax dated 4 August 1994 from Entaco's lawyers Eversheds to Dr Nölle of Prym lists three agreements between Entaco, Prym and Coats, the agreement

⁹⁵ F-1/38.036, p. 539. See introduction of the Heads of Agreement dated June 1994 between William Prym GmbH & Co. KG and Entaco Limited.

⁹⁶ F-1/38.036, p. 540, point a).

⁹⁷ F-1/38.036, p. 540, point b).

⁹⁸ F-1/38.036, p. 546.

for the purchase of the 10.1% shareholding and the Distribution agreement between Entaco and Prym as well as the Supply (and Purchase) agreement between Coats and Entaco. Furthermore it effectively states that these agreements are a result of the translation of the commercial principles contained in the Heads of Agreement into legal documents.⁹⁹

- (87) In addition, it has to be mentioned that Prym in its reply to the Statement of Objections recognises a conditional link between the Heads of Agreement and the “Agreement for the sale and purchase of 10.1% of entire issued share capital of Entaco Limited and certain future Shareholder relationships”. As Prym considers that the Heads of Agreement was linked to the existence of the 10.1% share in Entaco held by Prym or by a subsidiary of Prym’s and thus came to an end with the sale of Prym Consumer’s 10.1% share in Entaco to the Entaco Group Limited in March 1997.

Agreement for the sale and purchase of 10.1% of entire issued share capital of Entaco Limited and certain future Shareholder relationships¹⁰⁰

- (88) By way of this agreement Prym Consumer bought 10% of the issued share capital of Entaco from the 3i Group plc, 10% which was held by Prym Consumer’s subsidiary Newey Group plc¹⁰¹ between September 1994 and March 1997.

Agreement relating to the sale of 11,222 ordinary shares in the capital of Entaco Limited¹⁰²

- (89) By way of this share sale agreement dated 13 March 1997 between Newey Group (Prym subsidiary), Entaco Group, and Prym Consumer, Newey agreed to sell to Entaco Group ordinary shares in Entaco on the understanding that it had been agreed that the purchasing and distribution agreements between Entaco and Prym Consumer would be extended for five years commencing 1 April 1997.¹⁰³

- (90) Prym stated in its reply to the Statement of Objections that with the sale of its 10.1% stake in Entaco the Heads of Agreement were terminated what implied the end of the product market sharing agreement between Entaco and Prym. However, the Commission points out that clause 7 of the Agreement relating to the sale of 11,222 ordinary shares in the capital of Entaco Limited dated 13 March 1997 maintained the principle of a collusion between Prym and Entaco of the same kind as the collusion contained in the 1994 Heads of Agreement:

- (91) “7. *OBLIGATIONS*
7.1 *The Purchaser [Entaco] covenants with and undertakes to Prym to*

⁹⁹ F-1/38.036, p. 164. The accurate quotation is: “Obviously, the translation of commercial principles into legalese has resulted in documents somewhat thicker than the Heads of Agreement, but we have tried to reflect the underlying intentions of the parties as accurately as possible”.

¹⁰⁰ F-1/38.036, p. 542.

¹⁰¹ F-1/38.338, p. 5786 Prym Group structure.

¹⁰² F-1/38.036, p. 641.

¹⁰³ F-1/38.036, p. 2310. Entaco issued a writ of summons in the UK against Prym Consumer GmbH & Co KG regarding the length of the purchasing and distribution agreements entered into with Prym Consumer.

support Prym in developing and expanding the European needle market for “Prym” branded products.

7.2 The Vendor [Prym Consumer] covenants with and undertakes to the Purchaser:

7.2.1 *to view the Purchaser positively and assist in developing the Purchaser as a specialist needle manufacturer; [...]*¹⁰⁴

Clause 7 clearly contains elements of collusion between Prym Consumer and Entaco that reproduces the product market sharing that was originally contained in the Heads of Agreement though limiting it to the needle market as opposed to the Heads of Agreement which also covered the larger haberdashery market. Indeed Entaco commits itself to supporting Prym Consumer’s needle business while Prym Consumer commits itself to assist Entaco as a specialist needle manufacturer. This basically restrains Entaco to the limited market of specialist needles.

- (92) In addition, recital 5 of the same agreement refers to the Distribution and Purchasing agreement for which the parties Prym and Entaco have agreed an extension of five further years from 1 April 1997 onwards.
- (93) In the 1997 Purchasing agreement, clause 2.3 reads: “*during the period of this Agreement Prym [Consumer] shall procure that Prym Group shall not manufacture or distribute goods which compete with the Products supplied by Entaco under this Agreement [...]*.”¹⁰⁵
- (94) The products referred to are hand sewing needles and craft needles. As a consequence of these mentioned clauses it is evident that the principle of a product sharing agreement is maintained between Entaco and Prym, however reduced in scope as it only concerns needles and not other haberdashery products as in the Heads of Agreement.

Distribution agreement

- (95) Entaco and Prym Consumer entered into a distribution agreement dated 10 September 1994 whereby According to the agreement (clause 2.2), Entaco would not sell products¹⁰⁶ to any person in the territory (Europe excluding the United Kingdom and the Republic of Ireland) other than the label accounts¹⁰⁷ and/or the Distributor (Prym Consumer) and/or the Coats group. The following markets were concerned: Belgium, Cyprus, Czechoslovakia, Denmark, France, Germany, Greece, Holland, Iceland, Italy, Norway, Portugal, Spain, Sweden, and Switzerland.¹⁰⁸

¹⁰⁴ F-1/38.036, p. 646.

¹⁰⁵ F-1/38.036, p. 655

¹⁰⁶ Products which should be listed under Schedule I of the 1994 and 1997 Distribution Agreements, which is however a blank document.

¹⁰⁷ Existing clients of Entaco as listed under Schedule III of the Distribution Agreement

¹⁰⁸ F-1/38.036, p. 602.

- (96) A second distribution agreement¹⁰⁹ between Prym Consumer and Entaco was signed on 1 April 1997 extending the previous distribution agreement relating to the supply of hand sewing needles' requirements which, according to Entaco, was to last for five years. The market concerned was Europe excluding the United Kingdom and the Republic of Ireland.

Purchasing agreement

- (97) Entaco and Prym Consumer entered into a "Purchasing Agreement"¹¹⁰ on 10 September 1994 providing that Prym Group¹¹¹ would exclusively purchase all of its requirements for Products from Entaco, the supplier. The products to be purchased by Prym Consumer were set out in schedule 1 of the agreement and covered the following products: sewing needles (for supply to Prym Dritz Inc.); Newey turquoise sewing needles; crewel needles; beading and other specialist needles; special needles (Sack Needles, Sail Needles, Bookbinder Needles, Mattress needles, Upholstery Needles, Pack Needles, Glovers Needles, Harness Needles); other Hardware Needles, and other Special Needles outside the standard Prym range. As a consequence of the clause of exclusive purchasing, clause 2.2 reads: "except as otherwise provided in this Agreement, Prym shall procure that Prym Group shall not purchase any Products or goods of a similar description or application for resale from any other person" and clause 2.3 reads: "*during the period of this Agreement Prym [Consumer] shall procure that Prym Group shall not manufacture or distribute goods which compete with the Products supplied by Entaco under this Agreement [...].*"¹¹² These clauses stipulate that Prym Consumer should not compete with Entaco on the above listed products since it had to buy all its requirements from Entaco.
- (98) The Purchasing agreement¹¹³ between Prym Consumer and Entaco from 1994 was extended by another agreement on 1 April 1997. It provided that Prym Consumer should purchase all of its needles' requirements for the products concerned from Entaco and should not accordingly compete with that undertakings' products. Prym Consumer terminated this agreement by letter of 14 December 1998 with 12 months' notice, i.e. the purchasing agreement was terminated as of 31 December 1999.¹¹⁴

2. Entaco and Coats

Agreement for the sale and purchase of a business

- (99) By agreement entitled "Agreement for the sale and purchase of a business"¹¹⁵, Coats (Coats Viyella plc at the time) sold its remaining needle manufacturing

¹⁰⁹ F-1/38.036, p. 687.

¹¹⁰ F-1/38.338, File 20. Annex of letter from Entaco Ltd dated 7.10.2003.

¹¹¹ Under «Interpretation» of this agreement, it is stipulated that Prym group means "William Prym, Prym Consumer, Prym-Dritz Inc, and Newey Group plc".

¹¹² F-1/38.036, p. 655

¹¹³ F-1/38.036, p. 651.

¹¹⁴ F-1/38.036, p. 715.

¹¹⁵ F-1/38.036, p. 796

and packaging business to Entaco on 10 September 1994 for [CONFIDENTIAL].¹¹⁶ Under clause 17.1 the Agreement and therefore the sale of the business to Entaco is made “*conditional upon the execution of the Prym agreements,*”¹¹⁷ which are, according to the Recitals of the Agreement, effectively the Distribution and Purchasing agreements and the Agreement for the sale and purchase of 10,1% of Entaco’s share here above described entered into between Entaco and Prym Consumer. Clause 17.2 stipulated that in case this obligation was not fulfilled, the agreement “*shall lapse without penalty on any party and shall be of no further force and effect*”. Under clause 7.1.4, the agreement is made conditional upon the delivery of “*a duly executed engrossment of the Supply agreement*”, which is the Supply and Purchase agreement entered into between J & P Coats and Entaco. This clause is one of the series of obligation contained under clause 7.1 to be respected by Entaco in order to complete the sale of the business. There is no doubt that “a duly executed engrossment” supposes the entry into the supply and purchase agreement by Entaco as a condition for the sale of the business.

The Supply and Purchase Agreements

- (100) A three-year supply and purchase agreement entitled “Supply and Purchase Agreement”¹¹⁸ was entered into on 10 September 1994 between J & P Coats Ltd and Entaco for the exclusive purchase by Coats of Milwards branded needles and accessories from Entaco, “the supplier”¹¹⁹. Three references to Prym Consumer can be seen in the agreement, firstly, Prym is defined in clause 1 as Prym Consumer GmbH & Co KG in Stolberg, secondly, under clause 2.2.4, it is provided that “*a) in continental Europe each of the World Purchasers*¹²⁰ *therein shall purchase all of its requirements for Products from the Supplier [Entaco] and Prym Consumer*”, and thirdly under clause 2.2.3. which provides that: “[...] *the supplier shall [...] (b) fulfil its obligations of cognate nature pursuant to an Agreement between the Supplier and Prym dated 8 September 1994*¹²¹.”
- (101) The “Supply and Purchase Agreement”¹²² between Entaco Group and J & P Coats was renewed on 10 September 1997 for another three-year period, expiring in September 2000.¹²³ In both agreements, the following European

¹¹⁶ F-1/38.036, p. 153. As a result of an agreement dated 2 May 1991, called “agreement for the sale and purchase of certain businesses carried on by Needle Industries Limited” Coats (Coats Viyella plc at the time) sold the needle manufacturing business of NIL to Entaco for £700,000.

¹¹⁷ The Prym agreements were defined as follows under the heading “Interpretation”: (i) the agreement for the sale and purchase of 10.1% of the entire issued capital of the Purchaser [Entaco] to be entered into between Entaco, Prym, 3i Group (ii) The purchasing agreement to be entered into between the Purchaser [Entaco] and Prym Consumer, (iii) The distribution agreement to be entered into between the purchaser [Entaco] and Prym Consumer).

¹¹⁸ F-1/38.338, agreement provided by Entaco by letter dated 7.10.2003 (File 20).

¹¹⁹ In this agreement, Entaco is defined as “the Supplier” and when another supplier is mentioned, i.e. Prym Consumer, it is only referred as “Prym Consumer” in the agreement.

¹²⁰ Purchasers members of the Coats group

¹²¹ Coats’ reply to the Statement of Objections p.34, point 3.1.70 (e) “ The Entaco/ Prym agreements were finalised on 8 September and held to order until the Coats agreements were signed on 10 September”.

¹²² F-1/38.036, p. 360, p. 1741.

¹²³ F-1/38.036, p. 3725.

Union Member States formed part of the “World territory”: Austria, Belgium, Denmark, Finland, France, Holland, Luxembourg, Portugal, Spain, and Sweden. Clause 2.2.3. provides that: “(a) *in continental Europe each of the World Purchasers*¹²⁴ *therein shall purchase all of its requirements for Products from the Supplier [Entaco] and Prym; [...].*” It moreover provides that “[...] *the supplier shall [...]* (b) *fulfil its obligations of cognate nature pursuant to an Agreement between the Supplier and Prym dated 1 April 1997.*”¹²⁵

(102) Under clause 2.2 of the 1994 and 1997 Supply and Purchase Agreements, Entaco is restricted from supplying Coats customers in the UK: “*Entaco shall not supply products to a customer of a UK Purchaser other than those customers to whom the Supplier supplies Products prior to the date hereof at existing business levels*”.

(103) Effectively, by virtue of these agreements, Entaco was obliged on the one hand to enter into the purchasing agreements with Prym if it wanted to buy the remaining packaging and finishing needles business from Coats – and this was a prerequisite to become a competitor to Prym at the wholesale level and to Coats and Prym at the retail level – on the other hand to respect the obligations contained in the agreements signed with Prym, which were effectively keeping Entaco from competing with Prym at the wholesale level and with Prym and Coats at the retail level. Finally Entaco was restricted to the position of a supplier of Prym and Coats, but with the security to find an outlet for its production.

3. Coats –Entaco – Prym relationship (the inter-conditional clauses contained in the agreements)

(104) Though Coats in its reply to the Statement of Objections maintained that the contractual agreements between Coats and Entaco on the one hand, and Prym and Entaco on the other hand are to be regarded as separate, the Commission is able to demonstrate that all the agreements listed in the above section are intertwined through a series of inter-conditional or reference clauses which create a chain of obligation rendering formally bilateral contracts trilateral or conditional to the completion or the respect of other formally bilateral contracts. The structure of these inter-conditional clauses evolved between 1994 and 1997 onwards:

1994 Agreements

(105) The “Agreement for the sale and purchase of a business” relating to the sale of NIL remaining packaging and finishing needle business between Coats and Entaco was made conditional upon:

- “*a duly executed engrossment*” by Entaco of the Supply and Purchase Agreement between J & P Coats and Entaco (clause 7.1.4)

¹²⁴

Coats companies

¹²⁵

F-1/38.036, p. 365, 368.

- of the execution of the “Prym agreements”, i.e. the Agreement for the sale and purchase of 10.1% of Entaco by a Prym Consumer’s subsidiary, the Purchasing agreement and the Distribution agreement between Entaco and Prym Consumer. (clause 17.1 and clause 1.1-interpretation)

(106) The “Agreement for the sale and purchase of 10.1% of Entaco” between Prym Consumer, its subsidiary and Entaco was made conditional upon:

- the “Agreement for the sale and the purchase of a business” relating to the sale of the remaining NIL packaging and finishing business to Entaco by Coats (clause 2.1 and clause 1.1), first part of the “Coats Viyella agreements”¹²⁶
- the Supply and Purchase Agreement between J & P Coats and Entaco (clause 2.1 and clause 1.1), second part of the “Coats Viyella agreements” (although Coats argued in its reply to the Statement of Objections that “*this agreement had nothing to do with Coats*”)¹²⁷.
- the Distribution and Purchasing Agreements between Entaco and Prym Consumer called the “other agreements” (clause 2.1 and clause 1.1).

(107) The signing of the “Supply and Purchase Agreement” was:

- a condition to the completion of the Agreement for the sale and purchase of a business relating to the sale of the remaining NIL packaging and finishing needle business
- obliging Entaco to “fulfil its obligations of cognate nature pursuant to an Agreement¹²⁸ between the Supplier and Prym dated 8 September 1994” (clause 2.2.3 of the Supply and Purchase agreement) which corresponds to the Distribution and Purchasing agreements between Prym Consumer and Entaco.

