COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.09.2007
C(2007) 4257 final

COMMISSION DECISION

of 19.09.2007

relating to a proceeding under Article 81 of the EC Treaty

(Case COMP/E-1/39.168 – PO/Hard Haberdashery: Fasteners)

(ONLY THE ENGLISH, FRENCH AND GERMAN TEXTS ARE AUTHENTIC)

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(Only the English, French and German 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 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty[1], and in particular Articles 7(1) and 23(2) thereof,

Having regard to the Commission Decision of 17 September 2004 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised pursuant to Article 27(1) of Regulation (EC) No 1/2003 and Article 12 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty[2].

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions[3],

Having regard to the final report of the Hearing Officer in this case[4]

Whereas:

PART I – FACTS

1. INTRODUCTION

(1) This decision is addressed to the following undertakings and associations of undertakings:

– A. Raymond Sarl

– Berning & Söhne GmbH & Co. KG

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

2 OJ L123, 27.4.2004, p. 18.

3 OJ […], […], p. [..].

4 OJ […], […], p. […].

– Coats Holdings Ltd and its subsidiary:

  – Coats Deutschland GmbH

– Scovill Fasteners Inc. and its subsidiary:

  – Scovill Fasteners Europe SA

– William Prym GmbH & Co. KG and its subsidiaries:

  – Prym Inovan GmbH & Co. KG (hereafter "Prym Fashion GmbH & Co. KG" or "Prym Fashion")

  – Éclair Prym Group S.A.

– YKK Corporation [*] and its subsidiaries:

  – YKK Holding Europe BV

  – YKK Stocko Fasteners GmbH

– Fachverband Verbindungs - und Befestigungstechnik (VBT)

(2) These undertakings and associations of undertakings, to the extent described in this Decision, participated in one or several single and continuous infringements of Article 81(1) of the Treaty.

The Baseler-Wuppertaler and Amsterdamer co-operation on the markets for 'other fasteners' and attaching machines

(3) William Prym GmbH & Co. KG/Prym Fashion GmbH & Co. KG, Schaeffer GmbH, YKK Stocko Fasteners GmbH (formerly Stocko Verschlusstechnik GmbH & Co.), A. Raymond Sarl, Berning & Söhne GmbH & Co. KG, Scovill Fasteners Europe SA (formerly called Unifast), Scovill Fasteners Inc., and Fachverband Verbindungs- und Befestigungstechnick (VBT) took part in the co-operation within the frame of the so-called "Baseler circle" (at the European level), "Wuppertaler Circle" (at the German level) and "Amsterdamer Circle" (at the European level) from 24 May 1991 to 15 March 2001. During the meetings, the participants:

– agreed on coordinated price increases for 'other fasteners' and attaching machines (see section 2.1);

– exchanged confidential information on prices and the implementation of price increases.

(4) In addition, in the course of pursuing the main objective of agreeing on price increases, the participants exchanged views on the creation of a uniform European price list, discussed the fixing of minimum prices for 'other fasteners' and attaching machines (see section 2.1) and the fixing of discount rates for 'other fasteners' as an integral part of the efforts to create the uniform European price list.

(5) The products involved in these arrangements were metal and plastic fasteners ('other fasteners'), as well as attaching machines[5] (see section 2.1). The practices covered the whole territory of the Community.

The bilateral co-operation between Prym Fashion and Stocko/YKK [Corporation] **on the markets for 'other fasteners' and attaching machines**

(6) Prym Fashion GmbH & Co. KG on the one hand and YKK Corporation [*]and YKK Stocko Fasteners GmbH on the other co-operated between 13 August 1999 and 13 January 2003 on the 'other fasteners' and attaching machines market, and agreed in Europe **[*]** to:

– fix prices, notably minimum, average and target prices

– monitor price increases through the regular exchange of price lists and frequent bilateral contacts; and

– allocate customers by not undercutting each other's offers to clients

(7) The products involved in this co-operation were metal and plastic fasteners ('other fasteners'), as well as attaching machines (see section 2.1).