(108) The “Heads of Agreement” was made conditional upon the entry into force of the agreement for the sale and purchase of 10.1 % Entaco’s shares by Prym and therefore on the one hand conditional upon the signing of the Supply and Purchase agreement and of the agreement for the sale and purchase of a business (NIL’s remaining assets) entered into between Coats and Entaco and on the other hand on the Distribution and Purchasing agreements between Prym Consumer and Entaco.

(109) The completion of the “Distribution and Purchasing agreements” between Prym Consumer and Entaco was as a consequence a condition for the implementation of all the other here above mentioned agreements since:

- The Agreement for the sale and purchase of a business (NIL’s remaining assets) between Entaco and Coats was conditional (clause 17.1) to the signing of the Distribution and Purchasing agreements

¹²⁶ F-1/38.036, p. 544. As defined under clause 1.1 “Interpretation” of the agreement for the sale and purchase of 10.1% of Entaco

¹²⁷ P. 34

¹²⁸ F-1/38.036, p. 939 “clause 1.3.2 words denoting the singular shall include the plural and vice versa”.

- The Supply and Purchase agreement between J & P Coats and Entaco was a condition to the Agreement for the sale and purchase of a business (NIL’s remaining assets) (see clause 1.1 of the agreement for the sale and purchase of 10.1% Entaco’s shares) and therefore conditional upon the completion of the Distribution and Purchasing agreements; in addition of clause 2.2.3 imposing on Entaco to respect the Distribution and Purchasing agreements
- The Agreement for the sale and purchase of 10.1% Entaco’ share between Entaco and Prym Consumer was conditional (clauses 2.1 and 1.1) to the completion of the distribution and purchasing agreements and therefore the Heads of Agreement was conditional to the completion of these agreements as well.

1997 Agreements

- (110) In 1997 the structure of the inter-conditional clauses is simplified since the sale of NIL remaining packaging and finishing needle business has occurred and the Heads of Agreement was terminated by virtue of the agreement relating to the sale of Entaco’s shares dated 13 March 1997. However, inter-conditional and reference clauses still present in the agreements suffice to share or contribute to share the geographic and product needle market.
- (111) The Supply and Purchase Agreement between J & P Coats and Entaco dated 10 September 1997 renewed clause 2.2.3 of the agreement dated 10 September 1994. Clause 2.2.3 of the 1997 agreement states that Entaco “*(b) fulfil its obligations of cognate nature pursuant to an Agreement between the Supplier [Entaco] and Prym dated 1 April 1997*”. In the same manner as in 1994 agreement, this clause imposed to Entaco to respect the Distribution and Purchasing agreements it signed with Prym Consumer.
- (112) The Agreement relating to the sale of Entaco’s shares dated 13 March 1997 put an end to the 1994 Heads of Agreement as it is argued by Prym in its reply to the Statement of Objections. However, its clause 7 anticipated a prolongation of a product market sharing between Entaco and Coats. In addition, its recital 5 states that Entaco and Prym had “*agreed to extend and modify the Distribution agreement and the Purchasing agreement for a period of five years from 1 April 1997*”.
- (113) The 1997 Coats/Entaco agreement obliged Entaco to respect the 1997 “Prym agreements” from 10 September 1997 onwards. The 1994 Coats/ Entaco agreement, still in force until 10 September 1997, obliged Entaco to respect the 1994 “Prym agreements” which terminated on 1 April 1997. The obligation on Entaco was still valid from 1 April 1997 until 10 September 1997 since its agreement with Coats was still in force and since the Prym agreements dated 1 April 1997 only extended the Prym agreements dated 10 September 1994.
- (114) The result of this complex system of inter-conditional clauses had a twofold effect:
1. to make these formally bilateral agreements an overarching tripartite agreement;

2. to compel Entaco, on the one hand to sign the Distribution and Purchasing agreements with Prym Consumer and thereby materialising the principles set out in the Heads of Agreement since the sale of NIL and the exclusive supplier relationship with Coats were conditional upon these signatures, on the other hand to respect the geographic and product market sharing with Prym Consumer even after its acquisition of NIL (which would have enabled Entaco to be an effective competitor to Prym at the wholesale and retail level and Coats at the retail level). This effect was produced by clause 2.2.3 contained in the Supply and Purchase agreement with Coats.

F.3 The objectives of the various agreements and concerted practices

F.3.1. Explanations given by the leniency applicant and confirmed by the Commission's enquiry

(115) Mr Martin Ellis of Entaco has provided information in a written statement on the objectives of the market sharing agreements to the Commission on 7 October 2003 as follows: *"I joined Entaco in February 1993 as the Company's Sales and Marketing Manager. In 1994 Entaco's then Managing Director, Victor Barley, signed up to Agreements with both Coats and Prym, in return for which Coats at the same time sold the assets of Needle Industries Limited to Entaco Limited. The Distribution Agreements which were signed up to in 1994 with both Coats and Prym, although separate Agreements, were in reality effectively one Tripartite Agreement. In return for the secure supply of needles to Coats and Prym, Entaco agreed not to enter into the market for other haberdashery items such as pins and fasteners.*

(116) *The agreements with Prym also demanded that Entaco supply a full list of all of its needle accounts in Europe, and that from the date of the signing of the agreement in 1994, Entaco was restricted by Prym to sell needles to any other accounts in Europe other than those existing customers found in Schedule III to the distribution agreement.*

(117) *In terms of the spirit of the agreement, the 1997 documents are the same as the 1994 versions. Consequently, Entaco was certain to have a constant business to Coats and Prym in Europe, and wherever Entaco and Prym were both selling to a Coats Company, e.g. Italy, it was agreed within the agreements that the status quo would remain. In other words, neither company would do anything to try and see its own needle business with that Coats company increase at the expense of the other company.*

(118) *In addition, and linked to the written agreements, regular meetings took place between Prym and Entaco. At these meetings they often discussed the European market and the need to maintain the stability of the market by not actively competing with each other. One of the main corner-stones of this understanding was that Entaco would not sell packaged sewing needles into the German market and Prym would not sell packaged sewing needles into the UK market. This was the case throughout the six-year period from 1994 to 2000."*¹²⁹

¹²⁹

F-1/38.338, File 20. Annex to Entaco's letter dated 7.10.2003.

- (119) Indeed, Entaco and Prym Consumer entered into Distribution and Purchasing agreements initially in 1994 which were renewed in 1997 with the purpose of ensuring an efficient market sharing between both companies. In this way Entaco remained the sole supplier on the UK market while Prym Consumer remained the sole supplier in Germany as well as in several other European countries. Under the Distribution agreement, Entaco committed itself to supply exclusively Coats, Prym Consumer and a list of customers, so-called “label accounts”, as indicated precisely under Schedule III to the distribution agreement except in the United Kingdom and the Republic of Ireland. As a consequence, by contract Entaco limited its sales in the continental European market to its existing customers. As evidence of this it can be seen that the list of customers in the 1994 and 1997 agreements are identical, which demonstrates that Entaco did not obtain any new customers in the continental European market.¹³⁰ Martin Ellis has explained that this agreement was in fact a “bogus” agreement and that it was never anticipated to distribute any Entaco products (as can be seen under schedule I to the distribution agreement, the list of products to be distributed is empty) in continental Europe and that it was never done in practice.¹³¹ Interestingly, Prym in its reply to the Statement of Objections did not contest this latter remark.
- (120) The three agreements, namely the 1994 and 1997 Distribution agreements between Prym Consumer and Entaco¹³², the 1994 and 1997 Purchasing agreements between Prym Consumer and Entaco¹³³ and the 1994 and 1997 Supply and Purchase agreements between J & P Coats Ltd and Entaco¹³⁴ as well as the Heads of Agreement dated June 1994 between Prym and Entaco and the 1994 and 1997 Share sale agreements between Prym and Entaco as described above, were amounting in reality to a tripartite agreement between the Coats, Prym and Entaco constellation of companies and had the object and the effect:
- (121) - of sharing the European hard haberdashery market by limiting the business activity of Entaco Ltd to the hand sewing and special needles business, a fact which amounts to product market sharing between the hand sewing and special needles market with the wider markets for needles and with other hard haberdashery markets.
- (122) - of segmenting the European market for needles by restricting Entaco Ltd to the United Kingdom, the Republic of Ireland and (partially) Italy and by preventing that undertaking from entering (most of) the Continental European market for needles, thereby effectively reserving that market for William Prym GmbH & Co. KG and its subsidiaries, a fact which amounts to geographic market sharing in the needles market.

¹³⁰ F-1/38.036, p. 602 and 712.

¹³¹ F-1/38.036, p. 598 and 709.

¹³² F-1/38.036, p. 580.

¹³³ F-1/38.338, File 20. See annex to letter from Entaco dated 7.10.2003.

¹³⁴ F-1/38.338, File 20. See annex to letter from Entaco dated 7.10.2003. For the 1997 agreement see F-1/38.036, p. 360 (supply and purchase agreement between Entaco Group Ltd and J & P Coats Ltd dated 10.9.1997).

- (123) - of protecting Coats' own needle brand (Milward) at the retail level from competition on behalf of Entaco Ltd in exchange for i) the exclusive supply and purchasing agreement with Entaco Ltd covering the United Kingdom and (partially) Italy, ii) the imposition on Entaco Ltd of an obligation to respect the geographic market sharing agreement that undertaking had entered into with William Prym GmbH & Co. KG and its subsidiaries.
- (124) To this regard, Mr Martin Ellis of Entaco has provided the following statement in his reply to an Article 11 letter dated 14 April 2003 when asked to describe the arrangements between Entaco and Coats: *“The second point which did form part of the Agreement¹³⁵ between Entaco, Coats and Prym was related to the fact that provided Entaco was supplying Coats with all of their needle requirements then Entaco would not offer any house brand within the markets covered by the Agreement and would only supply customers [both at wholesale and retail levels] with their own private label brands.”¹³⁶*
- (125) *“The third point¹³⁷, which again is reflected in the final agreement between Entaco, Coats and Prym Consumer, relates to maintaining the status quo within the European marketplace between Entaco and Prym. The objective of all three companies was to see that they did not compete with each other and that they focus their energies on maintaining their own market share and attacking competition from the Far East. In Italy, for example, Coats purchased needles from both Needle Industries (later Entaco) and also from Prym. It was an important part of the Agreements that the level of business undertaken by each company was maintained and that one company did not benefit at the expense of the other. By having such Agreements in place this prevented any conflict emerging between Prym and Needle Industries (later Entaco) such that competition was thereby restricted.”¹³⁸*
- (126) The Distribution agreements kept Entaco from supplying the continental European market. According to a draft agreement dated 23 November 1993 between Prym and Entaco, Entaco was even obliged to disclose information on customers approaching it from continental Europe: *“Entaco will notify*

¹³⁵ F-1/38.036, p. 218. The second point referred to reads: “2) During the first 5 years of the supply agreement, or subsequently if the supply agreement was continued, Entaco would not introduce any other house brand – be it John James, English needles, whatsoever – and would only concentrate on supplying private, own label business.”

¹³⁶ F-1/38.338, p. 87.

¹³⁷ F-1/38.036, p. 218. The third point referred to reads: “3) With the supply agreement Entaco would wish to secure and maintain all the Coats sewing needle business previously supplied by NI. Entaco [NI refers to NIL, Needle Industries Ltd, owned by Coats (Coats Viyella) until 1991. A small but remaining part of the NIL assets and packaging business was purchased by Entaco in September 1994] recognises that certain accounts (for example, Cucirini Cantoni Coats in Italy) buy both Prym and Milward merchandise. Under an agreement between Prym Consumer and Entaco both companies would be anxious to maintain the status quo. Therefore, percentages would be worked out to indicate what level, for example, of CCC's (Cucirini Cantoni Coats) business each company had and those percentages would be maintained throughout the length and time of the agreement and, where they varied, some form of correction would be applied.”

¹³⁸ F-1/38.338, p. 87. Entaco's reply to an Article 11 letter dated 14 April 2003.

*Prym of any customers who seek to purchase needles from Entaco and will not proceed further until agreement has been given by Prym.”*¹³⁹

(127) For this Entaco was rewarded in three ways:

- Coats agreed to sell its remaining needles’ assets and packaging business to Entaco in 1994;
- According to the 1994 and 1997 Purchasing agreements, Prym Consumer committed itself to purchase its potential requirements for needles exclusively from Entaco. According to M Ellis statement, Prym’s purchases were limited to 10% of Prym’s needle production and were sold essentially in the USA market, to Prym Dritz (Prym subsidiary), and also in the UK under the Whitecroft and Newey brands [CONFIDENTIAL]. According to Mr Martin Ellis of Entaco this amount was compensation for not entering the continental European market;
- The 1994 Supply and Purchase agreement between J & P Coats Ltd and Entaco completed the scheme. Prym was protected from the entry of Entaco in the continental European market but Entaco did not have the same security as far as Prym was concerned for the UK market. The Coats/Entaco Supply and Purchase agreement resolved that issue by making Entaco the exclusive supplier of Coats in the UK and the Italian markets. Coats’ requirements accounted for most of the latter markets. According to Mr Martin Ellis of Entaco, the understanding of these agreements was to provide Entaco with a secure output and that “*neither Company would do anything to try and see its own needle business with that Coats Company increase at the expense of the other Company.*”¹⁴⁰

(128) The restriction on Entaco not to enter the continental European market and can be seen in the Heads of Agreement dated June 1994¹⁴¹ between Prym and Entaco, drawn up to facilitate the purchase of the activities of Needles Industries Ltd. According to this agreement, Entaco agreed:

(129) “*b) to appoint Prym as its exclusive distributor for all packaged hand sewing needles, other than Coats brands in Europe with the exception of the UK and Republic of Ireland.*”

(130) In addition, by agreeing with Coats that Entaco would be the exclusive supplier of Coats in the UK under the Coats/Entaco supply agreement, Entaco was effectively protected from the entry of Prym into the UK market.

(131) Entaco bought from Coats (Coats Viyella plc at the time) its remaining manufacturing and packaging business. In addition, there was the supply agreement dated 10 September 1994 (renewed in 1997) entered into between Entaco and J & P Coats Ltd for the supply of needles manufactured by the business sold. Simultaneously with the Coats deal, Entaco entered into

¹³⁹ F-1/38.036. p. 189.

¹⁴⁰ F-1/38.338, File 20, Annex to Entaco’s letter dated 7.10.2003

¹⁴¹ F-1/38.036, p. 340.

commercial agreements with Prym Consumer (who owned 10.1% of Entaco at the time) under which the latter agreed to source its entire requirement for sewing needles, beading and specialist needles from Entaco and Entaco in turn agreed to:

- Not to widen its activities to embrace manufacture and distribution of pins and fasteners, and to appoint Prym Consumer as its exclusive distributor for packaged hand-sewing needles (other than Coats brands), with the exception of the UK and the Republic of Ireland ;
- to give Prym Consumer a 10.1% shareholding in Entaco¹⁴²;
- to give Prym Consumer first refusal if it decides to sell its needle business; and
- to give Prym Consumer first refusal if the shareholders decide to sell Entaco.¹⁴³

F.3.2. Prym and Coats reply to the Statement of Objections and counter arguments

- (132) Prym admitted in its reply to the Statement of Objections its involvement with Entaco in the market sharing agreements and did not contest the explanations relating to the various objectives quoted in the Statement of Objections.
- (133) On the contrary, Coats strongly contests the findings of the Commission and the statements made by Mr M Ellis of Entaco.
- (134) 1. According to Coats' reply to the Statement of Objections, Coats was not a party to the agreement between Entaco and Prym and claiming that Coats, a customer, was a party to a horizontal market sharing agreement between two suppliers (Prym, Entaco) is a highly unorthodox allegation. Coats should rather be considered a victim of the market sharing agreement between its two main suppliers.
- (135) The Commission considers in this regard that while it is true that Coats is a customer at the wholesale level (although it used to be a major needles producer with its subsidiary NIL until 1994 and an important shareholder of Prym (24.9%)), at the retail level it always has been a competitor of Prym and is a competitor of Entaco since 2000 (as the agreements prevented Entaco from entering the retail level before that date) with its Milward brand.
- (136) Coats' submission that it was a victim of the market sharing agreement, is invalidated by its reaction to the communication by Prym of the Heads of Agreement (a clear product market sharing agreement) expressed in the fax dated 11 August 1994 sent by M Ülgen of Coats to J Griffiths of Prym: "*we suggest that a tripartite signing should take place at which Prym, Entaco and Coats are present and jointly agree to both the sale contract and the Heads of*

¹⁴² F-1/38.036, p. 542. By way of agreement dated 10 September 1994 Prym Consumer purchased 10.1% of the Entaco's share capital.