The tripartite co-operation between YKK Holding./[*], Coats/Coats Germany and Prym Fashion/Éclair Prym on the market for zip fasteners

(8) The Commission has identified a tripartite arrangement involving YKK Holding Europe B.V./**[*]**, Coats Holdings Ltd/Coats Deutschland GmbH and Prym Fashion GmbH & Co. KG/Éclair Prym Group S.A. dated between 28 April 1998 and 12 November 1999. In the framework of this infringement, the undertakings:

– exchanged price information

– discussed prices and price increases between themselves

– agreed on a methodology to fix minimum prices for standard products on the European market.

(9) The infringement concerned the European zip fasteners market (see section 2.1).

The bilateral co-operation between Coats and William Prym/Prym Fashion on the 'other fasteners' and zip fasteners markets

(10) The Commission is able to demonstrate the existence of a bilateral arrangement on European level involving Coats Holdings Ltd. on the one hand and William Prym GmbH & Co. KG and Prym Fashion GmbH & Co. KG on the other hand extending from at least 15 January 1977 to at least 15 July 1998 by which the two parties shared the haberdashery market by preventing Coats Group from entering the European market for 'other fasteners' (see section 2.1).

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[5] Attaching machines are used by customers to attach fasteners to textile garments and are as such complementary products to fasteners.

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The product

(11) The industry concerned is the business of manufacturing fastening products. This covers a large range of products, but can be easily divided into two main categories: i) zip fasteners and ii) other metal and plastic fasteners (hereafter 'other fasteners').

(12) Zip fasteners are designed for use in the apparel, garments, footwear and other speciality segments (industrial zips), and for home consumers' use (consumer zips). According to Eurostat's Prodcom Annual database, the production value in the Community as at 30 April 2004 ("EU15") of "slide fasteners" amounted to some EUR 460 million in 1997 and EUR 458 million in 1998. The agreements and concerted practices identified in this Decision concern, however, only industrial zips. Based on turnover data for the sale of zip fasteners **[*]**, the market size for industrial zip fasteners in 1997 is estimated to be EUR 441 million. For 1998 and 1999, based on turnover data for the sale of zip fasteners **[*]**, the market size of industrial zip fasteners is estimated to be EUR 413 and 424 million respectively.

(13) 'Other fasteners' include different types of press buttons/snap fasteners/press fasteners, clamp fasteners, hooks, eyelets, jeans buttons, rivets as well as accessories in metal and plastic for the leather and garments' industries. Other examples of products in this industry are clip fasteners, press studs, button moulds, button blanks and parts thereof. Buttons are made of plastic or of base metal and may be uncovered or covered with textile material. The members of the Baseler and Wuppertaler circles have been the main actors in the 'other fasteners' market in Europe. According to Eurostat's Prodcom Annual database, the production value for 2000 in EU15 of "base metal hooks, eyes, eyelets and the like, used for clothing, footwear, awnings, handbags, travel goods or other made-up articles excluding snap hooks, rivets, press studs and push buttons" was EUR 708 million, whereas the production value estimate for 2000 in EU15 of "press-fasteners, snap-fasteners, press-studs and parts therefore including those containing precious metal/metal clad with precious metal only as minor components" was EUR 87 million. The production value for 2000 in EU15 of "copper rivets, cotters and cotter pins and similar non-threaded articles (including of copper alloys) (excluding washers)" was EUR 24 million. On the basis of those Eurostat data, a conservative estimate of the market size for 'other fasteners' in the Community would be superior to EUR 750 million. The Eurostat product categories seem, however, to include products outside the scope of the cartels assessed in this Decision. On the basis of turnover data for the sale of 'other fasteners' **[*]**, the Commission estimates the size of the relevant 'other fasteners' market in the Community to be approximately EUR 191 million in 1997-2000 and EUR 160 million in 2002. The size of the worldwide market for 'other fasteners' can be estimated to EUR 620 million in 2002.