¹⁴³ F-1/38.036, p. 55, see also agreements p. 542, 580, 687.

*Agreement by the end of August [...] I do not believe we can accept such a clause and ask that it be removed*¹⁴⁴. Coats was informed (on 16 June) before the Heads of Agreement came into force on 10 September 1994 and must have seen that this agreement was conditional on the Supply and Purchase agreement signed by Entaco and Coats on 10 September 1994 (therefore the suggestion of “the tripartite signing”). As a consequence, Coats could influence the drafting of the Heads of Agreement. It seems quite irrational that a mere customer would knowingly enable its two main suppliers to enter into a product market sharing agreement to its detriment. A statement by Coats serves as a striking explanation for the undertaking’s actions: “*in return, Entaco should not approach Coats’ retail or wholesale customer and especially not to offer better prices*”¹⁴⁵.

- (137) Being informed about a market sharing agreement may not constitute an approval, however, actively participating in its drafting and enabling it to come into force certainly constitutes such an approval.
- (138) 2. Coats in its reply to the Statement of Objections argued that it “*was not involved in the negotiation of the Heads of Agreement and did not sign them*”. Coats develops its argumentation by stating that “*the signature of the Coats Viyella agreement*¹⁴⁶ (Coats/Entaco Supply and Purchase agreement) *was not a condition for the entry into force of the Heads of Agreement*”.
- (139) It has to be noticed that Coats argues that it did not sign the Heads of Agreement but does not argue that it did not apply it. Coats was informed as early as 16 June 1994 of the content of the Heads of Agreement Mr John Griffiths of Prym in a letter to Mr Victor Barley of Entaco states on 16 June 1994: “*I have spoken to Martin Flower [Coats CEO] and advised him of the situation and have requested that he sets his people in motion*”. According to this letter, the Heads of Agreement were signed on 16 June or shortly before (“*As promised I am now returning a signed copy of the Heads of Agreement for your records*”). This proves that Coats was clearly informed at the date of signature of the Heads of Agreement and that some action on its behalf was requested and therefore at least expected by Prym. Coats was therefore informed at the date of signature but more importantly three months before the entry into force of the Heads of Agreement.
- (140) Indeed, contrary to Coats’ arguments, the Heads of Agreement were effectively conditional on the signature of the Coats Viyella Agreement because i) the Heads of Agreement were conditional upon the “Agreement for the sale and purchase of 10.1% of entire issued share capital of Entaco Limited and certain future Shareholder relationships” signed on 10 September 1994 since in the recital of the Heads of Agreement, it is stated that the Heads of Agreement will remain in effect as long as Prym or its designated subsidiary holds not less than 10.1% of the ordinary shares of Entaco, ii) this

¹⁴⁴ F-1/ 38.036, p. 180 to 181

¹⁴⁵ F-1/38.036, p. 180

¹⁴⁶ Actually the Coats Viyella Agreement has a broader meaning according to the «Agreement for the sale and purchase of 10,1% of Entaco’ s share” and encompasses as well the “Agreement for the sale and purchase of a business relating to the remaining Nil’s packaging and finishing needle business”.

latter agreement was conditional upon the signature of the Coats Viyella agreement, by virtue of this following clause:

“2 Conditionality

2.1. This Agreement shall be conditional upon the completion of the Coats Viyella Agreement and the Other Agreements”.

- (141) This conditionality clause and the entry into force of the Heads of Agreement being not in June 1994 but on 10 September 1994 clarifies the remark made by Mr Meriç Ülgen of Coats relating to a tripartite signing on 11 August 1994. He was referring to the fact that the signing of the Heads of Agreement was ultimately dependant on the signing of the Coats Viyella agreement with Entaco on 10 September 1994, on the “Agreement for the sale and purchase of 10.1% of entire issued share capital of Entaco Limited and certain future Shareholder relationships” on 10 September 1994 and of the Prym/Entaco Distribution and Purchasing agreement (since there are inter-conditional clauses between the Coats Viyella agreements and the Prym/Entaco Distribution and Purchasing agreement) signed on 10 September 1994. Therefore it made sense for Coats to envisage a tripartite signing of the Heads of Agreement in August 1994.
- (142) In addition, it has to be mentioned that Prym in its reply to the Statement of Objections recognises a conditional link between the Heads of Agreement and the “Agreement for the sale and purchase of 10.1% of entire issued share capital of Entaco Limited and certain future Shareholder relationships”.
- (143) 3. Finally according to the Coats’ reply to the Statement of Objections, clause 2.2 of the Supply and Purchase agreement was drafted by Eversheds (Entaco’s lawyers) and does not make Coats a party to the agreement between Entaco and Prym.

Clause 2.2.3 of the 1994 and 1997 Supply and Purchase agreement between Coats and Entaco reads:

“(a) in continental Europe each of the World Purchasers therein shall purchase all of its requirements for Products from the Supplier [Entaco] and Prym; [...]” It moreover provides that *“[...] the supplier shall [...] (b) fulfil its obligations of cognate nature pursuant to an Agreement between the Supplier and Prym dated [10 September 1994]/[1 April 1997].”*

- (144) Regarding Coats’ explanations at the Hearing that this clause was inserted due to the insistence of Eversheds (Entaco’s lawyers), it appears extremely unlikely that Eversheds would have insisted on imposing an obligation on its own client at the last minute, obliging Entaco to respect an unrelated contract on the substance. As the case may be, Coats signed this clause and renewed it in 1997 (at which point Eversheds was not involved) and more importantly applied it.

- (145) Indeed, clause 2.2 made Coats a party to the tripartite agreement (alongside its endorsement of the Heads of Agreement), the enforcement of which Coats conducted in the following manner:
- (146) On the one hand, the clause obliged Entaco to respect the geographic market sharing agreement with Prym, on the other hand the agreement offered Entaco the security of an exclusive supply and purchasing agreement (Entaco was certain to sell all its production in the UK) and due to Coats' market power at the wholesale and the retail level in the UK, a strong territorial protection against Prym. Without this arrangement Entaco would not have taken part to the market sharing agreement with Prym. The Italian example is quite striking. Coats was, by using its orders of products, organising the respective market shares between Entaco and Prym (the High Court dispute between the parties actually arose out of increasing orders from Coats to Prym. Entaco complained in meetings with Prym about this situation). Coats was enforcing the agreements between Prym and Entaco since by using its orders of products, it was in a position to discipline both Entaco and Prym.
- (147) The Commission never argued that Coats was a party to the market sharing agreements between Prym and Entaco, but a party to formally bilateral agreements with Entaco and a party to a tripartite agreement which resulted of the inter-conditional clauses (as described above) contained in the formally bilateral agreements between Prym, Entaco, Coats and their subsidiaries and which had the object and the effect of sharing or contributing to sharing product (notably for Coats through its enforcement of the Heads of Agreement and clause 2.2.3 of the Supply and Purchase agreement) markets (by segmenting the European market for hard haberdashery products) and geographic markets (by segmenting the European market for needles).

F.3.3. The mechanism of the tripartite agreement and the respective objectives of the three undertakings

- (148) 1. Coats was protected against Entaco and Prym competition at the retail level (for its Milward brand) since:
- (149) - Entaco could not compete with Coats by virtue of the agreements it had signed with both Coats and Prym respectively for the UK and Continental Europe at the retail level.
- (150) Under clause 2.2 of the Supply and Purchase agreement, Entaco is restricted from supplying Coats customers in the UK: *“Entaco shall not supply products to a customer of a UK Purchaser other than those customers to whom the Supplier supplies Products prior to the date hereof at existing business levels”*.
- (151) Under clause 2.2 of the Distribution agreement between Prym and Entaco, Entaco is restricted from selling to customers of Coats and Prym in Continental Europe: *“Entaco will not sell products to any person in the territory [Europe excluding the United Kingdom and the Republic of Ireland] other than the label accounts and/or the Distributor [Prym Consumer] and/or the Coats group.”*

- (152) Therefore Entaco was not an independent force in the market since it could effectively only sell to Coats or Prym.
- (153) - Prym needed the support of Coats to stop Entaco entering the Continental European market¹⁴⁷. It must also be remembered that to enforce the market sharing agreements, all Coats (as the overwhelming buyer in UK) had to do was to buy from Entaco rather than Prym. This kept Prym limited to low activity in the UK while it disciplined Entaco to remain outside Continental Europe, because if it did not then Coats would stop considering Entaco as an exclusive supplier, a fact which is contained in clause 2.2 of the Supply and Purchase agreement between Entaco and Coats:
- (154) “[...] (b) fulfil its obligations of cognate nature pursuant to an Agreement between the Supplier and Prym dated [10 September 1994]/[1 April 1997].”
- (155) In addition, Coats as the main distributor in Europe was in a position by using its orders of products to ‘play off’ Entaco and Prym against each other, which represented another mode to discipline Prym.
- (156) 2. Entaco wanted to be the exclusive supplier of Coats in the UK as a security for its production; otherwise it would not have entered into the product market sharing agreement, limiting its business development. Indeed Entaco agreed to a very substantial limitation of its activity:
- (157) In the Heads of Agreement: “*Entaco agrees to restrict its manufacturing and distribution activities in the haberdashery sector to needles only, and not to widen its activities to include pins, safety pins, four-piece fasteners, knitting pins, or any other haberdashery product without the prior agreement of Prym*” (in addition to clause 2.3 of the Purchasing agreement between Prym and Entaco).
- (158) In the Distribution agreement under clause 2.2 as quoted above which amounts to a geographic market sharing agreement.
- (159) Entaco did not receive a similar guarantee from Prym. It needed as a consequence the security of an outlet for its production in the UK from Coats, which is what it received.
- (160) Entaco, being a management buy-out of Coats’ former needle business, was facing competition from two major companies, Prym and Coats which were linked by shareholding interests and a ‘special partnership’. For Entaco, entering in this tripartite agreement was the best possible deal since it gained

147 V Barley of Entaco insisted in a letter to Prym dated 10 May 1993 that “with the supply agreement Entaco would wish to secure and maintain all the Coats sewing needle business previously supplied by NIL. Entaco recognises that certain accounts (for example, Cucirini Cantoni Coats in Italy) buy both Prym and Milward merchandise. Under an agreement between Prym Consumer and Entaco both companies would be anxious to maintain the status quo. Therefore, percentages would be worked out to indicate what level, for example, of CCC’s [Coats Italy] business each company had and those percentages would be maintained throughout the length and time of the agreement”.

a secure outlet by just offering “*a face of independence to the market*” in exchange.

- (161) 3. Prym, without the approval, of Coats would not have entered a market sharing agreement to the potential detriment of its main shareholder and its main partner (Coats) in the European haberdashery market.
- (162) Coats owned approximately 25% of Prym until 1994.
- (163) The Commission has evidence that Coats and Prym have a long-standing partnership (Coats stated that “*Prym and Coats should be regarded as partners and not as friendly rivals*”) and that they have been close partners from at least 1975 up to the present. As stated under the description of the background to the agreements, in 1975 they entered in a cartel regarding zips (only terminated with the cooperation agreement of 1995), from 1977 to 1985 they organised a cartel (Prym confesses this fact in its reply) in Germany, on 3 February 1995, Coats Viyella (now Coats) and Prym signed an agreement called “*Cooperation Agreement*”. In the course of their continuing cooperation, Prym and Coats met on 11 June 1996 in Stolberg (Germany) where Mr David Gilliver of Coats stated “*Coats Craft distribution strategy in Europe is to cooperate wherever possible with leading suppliers of branded products such as Prym and not to introduce own brands. If a partnership arrangement is implemented then Coats would withdraw existing own brands*”. This statement illustrates the fact that after 1995, Coats and Prym were still acting in a spirit of sharing markets with non-compete strategies.
- (164) Taking account these links between Prym and Coats, it explains why Prym steadily communicated all its agreements with Entaco to Coats, that the Legal Counsel of Prym considered the whole range of agreements between Coats, Entaco and Prym as part of the same agreement¹⁴⁸ and that the Distribution agreements between Prym and Entaco made reference to the Supply and Purchase agreement between Entaco and Coats.

F.4 Implementation of various agreements and concerted practices

F.4.1. Concrete examples of the implementation of the market sharing agreements

1. 1995

- (165) At a meeting between Messrs Martin Ellis and Mr Victor Barley of Entaco and Messrs R von Agris, H Mohr of Prym on 14 March 1995, targeting in Europe was discussed and the following was stated: “*VHB [Entaco] asked that if Prym know of any European private label brand that Entaco could target, such as Fourneyron EUROPA, they let him know. HM [Prym] was quite happy for Entaco to target the ISI business. VHB thanked HM and RVA [Prym] for their help in safeguarding the Absalon business. [...] HM to think*

*about other potential accounts in Europe that Entaco could approach [...].*¹⁴⁹

(166) By fax dated 30 March 1995 from Mr Martin Ellis of Entaco to Mr H Mohr of Prym, under the heading new products, Mr Martin Ellis of Entaco stated that *“We will continue to consider the progress you make with this product and, as we have agreed, if you are not successful then you will allow Entaco to develop this product on mainland Europe.”*¹⁵⁰

– At a meeting between Prym and Entaco on 21 September 1995, *“Prym suggested target accounts [to Entaco) –*

– *Fourneyron Europe*

– *Atan ? (VHB) [Entaco]*

– *Belgian Chain? (VHB) [Entaco]*

– *MAE [Entaco] to take up these accounts in next visit.*¹⁵¹

– *“3. Point No. 7 – Targeting in Europe”*

(167) By the same fax as above dated 30 March 1995 from Mr Martin Ellis of Entaco to Mr H Mohr of Prym, Mr Martin Ellis stated that *“[...] a clear commitment by you to provide Entaco with potential target accounts within Europe for attack, we assume that we will be receiving those in due course [...].”*¹⁵²

(168) At a meeting between Prym Consumer and Entaco on 21 September 1995 under point 12 of the Prym minutes, Entaco questioned whether Prym Consumer had breached the agreement and supplied needles in the UK territory as follows: *“Entaco have detected in the U.K. market a wool needle pack under the Aero brand and ask about the supply source. As Prym Stolberg is not the supplier, enquiries were made within Rump & Prym. It can be definitely said that this product is not manufactured or distributed by a member of the Prym Group.”*¹⁵³ In Entaco’s minutes a reference to the UK problem was made: *“22. Aeor knitters Needles – 2 on a card. MAE [Mr Martin Ellis of Entaco] explained that despite an agreement that the UK would supply Aero branded HSN these are now coming from Germany. HM [Prym] to investigate.”*¹⁵⁴

2. 1996

¹⁴⁹ F-1/38.036, p. 285.

¹⁵⁰ F-1/38.036, p. 279.

¹⁵¹ F-1/38.036, p. 295.

¹⁵² F-1/38.036, p. 279.

¹⁵³ F-1/38.036, p. 294.

¹⁵⁴ F-1/38.036, p. 297.