(14) 'Other fasteners' are attached by attaching machines specifically designed for this purpose. The manufacturers of 'other fasteners' offer the machines to their professional customers, often on a rental basis. Attaching machines are by their very nature complementary products to fastening products, since they are used to

attach the different parts of the fastening products together and to attach these products to the different types of textiles, leather goods and garments. Even though they cannot be considered as part of the same relevant market as the fastener products themselves, they are the subject of the same concerted practices and agreements. On the basis of turnover data for the sale and rental of attaching machines **[*]**, the Commission estimates that the market size for the attaching machines business in EU15 in 1998-2000 was EUR 4 million and in 2002 was EUR 3 million. On the worldwide level, the size of the attaching machine business is estimated to be at least EUR 20 million.

2.2. Undertakings and associations of undertakings subject to these proceedings

2.2.1. A. Raymond Sarl

(15) A. Raymond Sarl (hereafter "A. Raymond") is a French company, established in 1865, active in the field of metal and plastic technical product manufacturing. The focus of A. Raymond's activities is the production of fasteners for the automotive industry. A. Raymond sold its production activities for fastening products for the leather and textile industry to William Prym/Prym Fashion GmbH & Co. KG in 2000.

2.2.2. Berning & Söhne GmbH & Co. KG

(16) Berning & Söhne GmbH & Co. KG (hereafter "Berning"), is a German family-owned company (the Berning family), which was established in 1888 and was incorporated in 1959 as Berning & Söhne GmbH & Co. KG. In 1983, Berning established a subsidiary in France, Berning France Sarl. The focus of Berning's activities is the production and distribution of fasteners and decorative elements, but the company produces and sells limited amounts of tools, machines and services as well. Berning complements its product portfolio by purchasing approximately **[*]** of its goods from other manufacturers. Berning is active in the production of jeans buttons, press buttons, rivets, eyelets, decorative elements and technical components used in manufacturing.

2.2.3. Coats Holdings Ltd and its subsidiary (hereafter "Coats Group")

(17) 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 changed its name to Coats Viyella plc. In 2001 the undertaking changed its name to Coats plc and as of 3 November 2003 it was known as Coats Ltd. As of 1 July 2004, it changed its name to the current denomination, that is to say Coats Holdings Ltd. Coats is a leading manufacturer and supplier of industrial sewing and embroidery threads and the world's second largest supplier of zip fasteners after the YKK Group. Coats produces a full range of lightweight polyester, nylon, metal and moulded zips. Opti, now Coats' brand for zip fasteners, was acquired in 1988. Until 1988, Opti was an independent company active in the zip fastener industry. After 1988, the zip business of Coats was known as Coats Opti.

(18) Coats Deutschland GmbH (hereafter "Coats Germany" or "Coats Opti" in the leniency applications when referring to the German market) is a wholly-owned subsidiary of Coats. Before July 1998 it was called Coats Mez GmBH. Coats

Germany was notably responsible for the distribution of Opti brand zips for the German market.

2.2.4. Scovill Fasteners Inc. and its subsidiary (hereafter "Scovill Group")

(19) Scovill Fasteners Inc. (hereafter "Scovill USA") is a US based undertaking which is active in the closure fastener industry. It manufactures industrial fasteners for marine and industrial product manufacturers and setting tools and apparel fasteners for clothing and leather manufacturers.

(20) Scovill Fasteners Europe SA (hereafter "Scovill") has been a wholly owned subsidiary of Scovill USA since 1996 (after the acquisition of Unifast). The company is registered in Belgium. It is active in the field of buttons and parts. Scovill has two operating units, one of which produces a wide range of products including snap fasteners, and eyelets (Unifast-Scovill) and the other of which is a commercial trading company serving the needs of the French market for fasteners (Daudé-Scovill). Scovill was declared in liquidation by court judgment in June 2005.