- (169) The meeting between Prym and Entaco dated 2 May 1996 is an example of the market sharing agreement between Prym and Entaco since Whitecroft and Accra, two brands of Prym, who made an offer to an Entaco customer in the UK stopped making that offer following a request from Entaco to Prym:
- (170) *“12. VHB [Entaco] drew to Prym’s attention how Entaco had lost money in the UK due to a low price position being offered from Whitecroft. VHB to send a sample of the product to HM [Prym].”*¹⁵⁵
- (171) *“We did have a period of aggression from Prym back in 1991/2. This provoked us into entering the safety pin market and taking a sizeable business from Whitecroft and Newey. We would very much wish to avoid having to compete with Prym and, therefore, we would see your proposed meeting on 27 August as being very important.”*¹⁵⁶
- (172) By fax of 28 November 1996 from Mr Martin Ellis to Mr H Mohr, Entaco forwarded a copy of a fax from a Coats company in Germany, Wollbaer – a wholesaler for crafts and haberdashery located in Hamburg - requesting Entaco to supply them with all-over gold plated Anchor brand Tapestry needles. Mr Ellis, although he thought that it would not be a problem for Entaco to supply this product which Entaco did not think Prym offered, considered it best to *“alert Prym to the request before responding”*¹⁵⁷
- (173) However, by letter of 11 December 1996 from Mr Barley of Entaco to Mr J. Griffiths of Prym, Entaco confirmed a phone conversation between the two regarding their basic understanding of preserving the market sharing between the UK and the Republic of Ireland on the one hand and the continental European market on the other as follows: *“Further to your telephone conversation earlier this week we should confirm the basis of our understanding. You indicated to me that “Wollbaer” is a major Prym account and that for Entaco to supply him would be seen by you as totally against the spirit of our Agreement. [...] I would honour our understanding with regard to Germany [...].”*¹⁵⁸
- (174) The meeting on 21 September 1995 and the exchange of correspondence on 28 November and 11 December 1996 illustrate how Entaco and Prym allocated their respective markets artificially between each other.

3. 1997

- (175) At a meeting between Entaco and Prym on 18 April 1997, target accounts for Entaco were discussed: *“3. Knappehuset. LG [Prym] says Knappehuset has bought some Pony [Needle Industries India] stocks but is not selling it. Only bought it to stop Pony working with anyone else. So LG [Mr L Griesmeyer of*

¹⁵⁵ F-1/38.036. p. 301.

¹⁵⁶ F-1/38.036, p. 2717.

¹⁵⁷ F-1/38.036, p. 443 and p. 2444.

¹⁵⁸ F-1/38.036, p. 2440.

Prym] *does not believe there is an opportunity for us re Idena brand HSN [hand sewing needles].*"¹⁵⁹

- (176) In a fax from Prym regarding Coats Mölnlycke in Denmark on 17 July 1997 in reply to a fax from Entaco dated 27 June 1997: *"The agreement [with Coats Mölnlycke] is formulated in such a way that no shifting of market shares of our two companies can occur"*.¹⁶⁰
- (177) By fax dated 22 July 1997, Entaco informed Prym that if the agreement signed between Prym Consumer and Coats Mölnlycke¹⁶¹ in Denmark included the sale of Prym hand sewing needles, *"it is in breach of our Agreements with Prym and Coats"* Entaco informed Prym as follows: *[...] if Prym wants to sell hard haberdashery to Coats Mölnlycke then they should exclude hand sewing needles, machine needles and thimbles from that offer [...].*" Entaco indicated that any reduction in their sales' expectation during 1997/8 *"would be seen as competition from Prym."*¹⁶²
- (178) By letter dated 23 July 1997 from Mr Victor Barley of Entaco to Mr L Griesmeyer of Prym, Entaco expressed its disappointment that [Prym] forced through their agreement with Coats Mölnlycke on 1 July 1997 and stated: *"[...] If this Agreement includes the sale of Prym hand sewing needles, it is in breach of our Agreements with Prym and Coats, and what is slightly more disappointing is that it was concluded without any prior discussion with Entaco, even though Coats Mölnlycke was our exclusive customer. [...]"*.¹⁶³
- (179) At a meeting between Prym and Entaco on 9 September 1997, Prym *"stated that he [Lobertus Griesmeyer of Prym] would reply within two weeks on Prym's intention re hand and machine needles to Denmark."*¹⁶⁴
- (180) At a meeting between Entaco and Prym on 28 October 1997, the following was noted in the minutes: *"6. The sales structure in Denmark was changed by Prym solely for the reason of attacking Far East competition. This should be in the interest of the two companies."*
- *"7. The agreement with the Danish agency deals with the subject "sewing needles" separately in order to guarantee flexibility.*
 - *"8. Entaco is claiming compensation for possible losses in Denmark."*¹⁶⁵
- (181) By fax dated 3 November 1997, at a meeting which had recently taken place between Prym and Entaco in Germany, Prym confirmed to Entaco that: *"[...] the Prym Agreement with Coats Denmark had purposefully not obliged the latter to purchase needles (hand or machine) from Prym. It was explained*

¹⁵⁹ F-1/38.036, p. 305.

¹⁶⁰ F-1/38.036, p. 2718.

¹⁶¹ F-1/38.036, p. 5949.

¹⁶² F-1/38.036, p. 2717.

¹⁶³ F-1/38.036, p. 2717.

¹⁶⁴ F-1/38.036, p. 306.

¹⁶⁵ F-1/38.036, p. 308.

that John Griffiths and Herbert Mohr [Prym] had both been keen to ensure that this was incorporated in the contract.” Entaco suggested that: the easiest solution, therefore, would be for Prym to ask Coats Denmark to purchase all their future hand and machine needle requirements from Entaco and not to take any further orders for these products. [...]. The important point [...] is that both Victor and I [Entaco] now genuinely believe that Prym was acting in what it considered good faith, and that Prym’s only concern was taking business from ‘Hemline’ [another brand], not from Entaco.”¹⁶⁶

- (182) At a meeting between Entaco and Prym in Stolberg referred to in the same fax as above dated 3 November 1997, Prym explained to Entaco that it had acted in Denmark to attack Far Eastern competition and they both agreed that: “[...] in future both Entaco and Prym should keep each other fully informed of any discussions that may possibly change the status quo in the market, and in particular if such a change affected Coats in any way.”¹⁶⁷
- (183) In a fax dated 15 December 1997 from Mr Martin Ellis of Entaco to Mr L Griesmeyer of Prym, Mr Ellis provided more details to Prym regarding their loss of business to Prym in Denmark:
- (184) “*Flemming Tvedsborg [...] has confirmed that our own downturn in sales is inextricably linked to the fact that Coats Denmark has taken on the Prym Agency*” and “*is due to the fact that his largest customer, FDB [...] are now purchasing Prym hand and machine needles.*”¹⁶⁸
- (185) As can be seen from the minutes of a meeting taking place between Entaco and Prym in Stolberg on 18 March 1998, the situation in Denmark was at that time not yet solved: “*Prym and Entaco’s information as to the present situation in Denmark did not match and needs to be clarified before the next steps can be taken.*”¹⁶⁹
- (186) “*It does again seem that Prym are not respectors of Agreements, and that this breach with Coats Mölnlycket comes on the heels of previous incursions of Entaco’s business i.e. “Lesur” brand in the UK by Kovova in 1995 and the stealing of their business with Welti [CH] in 1996. Obviously, we would wish to put a stop to this competitive approach from Prym.*”¹⁷⁰
- (187) At the meeting between Entaco and Prym on 4 June 1998 in Studley, Prym confirmed that: “*there would be no further approaches by Kovova, either directly or indirectly to companies in Western Europe concerning needles.*”¹⁷¹

4. Maintenance of status quo November 1997:

¹⁶⁶ F-1/38.036, p. 329.

¹⁶⁷ F-1/38.036, p. 328.

¹⁶⁸ F-1/38.036, p. 2503.

¹⁶⁹ F-1/38.036, p. 314.

¹⁷⁰ F-1/38.036, p. 2717.

¹⁷¹ F-1/38.036, p. 318, Kovova Galanterie, now Prym Galanterie, is a subsidiary of Prym in the Czech Republic, see F-1/38.338, File 1, Question 19 of Entaco’s reply dated 28.4.2003 to an Article 11 letter dated 14.4.2003.

(188) In a letter from Entaco to Prym dated 3 November 1997, Entaco stated “*Both parties appreciate the damage that each could do to the other if either company was to acting an aggressive manner in direct competition to the other, rather than working together as strategic partners.*”¹⁷²

5. Market sharing between Entaco and Prym of Coats accounts in four countries in 1998:

(189) At a meeting between Prym and Entaco in Studley (UK), on 4 June 1998, it is clear from the minutes that business with Coats was shared between Entaco and Prym in Denmark, Austria, Portugal and Norway and in relation to which Entaco and Prym were in agreement that Entaco should be compensated for the loss of business in these markets:

– *[Denmark]*

– “1. TB [Prym] confirmed that Prym currently already has a concrete agreement signed in Denmark where Flemming Tvedsborg is currently winding down his stocks of Milward in favour of the Prym range; the impact of this volume loss is already being felt at Entaco. TB confirmed that Coats Denmark will be selling Prym brand into all of their major customer FDB’s 800 outlets.

– *[Austria]*

– 2. Prym also confirmed concrete agreements with Austria – MAE confirmed that Entaco has received no orders from Harlander Prym for approximately nine months.

– *[Portugal]*

– 3. Over the next ½ weeks, TB and LG [Prym] will hope to finalise together details of their proposals to Portugal and will inform Entaco in due course; Prym anticipates that this agreement will take place in the latter half of 1998 with its impact being felt by Entaco only towards the end of the year. TB stressed that Prym is cautious when estimating the volume of business available to be taken in Portugal given Milward’s extremely strong reputation in the marketplace there.

– *[Norway]*

– 4. TB will concentrate on an agreement with Norway towards the end of 1998 and will keep Entaco fully informed. LG confirmed that Prym would not supply any hand sewing needles to Coats in either Portugal or Norway without Entaco’s written permission.”¹⁷³

6. Prym asking Entaco to give up its needle manufacturing business in March 1998 and in May 2000:

¹⁷² F-1/38.036, p. 328.

¹⁷³ F-1/38.036, p. 315.

- (190) At a meeting that took place between Prym and Entaco in Stolberg, Germany, on 18 March 1998, Victor Barley of Entaco “*stressed the point that Entaco would never give up the position as a manufacturer of needles.*”¹⁷⁴
- (191) By letter dated 18 May 2000, Mr Axel Prym of Prym wrote in reply to Mr Martin Ellis letter dated 13 April 2000 that they also were of the opinion that a commercial discussion between the two companies would be useful. Prym suggested a meeting to discuss the various points mentioned in Entaco’s letter and added the following topic to the agenda:
- (192) “*Entaco gives up its entire needle production. Prym supplies Entaco with goods according to Entaco’s instructions.*”¹⁷⁵
7. No sales to Coats by Prym in Portugal + Norway without Entaco’s written permission in June 1998:
- (193) At a meeting in Studley, on 4 June 1998 Mr L Griesmeyer of Prym “*confirmed that Prym would not supply any hand sewing needles to Coats in either Portugal or Norway without Entaco’s written permission.*”¹⁷⁶ Despite the pledge given, Prym did supply needles to Coats Portugal which Mr Martin Ellis complained about in a fax to Prym dated 17 August 1998 and in which he asked Prym as a matter of urgency to “*explain why Prym has changed its position in Portugal without any communication whatsoever to Entaco.*”¹⁷⁷

F.4.2. The Compensation scheme

1996

- (194) In a letter from Mr Victor Barley of Entaco to Mr H Mohr of Prym dated 25 November 1996, Mr Victor Barley stated that despite the fact that “*the Agreements between us are designed to restrict either party competing actively for the other’s accounts in Europe, it has recently come to my attention that one of our largest accounts in Switzerland, Welti, had been lost to Prym. Obviously, we would like this corrected. The spirit of the Agreements between us when we wrote them was such that, should this sort of thing occur, it would either be put right or compensation in some other form recommended.*”¹⁷⁸

1997

- (195) At a meeting between Entaco and Prym on 28 October 1997, Entaco requested compensation from Prym: “*8. Entaco is claiming compensation for possible losses in Denmark.*”¹⁷⁹

¹⁷⁴ F-1/38.036, p. 313.

¹⁷⁵ F-1/38.036, p. 527, 2182, 2820.

¹⁷⁶ F-1/38.036, p. 315.

¹⁷⁷ F-1/38.036, p. 505.

¹⁷⁸ F-1/38.036, p. 332.

¹⁷⁹ F-1/38.036, p. 308.

- (196) In a fax from Mr Martin Ellis of Entaco to Mr L Griesmeyer of Prym dated 3 November 1997 referring to Entaco's recent visit at Prym and during which the following had been agreed: "[...] *if Entaco have lost business as a result of the Agreement then appropriate compensation would be found. For our part, we confirmed that we would need to make further investigations before we could show how our business has been affected.*"¹⁸⁰

1998

Entaco Prym Compensation issue in March and June 1998

- (197) At a meeting between Entaco and Prym on 27 March 1998, which took place in order to clarify the present situation concerning the volume losses that Entaco notified in some countries, the following was discussed: "[...] *VB pointed out that the word 'compensation' does not meet the aim of the today's discussion. ME stressed that not turnover is the item to be considered but profits. Entaco's breakdown by country lead to an average price of [CONFIDENTIAL] pence/blister card.*
- (198) [...] 3. *Specifics as to customers and markets*
- (199) *With regard to the a.m. problems in some market areas Entaco agreed that concrete volume can be discussed on the country level and 'compensated' on a more global level taking the profit situation into account.*"¹⁸¹
- (200) By fax from Mr T Bortz of Prym to Mr Martin Ellis of Entaco dated 17 September 1998 the compensation proposal was being put together. Prym stated: "*My feeling is that we have developed a practicable model [...] hope that the figures finally match together so that we can start to compensate [...].*"¹⁸²
- (201) The following was stated at a meeting on 4 June 1998 regarding the compensation to Entaco for loss of business suffered in the Portuguese, Danish and Norwegian markets:
- "*COMPENSATION FOR LOSS OF SALES/PROFIT*
 - 5. *Prym are in full agreement that Entaco should be compensated in some way for the loss of business in these markets. TB estimated that Entaco's volume loss would be 200,000 pieces for this financial year and that Entaco should in return be given business from Prym equal to this figure; MAE suggested that 600,000 was a more realistic figure, given the turnover and volume figures presented at the last meeting as representing Entaco's business in Denmark, Portugal and Norway in 1997. [...]*

¹⁸⁰ F-1/38.036, p. 329.

¹⁸¹ F-1/38.036, p. 313.

¹⁸² F-1/38.036, p. 319.

- 6. *With regard to the items to be given to Entaco as part of a compensation deal, MAE made it clear that Entaco would wish those items to come from the Prym range of HSN since this would profit both companies.*
- [...]
- 12. MAE offered a best price to Prym of [CONFIDENTIAL] per pack to manufacture 600,000 packs for them over a twelve month period. This would then compensate for the loss of 600,000 Milward packs per annum at an average price of [CONFIDENTIAL] each.”¹⁸³

Entaco Prym Compensation discussion in August 1998

- (202) At a meeting between Entaco and Prym in Stolberg, Germany, on 25 August 1998, the objective of which was mainly to agree on Entaco’s volume losses, the minutes were entitled “*Strategic Alliance Entaco-Prym Implementation of a compensation concept and Objectives and measures for the future*”. The target was “*to find definitely a clear concept until the end of 09/98 otherwise the negotiations would have been considered as failure.*” It was pointed out that: “*it is still to be determined what exactly ‘compensation’ has to be taking the interests of both parties into account.*”¹⁸⁴
- (203) At the meeting between Entaco and Prym dated 25 August 1998, it was confirmed that:
- “*the turnover loss for Entaco (07/97 to 06/98) is*
 - *Denmark 50,000.- DM*
 - *Austria 30,000.- DM (being the figures ME provided 28.10.97).*”¹⁸⁵
- (204) In order to calculate losses Prym asked for transparency of both Entaco and Prym manufacturing costs and clarification of sales volumes. Both parties agreed on this concept and it was also agreed that “*if the parties would not reach an agreement until the end of September the result of the discussion that started 28 10 97 will be that no conclusion can be found basically between Prym and Entaco.*” A handwritten sentence was added to the minutes indicating that:
- (205) “*Any agreement reached to last at least until 1/4/2002.*”¹⁸⁶

Evidence of market sharing of Coats’ account in Portugal in the context of the compensation discussion between Prym and Entaco:

- (206) At a meeting between Entaco and Prym in Stolberg, Germany, on 25 August 1998, the following was stated:

¹⁸³ F-1/38.036, p. 315-316.

¹⁸⁴ F-1/38.036, p. 320.

¹⁸⁵ F-1/38.036, p. 320.

¹⁸⁶ F-1/38.036, p. 320.

- *“Prym will not start any further actions and apologises for the lack of coordination with regards to the recent Portugal problem; 16,800.- DM handsewing needles sold to COATS.”*¹⁸⁷

Attempt to solve compensation issue in November 1998

- (207) By fax to Mr L Griesmeyer of Prym dated 6 November 1998, Mr Martin Ellis of Entaco put forward a counter proposal to Prym’s proposal defining the relevant product range and the respective condition on a contractual basis for the year 1999 which was unacceptable to Entaco. Entaco’s proposal covered *“the loss of business taken by Prym in Denmark, Austria and Portugal. If Entaco loses further business in Denmark and Portugal then this would need to be taken into account in the year 2000 “compensation” calculation which would be agreed in July 1999. This offer is made on the basis that no further erosion of Entaco’s business to Coats by Prym will occur without Entaco’s written approval.”*¹⁸⁸

Compensation issue in March 1999:

- (208) By fax dated 24 March 1999 from Mr Victor Barley of Entaco to Mr Axel Prym of Prym, and referring to a phone call between them earlier that day, the following was stated: *“As you [Mr Axel Prym] appreciated, my call was very much of a conciliatory nature attempting at this late stage to try and find areas of agreement between Prym and Entaco to avoid the 2 companies being forced into serious commercial competition. On the Prym side you indicated to me that Entaco’s insistence of price increases, and our negative response to the compensation proposal put forward by Prym, left Prym with a view that they had no real alternative than to sever the Purchasing Agreement between the 2 companies emanating from the share sale by Prym to Entaco. [...] I indicated to you that Entaco, in retaliation to the termination of the Purchasing Agreement, would become more active in Europe and would also sell a wider range of hard haberdashery to compensate for the loss of the Coats business which Prym has taken [in Portugal, Denmark and Austria].”*¹⁸⁹
- (209) By letter dated 14 December 1998, Prym terminated the purchasing agreement on 12 month’s notice effective on 31 December 1999.¹⁹⁰
- (210) Legal proceedings were issued in the United Kingdom against Prym by Entaco on 12 April 1999 claiming the new purchasing and distribution agreements between Prym and Entaco entered into on 1 April 1997 was to be extended for five years although this was not explicitly stipulated in the agreements.¹⁹¹

Compensation issue Prym-Entaco in April 1999:

¹⁸⁷ F-1/38.036, p. 503.

¹⁸⁸ F-1/38.036, p. 2482-2483.

¹⁸⁹ F-1/38.036, p. 2886-2887.

¹⁹⁰ F-1/38.036, p. 2310-2312.

¹⁹¹ F-1/38.036, p. 2310-2312.

- (211) At a meeting at Heathrow airport between Prym and Entaco on 14 April 1999, the following statement was made:
- “5. Dr Nölle [Prym] presented two possible scenarios going forward between Prym and Entaco:
 - (i) All out competition – ‘war’ between the companies
 - (ii) Prym would allow Entaco to supply Prym Coats business but not the remainder of the Prym group.
 - 6. MAE [Mr Martin Alexander Ellis] stated scenario (ii) was unacceptable which only left scenario (i) i.e. all out competition.” [...]
 - 14. Dr Nölle stated that he did not believe Entaco would win any Court action against Prym as the agreements between the two companies were against the European Cartello Agreement. He stated that the Supply and Distribution Agreements were ‘I’ Agreement. [...]
 - 15. Dr Nölle stated that Prym signatories and VHB [V Barley of Entaco] were fully aware that both the Supply and Distribution agreements were in contravention of the European law prior to their signatures”.¹⁹²

Compensation paid by Coats in October 2000

- (212) By fax dated 18 October 2000, Coats¹⁹³ made a compensation offer to Entaco which Entaco rejected.¹⁹⁴ Mr Martin Ellis of Entaco informs the Commission that this offer was rejected because: “[...] we [Entaco] were looking for compensation for the business we had lost in Europe and we were under the impression that Coats would compensate us by allowing us to supply them with £150,000 of orders from European markets. Coats preferred to offer us needle business in America. However, the margins which we could achieve on European needle business was far higher than needle business in America.”¹⁹⁵ By internal memorandum dated 26 October 2000, Mr Martin Ellis of Entaco informed the board of Directors of Entaco Group Ltd as follows: “[...] we explained that Coats were considering purchasing additional orders from Entaco as a means of compensating us for business which we allege that Coats should have given to us during the last Agreement but which instead went to Prym. Subsequent to the meeting Coats decided not to give any additional orders, but have, instead, paid us £60,000 cash as an out-of-court settlement to close this matter.”¹⁹⁶

¹⁹² F-1/38.036, p. 170.

¹⁹³ The correspondence was between Mr Martin Ellis of Entaco and Mr M Ülgen on behalf of J & P Coats Ltd; its address: Coats, 1 The Square, Stockley Park, Uxbridge, Middlesex UB11 1TD, the UK.

¹⁹⁴ F-1/38.036, p. 532.

¹⁹⁵ F-1/38.338, File 1, Question 26 of Entaco’s reply dated 28.4.2003 to the Commission’s Article 11 letter dated 14.4.2003.

¹⁹⁶ F-1/38.036, p. 528, F-1/38.338, p. 90.

(213) This compensation payment made by Coats is confirmed by an e-mail exchange dated 11 September 2001 between Messrs B Anderson and D Gilchrist of Coats, according to which the following milestones regarding the “Entaco saga” are mentioned:

- *“In 1999 Coats give Entaco notice of cancellation of the supply contract in favour of supply from Prym*
- *Prior to the end of the notice period several Coats market commence purchases from Prym*
- *Entaco detect the premature decline in sales and claim compensation from Coats and Prym*
- *A long negotiation takes place and Coats settle the claim with a £60k cash payment and commitment to take £25k of Entaco’s dormant stock. Prym make their own settlement.”¹⁹⁷*

(214) In its reply to the Statement of Objections, Coats argued that the compensation it paid Entaco had no relation whatsoever to the compensation issue arising between Prym and Entaco out of the Prym agreements. However, it is demonstrated by a memorandum¹⁹⁸ from Christopher Healy of Coats to Paul Smith of Coats that Coats interpreted the obligation to purchase both from Entaco and Prym contained in the Supply and Purchase Agreement as an obligation to continue purchasing at similar levels (albeit not identical) from the two suppliers. Coats was perfectly aware of the content and the implication of the Entaco/Prym agreements as the Supply and Purchase agreement was conditional upon these agreements and since it had communication of these agreements¹⁹⁹. Therefore it knew that all orders placed by Coats to Prym have to be supplied by Entaco. As a consequence, compensating Entaco for a switch of business from Entaco to Prym by Coats makes only sense if Coats accepts that Prym does not respect its agreement with Entaco and ultimately could be interpreted as compensation on behalf of Prym made by Coats.

Prym Entaco February 2000:

(215) By phone on 21 February 2000, Mr Martin Ellis of Entaco suggested that Prym acquire a holding in Entaco of maximum 45% and that Prym after two years would take over the entire needle business from Entaco.

Prym Entaco March 2000:

(216) By letter dated 10 March 2000, Prym turned down Entaco’s offer of a participation in Entaco by Prym.²⁰⁰

¹⁹⁷ F-1/38.036, p. 3548, 3578.

¹⁹⁸ F-1/38.036, p. 2835-2836.

¹⁹⁹ F-1/38.036, p. 180

²⁰⁰ F-1/38.036, p. 2204.

Commercial discussion - relaunch attempt between Entaco and Prym in April 2000

(217) By letter which was “strictly confidential between our two companies” dated 13 April 2000, Entaco made the following indications of the broad parameters around which a commercial discussion could take place. The idea behind such a cooperation were as follows:

- “1. Entaco purchases X million needles from Prym per year.
- 2. Prym purchases a minority share holding in Entaco.
- 3. The existing price structures in Europe are respected.
- 4. Market shares in Europe are respected.
- 5. Entaco does not develop into haberdashery.
- 6. Entaco withdraws Nähwelt brand.
- 7. Prym purchases all private label business from Entaco.
- 8. Entaco supplies all Prym’s North American hand needle business.
- 9. Entaco supplies Milward business to Coats.”²⁰¹
- A further point 10 was added to Entaco’s parameters on the copy retrieved at the premises of Entaco which stated: “10. Entaco gives up its entire needle production. Prym supplies Entaco with goods according to Entaco’s instructions.”

(218) According to Mr Martin Ellis of Entaco, these points were a reference to going back to having an agreement between Entaco and Prym broadly on the lines of the 1994 and 1997 purchasing agreements. Point 10 was added by hand by Mr A Stringer [Entaco] after Entaco received the reply from Axel Prym dated 18 May 2000.²⁰²

Reply to Entaco’s commercial suggestions by Prym in May 2000:

(219) By letter dated 18 May 2000, Mr Axel Prym of Prym wrote in reply to Mr Martin Ellis’ letter dated 13 April 2000 that they also were of the opinion that a commercial discussion between the two companies would be useful. Prym suggested a meeting to discuss the various points mentioned in Entaco’s letter and added the following topic to the agenda: “Entaco gives up its entire needle production. Prym supplies Entaco with goods according to Entaco’s instructions.”²⁰³

Conclusion

²⁰¹ F-1/38.036, p. 2198, p. 523.

²⁰² F-1/38.338, p. 89, reply to Article 11 letter dated 14.4.2003.

²⁰³ F-1/38.036, p. 527, 2182, 2820.

- (220) As a conclusion to this section, the tripartite agreement constitutes the basis of the market sharing scheme to which Entaco, Prym, and Coats and their subsidiaries took part since these formally bilateral agreements²⁰⁴ amounting to a tripartite agreement were enforcing the market sharing decisions taken in 1993. The implementation of the market sharing agreements was directly linked to the entry into force of the listed above agreements and to their duration.
- (221) A series of statements made by the three undertakings reflects the market sharing implementation over the period 1994 to end 1999. However Coats argues in its reply to the Statement of Objections that Coats did not participate in any of trilateral meetings after 1993 except in one meeting in 1995. It has to be noted that firstly its participation was not necessary beyond the inter-conditional clauses between the agreements it signed with Entaco and the “Prym agreements” because the daily business of the market sharing agreements between Entaco and Prym could obviously be handled by Entaco and Prym and that Coats was anyway protected at the retail level by the agreements. Secondly, though they were no tripartite meetings after 1993, there were many exchanges of mails and faxes of a tripartite nature as referred to above in 1994 until the 10 September 1994. Thirdly, the fact that Coats renewed its Supply and Purchase agreement with Entaco for five more years in 1997 clearly represents a continuous implementation on behalf of Coats over the infringing period.
- (222) In the same manner, the evolution of the “compensation” for Entaco’s non-entry into the continental European market gives as well a good picture of the implementation of the market sharing agreements.

F.5 The end of the various agreements and concerted practices

- (223) The Heads of Agreement terminated on 13 March 1997 with the signature of the Agreement relating to the sale of 11,222 Ordinary Shares in the capital of Entaco Limited. The latter agreement including clause 7 product market sharing agreement contemplating a long standing cooperation between the parties contains no termination clause.
- (224) By letter dated 14 December 1998, Prym terminated the 1997²⁰⁵Purchasing Agreement with Entaco on 12 month’s notice effective on 31 December 1999.²⁰⁶
- (225) The Commission has no evidence that the 1997²⁰⁷Distribution Agreement between Entaco Limited and Prym Consumer GmbH & Co KG, which entered into force on 1 April 1997, actually terminated on 31 December 1999 as the Commission is not in possession of any correspondence giving notice of termination and as Prym in its reply to the Statement of Objections did not

²⁰⁴ The agreements referred to were signed by Entaco, Entaco Group Ltd, Prym Consumer and J & P Coats Ltd.

²⁰⁵ F-1/38.036, p. 651.

²⁰⁶ F-1/38.036, p. 2312, 2406, 715.

²⁰⁷ F-1/38.036, p. 687.

supply such evidence. However, references made by Dr Nölle of Prym to the Distribution and Purchasing agreement being ‘1’ agreement clearly indicate that the Distribution agreement would have terminated as a result of the termination of the Purchasing agreement.

- (226) Prym in its reply to the Statement of Objections argued that both agreements were not abided by the parties to the agreements at the latest at the end of April 1999 after the discussions concerning compensation had failed and Entaco brought its Court case. However it is a fact that the Purchasing agreement remained legally in force until 31 December 1999 and that the Distribution agreement remained in force at least until that date.
- (227) Therefore the Commission concludes that these two agreements ended on 31 December 1999.
- (228) Coats terminated the 1997²⁰⁸ supply and purchase agreement with Entaco Group Ltd in September 2000.²⁰⁹
- (229) Documents in the Commission’s possession indicate that Prym and Entaco made attempts between February and May 2000 to relaunch their commercial cooperation as during the 1990’s and which moreover indicate that Coats discussed the Entaco – Prym situation with both Entaco and Prym. In particular, the Commission has evidence of a meeting between Prym and Coats on 18 January 2000 regarding Entaco (among other topics), during which it was stated that Mr “*M Ülgen was to facilitate a meeting between Mr M Ellis [Entaco] and A Prym [Prym] with a view to negotiating a purchase of the hand sewing needle business by Prym. Prym would close the business [...]*”. It is moreover stated that “*Entaco can attack Coats/Prym; but Prym can also attack Entaco*”.²¹⁰ This statement indicates that Coats/Prym and Entaco were, following the termination of their tripartite agreements, still observing each other and also that they were not yet acting as fully aggressive competitors towards each other, the latter possibility being merely a hypothetical threat.
- (230) By phone on 21 February 2000, Mr Martin Ellis of Entaco suggested that Prym Consumer acquire a holding in Entaco of maximum 45% and that Prym after two years would take over the entire needle business from Entaco. This phone call from Prym to Entaco in order to solve the “Entaco – Prym issue” was on Coats’ initiative [Mr M Ülgen of Coats] and Coats’ participation was

²⁰⁸ F-1/38.036, p. 360, p. 1741.

²⁰⁹ F-1/38.036, p. 3725.

²¹⁰ F-1/38.036, p. 2770. At this meeting it is also stated that Prym was “capable of supplying Coats” and that Prym was “highly motivated to replace Entaco”. It can also be noted that Mr P Smith of Coats stated in an email dated 2.9.1999 to Mr M Ülgen of Coats that at the time of signing the umbrella agreement (distribution agreement between J & P Coats Ltd and Prym Consumer from 1997, see F-1/38.036, p. 5911), it was assumed that Entaco would be a “junior partner” as supplier to Prym. That was the understanding with J. Griffiths at the time of signing the agreement in 1997, F-1/38.036, p. 4134.

initially foreseen (but was cancelled).²¹¹ By letter dated 10 March 2000, Prym turned down Entaco's offer of a participation in Entaco by Prym.²¹²

- (231) By letter which was “*strictly confidential between our two companies*” dated 13 April 2000, Entaco indicated parameters around which a commercial discussion could take place.²¹³ By memorandum dated 25 April 2000, Prym considered the latter letter from Mr Martin Ellis.²¹⁴ By letter dated 18 May 2000, Mr Axel Prym of Prym wrote in reply to Mr Martin Ellis (of Entaco) letter dated 13 April 2000 that they also wanted a commercial discussion between the two companies and that they should meet.²¹⁵
- (232) On the basis of the documents available to the Commission, these attempts to revive the former product and geographic market sharing agreements and concerted practices are however not conclusive. Moreover, the fact that the 1997 Supply and Purchase Agreement between Entaco Group Ltd and J & P Coats Ltd expired in September 2000 does not confirm that the infringing practices continued, considering that the bilateral agreements signed up to in 1994 by Entaco/Prym Consumer and Entaco/J & P Coats Ltd should in practice be seen as one tripartite agreement with Coats for the period 10 September 1994 to 31 December 1999. The Commission therefore holds the view that the end of the agreements and concerted practices is 31 December 1999, the date on which the Distribution and Purchasing agreements between Prym Consumer and Entaco and Entaco Group Ltd terminated.