2.2.5. William Prym GmbH & Co. KG and its subsidiaries (hereafter "Prym Group")

(21) William Prym GmbH & Co. KG, legal successor to William Prym-Werke GmbH & Co. KG as of 1 August 1994 (hereafter "William Prym"), is a European leading brand of hard haberdashery and sewing notions. William Prym has three divisions: Prym Fashion, which produces and distributes metal fasteners and zips to industrial users, Prym Consumer, which produces and markets a range of hand sewing needles, knitting pins, safety pins, consumer haberdashery and notions to the consumer markets and Prymtec which produces and markets a range of contact elements, surface technology and components for the electrical/electronics industry.

(22) Prym Inovan GmbH & Co. KG (known as Prym Fashion GmbH & Co. KG until 23 October 2006) (hereafter "Prym Fashion GmbH & Co. KG" or "Prym Fashion") is a wholly-owned subsidiary of William Prym, founded on 1 August 1994. Previously, Prym Fashion had the status of a not legally independent division of the Prym Group. Prym Fashion, together with its subsidiaries, markets metal fasteners and zips to industrial users. Prym Fashion has two fully owned subsidiaries, that is to say Schaeffer GmbH and Éclair Prym Group S.A., that were also involved in the anti-competitive agreements and concerted practices described in this Decision.

(23) In 2000, Schaeffer GmbH (hereafter "Schaeffer") was merged internally within the Prym Group with Prym Fashion, and ceased to exist. The Schaeffer brand is still used by Prym Fashion. Consequently, this Decision will not be addressed to Schaeffer but to Prym Fashion, which is fully liable for Schaeffer's conduct.

(24) Éclair Prym Group S.A.[6] (hereafter "Éclair Prym"), registered in Belgium, has been a 100% subsidiary of Prym Fashion since 1 January 2001, and was already owned as to a 50% stake in the firm from 1 July 1998 (with Bonduel Sarl an independent company owning another 50%). Before it was fully acquired by Prym Fashion in 2001, Éclair Prym was known as Bonduel-Prym and was effectively a Joint Venture between Bonduel Sarl and Prym Fashion. In a meeting dated 13 January 1999, it is stated that Bonduel-Prym was due to be fully acquired by Prym Fashion and **[*]** could be seen as having a preponderant role in the management of Bonduel-Prym. In the same manner, it is clear that in a meeting held **[*]** on 15 July 1998, it is **[*]** representing Prym Fashion that reached agreement with Coats on non competition in the zip market between Bonduel-Prym (Éclair Prym) and Coats. Bonduel-Prym will be therefore referred to as Éclair Prym (or alternatively Éclair Prym Group S.A.) in this Decision in the interest of simplicity. Éclair Prym is active in the zip fasteners industry.

2.2.6. YKK Corporation [*] *and its subsidiaries (hereafter "YKK Group")*

(25) YKK Corporation [*] (hereafter "YKK [Corporation]") is a Japanese company and a global leader in the market for zip fasteners as well as being active in the 'other fasteners' market. YKK [Corporation] operates in **[*]** countries. YKK [Corporation]'s fastening products operations are split between **[*]**.

(26) YKK Holding Europe BV (hereafter "YKK Holding"), is based in the Netherlands and has **[*]** subsidiaries, including YKK Stocko Fasteners GmbH, **[*]** and **[*]**. YKK Holding is a fully-owned subsidiary of YKK [Corporation] and operates in the **[*]** region. It was created and registered in 1988. YKK Holding's subsidiaries are active in the button and fastener manufacturing business. **[*]**.

(27) YKK Stocko Fasteners GmbH, formerly Stocko Fasteners GmbH and Stocko Verschlußtechnik GmbH & Co. KG (hereafter "Stocko"), is a German company based in Wuppertal. It was created in 1901 and was registered as YKK Stocko Fasteners in September 1995, when YKK Holding purchased **[*]** of its shares, before acquiring **[*]** ownership in March 1997. The undertaking is active in the production of jeans buttons, press buttons, rivets, eyelets, buckles and other fastening products, particularly for the garment and leather industries.