II. LEGAL ASSESSMENT

G. Application of Article 81(1)

G.1. Article 81(1) of the Treaty

- (233) Article 81(1) of the Treaty prohibits as incompatible with the common market all agreements between undertakings, decisions by associations of

²¹¹ F-1/38.036, p. 2208.

²¹² F-1/38.036, p. 2204.

²¹³ F-1/38.036, p. 523: “1. Entaco purchases X million needles from Prym per year; 2. Prym purchases a minority share holding in Entaco; 3. The existing price structures in Europe are respected; 4. Market shares in Europe are respected; 5. Entaco does not develop into haberdashery; 6. Entaco withdraws Nähwelt brand; 7. Prym purchases all private label business from Entaco; 8. Entaco supplies all Prym's North American hand needle business; 9. Entaco supplies Milward business to Coats.” A further point 10 was added by Prym to Entaco's parameters which stated: “10. Entaco gives up its entire needle production. Prym supplies Entaco with goods according to Entaco's instructions.” According to Mr Martin Ellis of Entaco, these points were a reference to going back to having an agreement between Entaco and Prym Consumer broadly on the lines of the 1994 and 1997 purchasing agreements. Point 10 was added by hand by Mr A Stringer [Entaco] after Entaco received the reply from Mr Axel Prym dated 18 May 2000.

²¹⁴ F-1/38.036, p. 2201-2202. Within this context, Prym would commit itself to acquire a minority stake in Entaco. Prym stated that “a shareholding in Entaco (<25%) leads to control over a competitor. This could be strategically used for instance against Bohin and HEMLINE (...).” “Eine Beteiligung an Entaco (<25%) führt zur Kontrolle eines Wettbewerbers. Diesen könnten wir dann strategisch einsetzen z.B. gegen Bohin und HEMLINE [...].”

²¹⁵ F-1/38.036, p. 527, 2182, 2820.

undertakings or concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which directly or indirectly fix purchase or selling prices or any other trading conditions, limit or control production and markets, or share markets or sources of supply.

G.2. *Agreements and concerted practices*

G.2.1. The Courts' case-law and the Commission's practice

- (234) An agreement under Article 81(1) 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 conditional agreements in the bargaining process which lead up to the definitive agreement.
- (235) In its judgment in Joined Cases T-305/94 etc. *Limburgse Vinyl Maatschappij NV and Others v Commission (PVC II)*²¹⁶ the Court of First Instance stated that “*it is well established in the case-law that for there to be an agreement within the meaning of Article [81(1)] of the Treaty it is sufficient for the undertakings to have expressed their joint intention to behave on the market in a certain way*”.
- (236) Although Article 81 of the EC Treaty draws a distinction between the concept of “concerted practices” and that of “agreements between undertakings” or of “decisions by associations of undertakings”, the object is to bring within the prohibition laid down in that provision a form of coordination between undertakings which, without having reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical cooperation between them for the risks of competition²¹⁷.
- (237) The criteria of coordination and cooperation laid down by the case-law of the Court, far from requiring the elaboration of an actual plan, must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition, according to which each economic operator must determine independently the commercial policy which 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

²¹⁶ Joined Cases T-305/94 etc. *Limburgse Vinyl Maatschappij and Others v Commission (PVC II)* [1999] ECR II 931, paragraph 715.

²¹⁷ Case 48/69 *Imperial Chemical Industries v Commission* [1972] ECR 619, paragraph 64.

direct or indirect contact between such operators the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market²¹⁸.

- (238) Thus conduct may fall within the scope of 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 coordination of their commercial behaviour.²¹⁹ 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.
- (239) Although in terms of Article 81(1) of the Treaty the concept of a concerted practice requires not only concertation but also conduct on the market resulting from the concertation and having a causal connection with it, it may be presumed, subject to proof to the contrary, that undertakings taking part in such a concertation and remaining active in the market will take account of the information exchanged with competitors in determining their own conduct on the market, all the more so when the concertation occurs on a regular basis and over a long period²²⁰. Such a concerted practice is caught by Article 81(1) of the Treaty even in the absence of anti-competitive effects on the market.²²¹
- (240) 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.²²²
- (241) It is not necessary, particularly in the case of a complex infringement of long duration, that the Commission should categorise it as exclusively one or other of these forms of illegal behaviour. The concepts of agreement and concerted practice are fluid and may overlap. Indeed, it may not even be possible realistically to make any such distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while considered in isolation some of its manifestations could accurately be described as one rather than the other. It would however be artificial analytically to subdivide what is clearly a continuing common enterprise

²¹⁸ Joined Cases 40-48/73 etc. *Suiker Unie and others v Commission* [1975] ECR 1663.

²¹⁹ See also Case T-7/89 *Hercules Chemicals v Commission* [1991] ECR II-1711 (SVXI/II-83 FIXI/II-79), paragraph (256).

²²⁰ See Case C-199/92 P *Hüls v Commission* [1999] ECR I-4287, paragraphs 158-166.

²²¹ See also the judgment of the Court of Justice in Case C-199/92 P *Hüls v Commission*, [1999] ECR I-4287, at paragraphs 158-166.

²²² See, in this regard, the judgments of the Court of First Instance in Cases T-147/89, T-148/89 and T-151/89, *Société Métallurgique de Normandie v Commission*, *Trefilunion v Commission* and *Société des treillis et panneaux soudés v Commission*, respectively, at paragraph 72.

having one and the same overall objective into several discrete forms of infringement. A cartel may therefore be an agreement and a concerted practice at the same time. Article 81 lays down no specific category for a complex infringement of that type²²³.

(242) In the PVC II case, the Court of First Instance stated that “(i) *in the context of a complex infringement which involves many producers seeking over a number of years to regulate the market between them, the Commission cannot be expected to classify the infringement precisely, for each undertaking and for any given moment, as in any event, both those forms of infringements are covered by Article (81) of the Treaty*”²²⁴.

(243) An “agreement” for the purposes 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 judgment of the Court of First Instance, has pointed out in Case C-49/92P *Commission v Anic Partecipazioni Spa*²²⁵ it follows from the express terms of Article 81(1) of the Treaty that agreement may consist not only in an isolated act but also in a series of acts or a course of conduct.

G.2.2. Agreements and/or concerted practices in the present case

(244) It is demonstrated in the facts described in Section F of this Decision that Entaco, Coats and Prym have participated in numerous meetings either together or in a bipartite manner and that they signed a series of formally bilateral agreements having as their purpose to restrict competition which amounted to a tripartite agreement. It is also demonstrated that the fact that Coats participated in only one meeting after 1993 does not have any influence on the assessment of its participation in the agreements and/or concerted practices in the present case.

(245) The following agreements and concerted practices between Entaco, Coats and Prym were found to exist in the documents retrieved during the investigations: a) product market sharing agreements; and b) geographic market sharing agreements.

- The Heads of Agreement dated June 1994 which entered into force on 10 September 1994) between Prym and Entaco, whereby Entaco agreed to restrict its manufacturing and distribution activities in the haberdashery sector to hand sewing needles and special needles only. The Heads of Agreement was made conditional upon the entry into force of the Agreement for the sale and

²²³ Case T-7/89 *Hercules Chemicals v Commission*, [1991] II-1711 (SVXI/II-83 FIXI/II-79), paragraph 264.

²²⁴ Joined Cases T-305/94 etc. *Limburgse Vinyl Maatschappij and Others v Commission* (PVC II) [1999] ECR II 931, paragraph 696.

²²⁵ [1999] ECR I - 4125, at paragraph 81.

purchase of 10.1% of Entaco's shares by Prym and therefore on the one hand conditional upon the signing of the Entaco/J&P Coats Supply and Purchase Agreement and of the Agreement for the sale and purchase of a business (NIL's remaining assets) entered into between Coats and Entaco and on the other hand on the Distribution and Purchasing agreements between Prym Consumer and Entaco. Coats was therefore instrumental to the entry into force of the Heads of Agreement.²²⁶

- The 1997 agreement relating to the sale of 11,222 Ordinary Shares in the capital of Entaco Ltd, whereby Entaco and Prym Consumer renewed the product market sharing agreement originally contained in the Heads of Agreement (as well as in clause 2.3 of the Purchasing agreement) by limiting Entaco to being a specialist needle manufacturer.
- The 1994 and 1997 distribution and purchasing agreements between Prym Consumer and Entaco as well as the 1994 and 1997 Supply and Purchase agreements between Entaco and J & P Coats, whereby the three undertakings created a tripartite agreement aiming at sharing or helping to share the hard haberdashery product market and the geographic needle market.

(246) The Supply and Purchase agreements between Entaco and J & P Coats were the cornerstone of the tripartite agreement. Indeed, by making Entaco the exclusive supplier of Coats in the UK and the Italian market (even though the Italian market was divided in practice between Prym and Entaco according to Coats' orders), and by linking this exclusivity to Entaco's respecting the distribution and purchasing agreements signed together with Prym Consumer, the agreements were protecting Entaco from competition from Prym Consumer in the UK. At the same time, the agreements obliged Entaco to respect its commitment to restrict its product range to hand sewing and special needles and to supply exclusively Prym in continental Europe and not to solicit customers or even to accept passive sales. The Heads of Agreement between Prym and Entaco were conditional upon the signature of the supply and purchase agreements between Entaco and J & P Coats.

(247) The following agreements, namely the 1994 and 1997 Distribution agreements between Prym Consumer and Entaco²²⁷, the 1994 and 1997 Purchasing agreements between Prym Consumer and Entaco²²⁸ and the 1994 and 1997 Supply and Purchase agreements between J & P Coats Ltd and Entaco²²⁹, as well as the Heads of Agreement dated June 1994 which entered into force on 10 September 1994) between Entaco and Prym²³⁰ had a threefold purpose and effect:

- of sharing the European hard haberdashery market by limiting the business activity of Entaco Ltd to the hand sewing and special needles business, a fact which amounts to product market sharing between the hand sewing and special

²²⁶ F-1/38.036, p. 180.

²²⁷ F-1/38.036, p. 580, F-1/36.338, p. 6228 (1994) and F-1/38.036, p. 687 (1997).

²²⁸ F-1/38.338, p. 6253 (1994), F-1/38.036, p. 651 (1997).

²²⁹ F-1/38.338, p. 6275 (1994), F-1/38.036, p.360, p. 1741 (1997).

²³⁰ F-1/38.036, p. 539, 340 (1994).

needles market with the wider markets for needles and with other hard haberdashery markets;

- of segmenting the European market for needles by restricting Entaco Ltd to the United Kingdom, the Republic of Ireland and (partially) Italy and by preventing that undertaking from entering (most of) the Continental European market for needles, thereby effectively reserving that market for William Prym GmbH & Co. KG and its subsidiaries, a fact which amounts to geographic market sharing in the needles market;

(for Coats Holdings Ltd and J & P Coats Ltd:)

- notably, of protecting the undertakings' own needle brand (Milward) at the retail level from competition on behalf of Entaco Ltd through (i) the exclusive Supply and Purchase agreement with Entaco Ltd covering the United Kingdom and (partially) Italy, and through (ii) the imposition on Entaco Ltd of an obligation to respect the geographic market sharing agreement that undertaking had entered into with William Prym GmbH & Co. KG and its subsidiaries.

(248) Those patterns of conduct led to conditions of competition which did not correspond to the normal conditions of the market and which led to common conduct on these markets, with the result that participating competitors did not determine their policy on the market independently as is required by Article 81(1).

(249) The Commission concludes that, in the present case, the tripartite agreement and the preliminary meetings between Prym, Entaco and Coats as well as the bilateral meetings between Prym and Entaco may be characterised as agreements and/or at least concerted practices; it considers that over the period of time during which those agreements and concerted practices were run, they constitute a common overall enterprise for which all members of the cooperation bear responsibility, irrespective of their precise involvement from day to day.

G.3. *Single continuous infringement*

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

(251) The agreements and concerted practices found to exist form part of an overall scheme which laid down the lines of the parties' action in the market and restricted their individual commercial conduct with the aim of pursuing an identical anti-competitive object and a single economic aim, namely to restrict world-wide production by the allocation of volumes quotas in the relevant market of needles as well as distorting prices in other hard haberdashery markets like other sewing products and pins or fasteners by

preventing the entry of a new competitor in these markets. 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 would progressively manifest itself in both agreements and concerted practices.

- (252) 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.
- (253) 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.²³¹
- (254) In fact, as the Court of Justice stated in its judgment in Case *Commission v Anic Partecipazioni*²³², 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 series of acts or continuous conduct could also constitute in themselves an infringement of Article 81 of the Treaty²³³.
- (255) In the present case, the conduct in question undoubtedly constitutes a single and continuous infringement of Article 81(1) of the Treaty.
- (256) For the period from 10 September 1994 to at least 31 December 1999 the evidence referred to in this Decision shows the existence of a single and continuous collusion in the Community-wide market for needles, other sewing products and pins, and other fasteners between Coats, Entaco and

²³¹ See judgment of the Court of Justice in *Commission v Anic Partecipazioni*, at paragraph 83.

²³² Case C-49/92.

²³³ See the judgment of the Court of Justice in Case C-49/92, *Commission v Anic Partecipazioni*, paragraphs 78-81, 83-85 and 203.

Prym. 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 sharing or contributing to sharing their geographic and product fields of activity. The agreement to enter into this plan with a view to restrict competition can therefore be dated back to at least to 10 May 1993. The collusion was in pursuit of a single anti-competitive economic aim: preventing any competition on prices and customers by agreeing to share product and geographic markets in the relevant Community markets of needles, other sewing products and pins, and other fasteners. However the Heads of Agreement of 10 September 1994 is the first implementation of the agreements and concerted practices and would not have much effect without the several bilateral agreements that enforced the product and geographic market sharing agreements.

- (257) As in any legally binding civil contract, most of the formally bilateral agreements amounting to a tripartite agreement between Entaco, Coats and Prym and their subsidiaries are signed agreements, containing a starting date and a stated expiry date. The Heads of Agreement are the same and Coats was associated, as can be seen above, with its signing. They can consequently, by their commercial nature, be qualified as continuous in time. These agreements are also deemed to constitute a single infringement.
- (258) The meetings between Coats, Entaco and Prym took place between January 1993 and November 2001 on a very regular basis. However, Coats only participated in the trilateral preliminary meetings of 1993 and in other communications in 1994. For many meetings, the Commission has evidence of regular discussions leading to the agreements and/or to the concerted practices considered to infringe Article 81(1). The regularity of those meetings ensured the continuing implementation of the signed agreements.
- (259) The plan subscribed to by Entaco, Coats and Prym as well as their subsidiaries was developed and implemented over a period in excess of five years. A variety of complex and collusive arrangements, specific agreements and/or concerted practices were established, which pursued the same common purpose of eliminating competition between each other. The participants in this unlawful conduct knew that they were part of an overall plan pursuing a common unlawful object.
- (260) Given the common design and common objective of eliminating competition within the needle market and other hard haberdashery products, the Commission considers that the complex of collusive arrangements mentioned above has as its object the restriction of competition within the meaning of Article 81(1) of the Treaty. Those arrangements are described in detail in the factual part, Section F, of this Decision. This description is supported by widespread and clear evidence systematically referred to throughout the text.

G.4. Restriction of competition

- (261) The anti-competitive behaviour in the present case had the object and effect of restricting competition in the Community.

- (262) Article 81(1) of the Treaty expressly mentions as restrictive of competition agreements which share markets or sources of supply.
- (263) In the complex of agreements and concerted practices considered in the present case, the following elements can be identified as relevant in order to establish an infringement of Article 81(1) of the Treaty:
- product and geographic market sharing; and
 - participating in preliminary and/or regular meetings and having other contacts in order to agree on those restrictions and to implement and/or modify them as required.
- (264) These kinds of agreements and/or concerted practices have as their object the restriction of competition within the meaning of Article 81(1) of the Treaty. They are described in detail in the factual part, Section F, of this Decision.
- (265) It is settled case-law that for the purpose of application of Article 81(1) of the Treaty there is no need to take into account the actual effects of an agreement when it has as its object the prevention, restriction or distortion of competition within the common market. Consequently, it is not necessary to show actual anti-competitive effects where the anti-competitive object of the conduct in question is proved²³⁴.
- (266) In the present case, however, the Commission considers that, on the basis of the elements put forward in this Decision, it has also proved that the anti-competitive cartel decisions have been implemented and that therefore actual anti-competitive effects of the cartel arrangements manifested themselves.
- (267) Even if it is not necessary to show actual anti-competitive effects where the anti-competitive object of a conduct is proved, the anti-competitive effects of the cartel arrangements were established in section F of this Decision.
- (268) It is, in fact, proven, that Entaco was restricted from entering and competing in the continental European market for needles and to the manufacturing of hand sewing and special needles to the exclusion of other needles or other hard haberdashery products and notably other sewing products and pins.
- (269) It is also proven that Prym and Prym Consumer, as a result of their bilateral agreements with Entaco, were prevented from competing freely on the needle market in the UK and in the Republic of Ireland. Furthermore, this exclusion of Prym and Prym Consumer at the wholesale level in the UK and partially in Italy (that is, as regards Coats' business in Italy) was reinforced as a result of the Entaco/ Coats bilateral agreements whereby Entaco is made the exclusive supplier of Coats (in these two countries but not in the Republic of Ireland).
- (270) In the same manner it has been established that by imposing a geographic market sharing on Entaco with Prym through clause 2.2.3 of the Supply and Purchase agreement, Coats restricted its source of supply, since as a result of

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

this market sharing agreement Coats logically suffered from a less competitive supply, a fact which should have resulted in higher prices.

- (271) Through the Supply and Purchase agreement between Coats and Entaco, Coats had to source all its needles from Entaco in the UK and Italy. Therefore, Coats limited its source of supply to Entaco, thereby depriving itself of the possibility of sourcing its needle supplies from Prym or from other suppliers in the UK and Italy, and from other suppliers in continental Europe.
- (272) Conversely, if Coats had not limited its possibility of sourcing its supplies in the UK and in Continental Europe, Entaco would not have been protected against Prym in the UK and would not have agreed to enter into the market sharing agreement with Prym.²³⁵ Additionally, in Continental Europe Prym could have attacked Coats on Milward, by sourcing from Pony for example.
- (273) It should be borne in mind as well that at the origin of the tripartite agreements, Coats agreed to divest itself of its needle manufacturing and packaging business to Entaco suffering a shortfall of £5.8m.
- (274) The role of Coats in the tripartite agreement differs drastically from the cases contemplated in the Commission Decisions “Italian Cast Glass” and “Organic Peroxides” in which respectively “FIDES” and “AC Treuhand” were in both cases service undertakings in charge of organising and collecting statistical information in order to enforce the cartels. Coats plays a different role, as it is a party to the tripartite agreement emerging out of the formally bilateral agreements and a cornerstone of the infringements. Without Coats’ involvement it is proven in this Decision that the market sharing agreement between Prym and Entaco would not have come into being and in the same manner its own brand at the retail level would not have been protected against competition. However Coats never organised the daily business of the market sharing agreement since, as has already been demonstrated, it did not need to do so.
- (275) The economic size and the market shares of these three undertakings rendered the infringements extremely detrimental to output and price competition in the relevant markets concerned.
- (276) Whilst the anti-competitive object of the arrangements is sufficient to support the conclusion that Article 81(1) of the Treaty applies, the anti-competitive effects of these arrangements have nonetheless also been established and lead to the same conclusion.

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In a fax (F-1/38.036, p.182) from Mr Victor Barley of Entaco (Managing Director of Entaco at the time) to Mr John Griffiths of Prym dated 24 November 1993, Entaco stated that: “*We cannot lose sight of the fact that Coats and Prym are inter-related, Coats owning 25% of Prym. Therefore, an agreement between Entaco and Prym has to take into consideration the agreement between Entaco and Coats. The first paragraph of your draft has to be altered to encompass this and we would not seek to have “handcuffs on our wrists” in Europe if we were not cushioned by a supply agreement with Coats. This is the one area in our drafts where we are not prepared to move.*”

G.5. *Effect upon trade between Member States*

- (277) The continuing agreement between the manufacturers had an appreciable effect upon trade between Member States of the Community.
- (278) Article 81(1) of the Treaty is aimed at agreements which might harm the attainment of a single market between the Community Member States, whether by partitioning national markets or by affecting the structure of competition within the common market.
- (279) According to the Court of Justice judgment in the *Bagnasco* case, “*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*”²³⁶. 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,[but] it does require that it be established that the agreements are capable of having that effect*”²³⁷.
- (280) As demonstrated under the “Inter-State trade” heading in Section D of this Decision, the relevant markets of needles including hand sewing needles and craft needles, of other sewing and knitting products including pins and knitting pins and of other fasteners is characterised by a substantial volume of trade between Member States.
- (281) The application of Article 81(1) of the Treaty 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 States²³⁸.
- (282) In the present case, the cartel arrangements covered virtually all trade throughout the Community in the needle industrial sector, but also affected trade in other more important, hard haberdashery industrial sectors by preventing Entaco from entering those markets.
- (283) The product and geographic market sharing agreements and concerted practices between Entaco, Coats and Prym through which they allocated product and geographic markets between manufacturers and distributors in the Member States of the European Union are likely to explain the difference in prices for some Member States in the needles' industrial sector affected, as well as the normal trade flows within the European Community.
- (284) Furthermore, the 2004 Commission Notice (2004/C 101/07) entitled “Guidelines on the effect on trade concept contained in Articles 81 and 82 of

²³⁶ Cases C-215/96 and C-216/96, *Bagnasco*, [1999] ECR I-135, paragraphs 47 and 48.

²³⁷ C-306/96 *Javice*, [1998] ECR 1997, paragraphs 16 and 17; see also the Judgment of the Court of First Instance in Case T-374/94, *European Night Services*, [1998] ECR II-3141, paragraph 136.

²³⁸ Case T-13/89 *Imperial Chemical Industries v Commission* [1992] ECR II-1021, paragraph 304.

the Treaty”²³⁹ submits that cartel agreements such as those involving market sharing covering several Member States are by their very nature capable of affecting trade between Member States. Cross-border cartels harmonise the conditions of competition and affect the interpenetration of trade by cementing traditional patterns of trade. When undertakings agree to allocate geographic territories, sales from other areas into the allocated territories are capable of being eliminated or reduced.

- (285) The Commission Notice states as well that the effect on trade produced by cross-border cartels is generally, by its very nature, appreciable owing to the market position of the parties to the cartel. Cartels are normally only formed when the participating undertakings together hold a large share of the market, as this allows them to raise price or reduce output.

H. Undertakings involved

H.1. Principles applicable

- (286) In order to identify the addressees of this Decision, it is necessary to determine the legal entities responsible for the infringement. Measures enforcing Article 81 should be exclusively addressed to legal entities. Despite the fact that its provisions are applicable to undertakings, and the concept of an “undertaking” has an economic scope, only entities with legal personality can be liable for their infringements.
- (287) In this regard, 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.*”²⁴⁰
- (288) When an infringement of Article 81(1) the Treaty is found to have been committed over a given period of time, it is necessary to identify the natural or legal person who was responsible for the operation of the undertaking at the time of the infringement.
- (289) When an undertaking commits an infringement of Article 81(1) of the Treaty and later disposes of the assets that served as the vehicle for the infringement and withdraws from the market concerned, the undertaking in question will continue, if it is still in existence, to be held responsible for the infringement over the period considered.²⁴¹

²³⁹ OJ C 101, 27.4.2004, p. 81.

²⁴⁰ Case 48/69 *Imperial Chemical Industries v Commission* [1972] ECR 619, paragraphs 132-133.

²⁴¹ See Commission Decision of 23 April 1986 (IV/31.149-Polypropylene), OJ L 230, 18.8.1986, p. 1, para. 96; Commission Decision of 21 December 1988 (IV/31.865-PVC), OJ L 74, 17.3.1989, p. 1, para. 43; and Commission Decision of 13 July 1994 (IV/C/33.833-Cartonboard), OJ L 243, 19.9.1994, p. 1, para. 156. See also Case T-6/89 *Enichem Anic SpA v. Commission* (Polypropylene) [1991] ECR II-1623. Judgment upheld by the Court of Justice in Case C-49/92 P *Commission v. Anic Partecipazioni SpA* [1999] ECR I-4125. See also Case T-327/94 *SCA Holdings v. Commission* [1998] ECR II-1373.

- (290) It may be presumed that a wholly-owned subsidiary, in principle, necessarily follows the policy laid down by the parent company and thus does not enjoy such an autonomous position.²⁴²

H.2. Addressees of the Decision

- (291) Prym Consumer GmbH & Co KG directly and autonomously participated in the product and geographic market sharing agreements and concerted practices. Consequently, the group as a whole bears responsibility for the infringements and is therefore an addressee of this Decision.
- (292) William Prym GmbH & Co KG directly and autonomously participated in the product and geographic market sharing agreements and concerted practices and is the parent company of Prym Consumer GmbH & Co KG (100% ownership). Consequently, the group as a whole bears responsibility for the infringements and is therefore an addressee of this Decision. Prym in its reply to the Statement of Objections contests that it was only involved in the signing of the Heads of Agreement for purely formal reasons. It did so owing to the insistence of Entaco which refused to enter into the Heads of Agreement with Prym Consumer. In addition, the only member of William Prym's management to sign the Heads of Agreement was John Griffiths, the sole manager of Prym Consumer. However, the Commission cannot accept this argumentation, since it is a fact that William Prym signed the Heads of Agreements and was the 100% parent company of Prym Consumer and bears responsibility for the agreements Prym Consumer signed. Furthermore it must be remembered that the Heads of Agreements, as it is demonstrated in the Decision, set out the principles of the market sharing agreements that were developed in the other agreements of 10 September 1994 onwards.
- (293) Entaco Ltd directly and autonomously participated in the product and geographic market sharing agreements and concerted practices. Consequently, the group as a whole bears responsibility for the infringements and is therefore an addressee of this Decision.
- (294) Entaco Group Ltd, the parent company of Entaco Ltd (100% ownership) is held responsible for the infringements committed by Entaco Ltd. Entaco Group Ltd, moreover, signed up to the 1997 supply and purchase agreement with J & P Coats. Entaco Group Ltd is therefore an addressee of this Decision.
- (295) J & P Coats Ltd took part in the product and geographic market sharing agreements involving its parent company Coats Holdings Ltd, Prym Consumer GmbH & Co KG, William Prym GmbH & Co KG, Entaco Ltd and Entaco Group Ltd and enforced the product and geographic market sharing agreements and concerted practices. J & P Coats Ltd is therefore an addressee of this Decision.

Judgment upheld by the Court of Justice in Case C-297/98 P *SCA Holdings v. Commission* [2000] ECR I-10065.

²⁴²

Case 107/82, *AEG v. Commission* [1983] ECR 3151, paragraph 50.

- (296) Coats Holdings Ltd, the parent company of J & P Coats Ltd (100% ownership) is held responsible for the infringements committed by J & P Coats Ltd. Coats Holdings Ltd is therefore an addressee of this Decision.

I. Duration of the infringement

(297) The product and geographic market sharing agreements between Prym, Entaco Ltd and Coats lasted at least from the entry into force of the Heads of Agreement and from the signatures of the bilateral agreements on 10 September 1994, which in practice amounted to a tripartite agreement, until 31 December 1999, the date of termination of the Distribution and Purchasing agreements between Prym Consumer and Entaco Ltd. This termination put an end to the product and geographic market sharing mechanism between the three undertakings in question. The fact that the Supply and Purchase Agreement between two of the undertakings, Entaco Ltd and J & P Coats, which took part in the tripartite agreement, expired in September 2000 or the fact that Entaco Ltd and Prym met prior to the Heads of Agreement before 10 September 1994 or after 31 December 1999 is irrelevant when calculating the duration of the infringement. This is because the participation of the three undertakings and the parallel existence of, in particular, the 1994 and 1997 Distribution Agreements between Prym Consumer and Entaco²⁴³, the 1994 and 1997 Purchasing Agreements between Prym Consumer and Entaco²⁴⁴ and the 1994 and 1997 Supply and Purchase agreements between J & P Coats Ltd and Entaco²⁴⁵ were the *sine qua non* conditions of the infringements, and further because the Heads of Agreement associated the three undertakings in the same manner as the above mentioned agreements (Coats Supply and Purchase agreements being a condition of the signature of the Heads of Agreement). Similarly, the fact that Coats/Entaco 1994 Supply and Purchase agreement refers to the 1994 Entaco/Prym agreements even after the entry into force of the 1997 Entaco/Prym agreements on 1 April 1997 until Coats/Entaco renewed the Supply and Purchase agreement on 10 September 1997 is irrelevant, since the obligation on Entaco was still valid from 1 April 1997 until 10 September 1997 since its agreement with Coats was still in force and since the Prym agreements dated 1 April 1997 only extended the Prym agreements dated 10 September 1994. The duration of this infringement is therefore at least five years and three months.

I.1. Prym Consumer GmbH & Co KG

(298) Prym Consumer GmbH & Co KG, a subsidiary of William Prym GmbH & Co. KG, signed agreements and participated in meetings to ensure their implementation from 10 September 1994 until 31 December 1999 as set out in Sections F above. The Commission has evidence that the undertaking committed infringements under Article 81(1) during the latter period. The duration of the infringement is therefore five years and three months.

²⁴³ F-1/38.036, p. 580.

²⁴⁴ F-1/38.338, File 20. See annex to letter from Entaco dated 7.10.2003.

²⁴⁵ F-1/38.338, File 20. See annex to letter from Entaco dated 7.10.2003. For the 1997 agreement see F-1/38.036, p. 360 (supply and purchase agreement between Entaco Group Ltd and J & P Coats Ltd dated 10.9.1997).

I.2. William Prym GmbH & Co KG

(299) William Prym GmbH & Co KG, the parent company of Prym Consumer GmbH & Co KG, is a party and is held responsible for the agreements and concerted practices pursued in connection with the tripartite product and geographic market sharing agreements by its wholly owned subsidiary Prym Consumer GmbH & Co KG for the period from 10 September 1994 until 31 December 1999. The Commission has evidence that its subsidiary committed infringements under Article 81(1) during the latter period. The duration of the infringement is therefore five years and three months.

I.3. Entaco Ltd

(300) Entaco Ltd, a subsidiary of Entaco Group Ltd since March 1997, signed agreements and participated in meetings to ensure their implementation from 10 September 1994 until 31 December 1999 as set out in Section F above. The Commission has evidence that the undertaking committed infringements under Article 81(1) during the latter period. The duration of the infringement is therefore five years and three months.

I.4. Entaco Group Ltd

(301) Entaco Group Ltd, the parent company of Entaco Ltd as from March 1997, is held responsible for the agreements and concerted practices committed in connection with the tripartite product and geographic market sharing agreements by its subsidiary Entaco Ltd. The Commission has evidence that its subsidiary committed infringements under Article 81(1) during the period between 10 September 1994 and 31 December 1999. The duration of the infringement is therefore five years and three months.

I.5. J & P Coats Ltd

(302) J & P Coats Ltd, a subsidiary of Coats Holdings Ltd, signed agreements and participated in meetings to ensure their implementation from 10 September 1994 until 31 December 1999 as set out in Section F above. The Commission has evidence that the undertaking committed infringements under Article 81(1) during that period. The duration of the infringement is therefore five years and three months.

I.6. Coats Holdings Ltd

(303) Coats Holdings Ltd, the parent company of J & P Coats Ltd, is held responsible for the agreements and concerted practices committed in connection with the tripartite product and geographic market sharing agreements by its wholly owned subsidiary J & P Coats Ltd for the period from 10 September 1994 until 31 December 1999. The Commission has evidence that its subsidiary committed infringements under Article 81(1) during the latter period. The duration of the infringement is therefore five years and three months.

J. Application of 1984/83 Block Exemption Regulation

- (304) Coats in its reply to the Statement of Objections argued that the Supply and Purchase agreements from 1994 and 1997 would have been block exempted under Commission Regulation (EEC) No 1984/83 of 22 June 1983 on the application of Article 85(3) of the Treaty to categories of exclusive purchasing agreements²⁴⁶ as it did not involve more than two parties and the goods were supplied for resale. Coats also points out that the Coats/Entaco Supply agreements were bilateral in nature, the only parties to it being Entaco and Coats and the goods sold by Coats were for resale only.
- (305) The Commission notes that firstly as demonstrated above these agreements were only formally bilateral agreements. The Commission demonstrated above that that these agreements constituted a tripartite agreement.
- (306) In addition Coats does not take clause 2.2.3 into account in its argumentation; clause 2.2.3 refers to a third party, namely Prym. Article 2(1) of the 1984/83 Block exemption states that in order to apply the Block Exemption: “*no other restriction of competition shall be imposed on the supplier than the obligation not to distribute the contract goods or goods which compete with the contract goods in the reseller's principal sales area and at the reseller's level of distribution.*” Clause 2.2.3 imposes on Entaco an obligation to respect a geographic market sharing agreement with a third party, namely Prym.
- (307) It also has to be mentioned that Coats sold stocks of needles (“Chinese needles”) to Entaco in bulk and bought part of them back over a period of five years. Therefore the agreements were not exclusively supply and purchase agreements as argued by Coats.

K. Application of Commission Regulation No (EC) 2658/2000²⁴⁷

- (308) The horizontal agreements between Entaco and Prym/Prym Consumer could not benefit from the exemption provided with in Commission Regulation (EC) No 2658/2000 of 29 November 2000. As indicated under Section D of this Decision, Entaco and Prym/Prym Consumer are the major players and direct competitors in the very concentrated relevant markets and are therefore above the market share threshold set out under Article 4 of Regulation (EC) No 2658/2000

L. Application of Article 81(3)

- (309) The Heads of Agreement dated June 1994 and the 1994 and 1997 Purchasing²⁴⁸ and Distribution²⁴⁹ agreements between Entaco Ltd and Prym Consumer GmbH & Co. KG do not satisfy the tests of Article 81(3), which

²⁴⁶ OJ L 173, 30.6.1983, p. 5. Regulation as last amended by Regulation (EC) No 1582/97 (OJ L 214, 6.8.1997, p. 27).

²⁴⁷ Commission Regulation (EC) No 2658/2000 of 29 November 2000 on the application of Article 81(3) of the Treaty to categories of specialisation agreements, OJ L 304, 5.12.2000, p. 3.

²⁴⁸ F-1/38.036, file 20, see annex to Entaco's letter dated 7.10.2003.

²⁴⁹ F-1/38.036, p. 580.

apply cumulatively.²⁵⁰ They do not improve the production or distribution of needles, since the system of exclusive purchasing and distribution has the object, as was demonstrated above, of limiting output or sales and allocating markets and customers by means of sharing markets and customers; this system affects other relevant product markets such as other sewing products and pins and other fasteners. The sharing of markets reduces the choice available to customers and therefore also leads to higher prices and reduced output. Those agreements, together with the 1994 and 1997 supply and purchase agreements between Coats and Entaco, formed in practice a tripartite agreement enforcing the product market sharing agreements and producing and enforcing the geographic market sharing agreements.

M. Remedies

M.1. Article 7 of Regulation No 1/2003

- (310) Where the Commission finds an infringement of Article 81(1) of the Treaty it may require the undertakings concerned to bring such infringement to an end in accordance with Article 7 of Regulation (EC) No 1/2003.
- (311) In the present case the participants in the agreements and concerted practices went to considerable lengths to conceal their unlawful conduct. In these circumstances, the Commission maintains that it is not possible to declare with absolute certainty that the infringement had ceased.
- (312) Notwithstanding these observations, and for the avoidance of doubt, it is necessary to require the addressee undertakings that remain active in the needle market 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, in object or effect, is the same or similar.

M.2. Article 23(2) of Regulation (EC) No 1/2003 (Article 15(2) of Regulation N° 17)

- (313) Article 23(2) of Regulation (EC) No 1/2003 states that the Commission may impose fines on undertakings and associations of undertakings where, either intentionally or negligently, they infringe Article 81 or Article 82 of the Treaty. Article 15(2) of Regulation No 17, which was applicable when the infringement was committed, stated that the fine could not exceed 10% of the turnover in the preceding business year of each of the undertakings participating in the infringement. Article 23(2) of Regulation No 1/2003 applies the same limitation.
- (314) In fixing the amount of any fine the Commission must have regard to all relevant circumstances and particularly the gravity and duration of the infringement, which are the two criteria explicitly referred to in Article 15(2) of Regulation No 17 and in Article 23 (3) of Regulation No 1/2003. This basic

²⁵⁰ See Commission Regulation (EC) No 2658/2000 of 29 November 2000 on the application of Article 81(3) of the Treaty to categories of specialisation agreements, OJ L 304 of 5.12.2000, p. 3 and Commission Notice Guidelines on the applicability of Article 81(1) of the EC Treaty to horizontal cooperation agreements (2001/C 3/02), OJ C 3 of 6.1.2001, p. 2.

amount will be increased to take account of aggravating circumstances or reduced to take account of mitigating circumstances.

1. The basic amount of the fines

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

1.1. Gravity

- (316) In assessing the gravity of the infringement, the Commission will take account of its nature, its actual impact on the market, where this can be measured, and the size of the relevant geographic market. The Commission will also take account of the specific weight and, therefore, the real impact of the offending conduct of each undertaking on competition.

1.1.1 Nature

- (317) The conduct in question consists of a series of formally bilateral agreements that amounted to a tripartite agreement that had the object and the effect of sharing or contributing to share the geographic market for needles and the product market for needles and other haberdashery products. Such practices are by their very nature the worst kinds of violations of Article 81 of the Treaty. The infringement concerns a product and geographic market sharing between different markets and not simply an allocation of quotas within one market and that the product market sharing agreements intervene at different market levels, i.e. manufacturing and distribution (both at the wholesale and retail levels). The parties of the infringement operated entirely for their benefit and to the detriment of their customers and ultimately the general public.

1.1.2. The actual impact of the infringement

- (318) As demonstrated above (part F.4) the Commission considers the agreements were implemented have clearly been implemented and had an impact on the market. The infringing agreements related to the needle market and at least from 10 September 1994 to 13 March 1997 to the wider market for other haberdashery products as regards the product market sharing agreement.
- (319) Coats and Prym in their replies to the Statement of Objections limit themselves to argue that the hand sewing needle market is smaller than the needle market. However, the market concerned by the infringement was in fact much wider as described in Section D.5 of the Decision.
- (320) The impact of the infringements varied during the infringing period. As the product market sharing was covering a wider market from 10 September 1994 to 13 March 1997 as from 13 March 1997 to 31 December 1999, the impact has to be considered as lower in the second period. However the geographic scope of the market sharing was the same over the whole infringing period.

1.1.3. The size of the relevant geographic market

(321) The infringement took place in a substantial part of the common market affecting most of the Member States.

1.1.4. The Commission's conclusion on the gravity of the infringement

(322) Taking all these factors into account, the Commission considers that the undertakings concerned by this Decision have committed a very serious infringement.

1.1.5. Differential treatment

(323) An assessment of the specific weight, that is to say of the real impact of the infringement committed by each of the undertakings, in fact involves establishing the scale of the infringement committed by each participant.

(324) The three parties were equally active since the infringing agreements could only succeed as a result of the tripartite agreement between the three undertakings and their subsidiaries.

(325) However, during the infringing period, Prym and Entaco were the two most important manufacturers of needles with very limited existing competition (mainly coming from Needle Industries (India) Ltd), but Entaco had sales exclusively at the wholesale level and represented only one quarter of Prym's production share. At the wholesale level, Coats was the biggest distributor of needle products within the European Union. Prym was the European market leader in manufacturing of other hard haberdashery products such as fasteners and pins and one of the strongest competitors in the manufacturing of zip products. Coats was a leading distributor both at the wholesale and the retail levels of haberdashery products in Europe and worldwide, and one of the strongest competitors in the manufacturing of zip products. Coats and Prym were the main competitors at the retail level with their respective brands of hand sewing needles, namely Milward and Newey.

(326) On the basis of the foregoing, the appropriate starting amounts for the fines to be imposed in the present case are as follows:

- Coats and Prym, EUR 20m and

- Entaco, EUR 5m

1.2. Duration

(327) The infringement extended over a period of 5 years and three months as outlined under Section I.

(328) The starting amount should therefore be increased by 50% to take account of its duration. This leads to the following percentage increases to each undertaking's starting amount: 50% for Coats and Prym and to 50% for Entaco.

1.3. Basic amount

- (329) Taking into account gravity and duration the basic amount is set at EUR 30m for Coats and Prym, and EUR 7.5m for Entaco.

2. Mitigating circumstances

- (330) Prym in its reply to the Statement of Objections argues that it should benefit from mitigating circumstances since on the one hand it did terminate its distribution and purchasing agreements with Entaco on 31 December 1999 at its own initiative, namely before the termination anticipated in the 1997 agreements and on the other hand since a merger between Entaco and Prym Consumer could have been allowed at any time under the merger control laws of the Community and/or the Member States.
- (331) The Commission underlines the fact that the early termination of the infringing agreement was due neither to an intervention of the Commission nor to a decision by Prym to put an end to the infringement, but essentially a result of the increased manufacturing capacity of Prym in the Czech Republic, as Prym itself indicates in its reply to the Statement of Objections under the section “mitigating circumstances”. Moreover, the Commission notes that an early termination of the agreement is already taken into account in the duration of the infringement and that the argument of another legal option (the “merger”) is not admissible since it never happened.
- (332) Coats, in its reply to the Statement of Objections, claims that it should benefit from mitigating circumstances since it considers the relevant product market to be very small, since Entaco should be regarded as a ring leader, Coats’ turnover in the sector is very small in absolute terms, and Coats has gained nothing from either the product or the geographic market sharing and since it might be subject to fines in other pending Commission proceedings.
- (333) The Commission notes that these arguments cannot be accepted. The fact that another undertaking was a ring leader, which is demonstrably not the case here, has no bearing on the assessment of the involvement of Coats. Furthermore, Coats has notably gained economic advantage out of these infringing practices: the protection of its Milward brand and a stability in the needles and pins markets and other haberdashery markets. The size of the relevant markets and the effective economic capacity of offenders to cause significant damage to other operators are taken into account in the assessment of the gravity above.

3. Aggravating circumstances

- (334) There are no aggravating circumstances to be considered in this Decision.

4. Application of the 10% threshold

- (335) It goes without saying that the final amount calculated according to the following method, that is to say, the basic amount increased or reduced on a percentage basis, may not in any case exceed 10% of the world-wide turnover

of the undertakings, as is laid down by Article 23(2) of Regulation 1/2003 and Article 15(2) of Regulation No 17. The accounting year on the basis of which the world-wide turnover is determined must, as far as possible, be the one preceding the year in which the decision is taken or, if figures are not available for that accounting year, the one immediately preceding it.

5. Application of the Leniency Notice²⁵¹

(336) Only one undertaking applied for leniency according to the Commission notice on immunity from fines and reduction of fines in cartel cases. This undertaking is Entaco, which participated actively in the market sharing agreements. However, it is clear that Entaco allowed the Commission to find out about these infringements.

(337) Entaco was the only undertaking to inform the Commission of the existence of the market sharing agreements and to bring decisive evidence without which the market sharing agreements might not have been disclosed. At the time of the disclosure of this information, the Commission had not undertaken an investigation, nor did it have in its possession sufficient information to establish the existence of the market sharing agreements. Furthermore, Entaco has continuously co-operated with the Commission: it has been determined that Entaco has not compelled Coats' or Prym's companies to take part in the market sharing agreements, since the bilateral agreements were of a tripartite nature and needed the consent of the three parties in order to enter into force. In addition, the Commission considers that there was no evidence that Entaco was a ring leader.

(338) As a consequence, the Commission considers that Entaco meets the conditions set out in section B of the Leniency Notice.

(339) In conclusion, with regard to the nature of its co-operation and in the light of the conditions set out in the Leniency Notice, the Commission will grant a reduction of 100% from the fine that would otherwise have been imposed on Entaco, that is to say a reduction of EUR 7.5m.

6. Amount of the fine

(340) For these reasons the amount of the fine to be imposed in respect of the infringement identified in this Decision should be EUR 30m for Coats and Prym being jointly and severally liable with their subsidiaries. No fine should be imposed on Entaco.

HAS ADOPTED THIS DECISION:

Article 1

During the period extending from 10 September 1994 to 31 December 1999, William Prym GmbH & Co. KG, Prym Consumer GmbH & Co. KG, Entaco Ltd, Entaco Group Ltd, Coats

²⁵¹ OJ C 207, 18.7.1996, p. 4.

Holdings Ltd and J & P Coats Ltd infringed Article 81(1) of the EC Treaty by engaging in concerted practices and entering into a series of, formally bilateral, agreements which amounted to a tripartite agreement having the effect and the object of (i) sharing the European hard haberdashery market, a fact which amounts to product market sharing between the hand sewing and special needles market with the wider markets for needles and with other hard haberdashery markets, and (ii) partitioning the European market for needles, a fact which amounts to geographic market sharing in the needles market

Article 2

A fine of EUR 30m is hereby imposed on William Prym GmbH & Co. KG and on Prym Consumer GmbH & Co. KG, which are jointly and severally liable.

A fine of EUR 30m is hereby imposed on Coats Holdings Ltd and on J & P Coats Ltd, which are jointly and severally liable.

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

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

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

Article 3

William Prym GmbH & Co. KG, Prym Consumer GmbH & Co. KG, Entaco Ltd, Entaco Group Ltd, Coats Holdings Ltd and J & P Coats Ltd shall put an end to the infringements if they have not already done so and shall refrain from repeating any conduct as described in Article 1, and from adopting any measure having equivalent effect.

Article 4

This Decision is addressed to:-

- (i) William Prym GmbH & Co. KG Stolberg, Germany;
- (ii) Prym Consumer GmbH & Co. KG, Stolberg, Germany;
- (iii) Entaco Ltd, Studley, United Kingdom;
- (iv) Entaco Group Ltd, Studley, United Kingdom;
- (v) Coats Holdings Ltd, Stockley Park, United Kingdom; and
- (vi) J & P Coats Ltd, Stockley Park, United Kingdom.

This Decision shall be enforceable pursuant to Article 256 of the Treaty.

Done at Brussels, 26 X 2004

For the Commission
Mario MONTI
Member of the Commission