2.2.7. Fachverband Verbindungs- und Befestigungstechnik, VBT (hereafter "VBT")

(28) The association VBT promotes the interests of German undertakings active in the field of metal products, notably undertakings producing needles, metal and plastic fasteners such as press buttons, snap fasteners, jeans buttons, clamp fasteners, clip fasteners, eyelets, rivets, hooks and buckles, zips etc. It has been acting as a secretariat for the so called "Arbeitskreise" (work circles) consisting of the Baseler circle, the Wuppertaler circle and the Amsterdamer circle. It was

[6] Éclair Prym Group S.A. has been referred to as 'Éclair Prym Sarl' by the Commission in the course of these proceedings (including in the Statements of Objections of 15 September 2004 and of 7 March 2006). By letter dated 6 September 2007, Prym Group has informed the Commission that the company referred to by the Commission as 'Éclair Prym Sarl' in its two Statements of Objections should instead be referred to as 'Éclair Prym Group S.A.', the name under which the company has operated since 12 November 2001.

moreover very active in the the European Needlemakers Association ("E.N.A."), considered by VBT as one of its special departments alongside the Baseler, Wuppertaler and Amsterdamer circles. The E.N.A. covers industrial and domestic needles of all kinds.

(29) The following undertakings were members of the German association VBT on 1 June 2001: **[*]**.

2.3. Supply and Demand

(30) The products involved in these proceedings are zip fasteners, 'other fasteners' and attaching machines. This Decision concerns only industrial products, that is to say zips, 'other fasteners' and attaching machines sold (and rented in the case of attaching machines) to industrial customers.

2.3.1. Supply

(31) 'Other fasteners' and zip fasteners are mainly produced in the Community by Community manufacturers or Community subsidiaries of major worldwide haberdashery manufacturing groups. National subsidiaries for each of the pan-European companies exist in most Member States or at least in relatively small geographic areas. The market share structure differed over the period 1989 to 1991 from one Member State to the other, with, however, the recurrent presence of the main groups (with local subsidiaries on the national level). Further data regarding the market shares of the manufacturers of 'other fasteners' and zip fasteners are set out in the Annex to this Decision.

(32) Attaching machines form a separate market from 'other fasteners' and zip fasteners. Attaching machines are in general provided to the industrial purchasers of fastener products, often on a rental basis, by the manufacturers of fastening products.

2.3.2. Demand

(33) The main customers of the traditional range of zip fasteners and 'other fasteners' are within the garment industry, leather goods industry, shoe industry and cardboard industry.

(34) Demand is essentially industrial and wholesale since fasteners are an accessory to a further product and must be adapted to that product.[7] The garment and leather industries depend upon the evolution of the fashion industry and are highly sensitive to customer perception. Product differentiation is as a consequence a competitive advantage. The customers are in general supplied by the national subsidiaries of the producers of fastening technologies. Price differences between the various national markets are significant, adding to more than 100% price differentials in certain countries, all of which leads to conclusion that the markets for zip fasteners and 'other fasteners' are national markets.

[7] There is demand on the retail side, but this is essentially from the after-market for fixing damaged clothes or leather goods.

(35) As for attaching machines, preferences might exist among the customers between different types of machines (manual, semi- or fully automatic machines) according to the convenience of use, with automatic machines, even though performing the same jobs, likely to be more productive than manual machines. However, there is no evidence of the existence of a further relevant market breakdown. Information available to the Commission and in particular information relating to the Baseler and Wuppertaler meetings indicates that the market for attaching machines is Community-wide since machine prices were not broken down by Member State.

2.4. Inter-state trade

(36) The major haberdashery manufacturing groups are global companies that supply customers through their national subsidiaries in the Member States or at least in a relatively small geographical area.

(37) Furthermore, according to the data available from 1999, the members of the association VBT export 40% of their total exports, notably of press buttons and parts thereof, from Germany to other Member States, for example 25% to France; 16% to the United Kingdom; 11% to Belgium; 9.3% to the Netherlands; 9.7% to Portugal; and 6.7% to Italy. As for the import of VBT-products from Italy and France to Germany, it amounts to 39.6%, with most of the imported products coming from Italy (89.3%).

(38) Regarding zip fasteners, the main producers in the Community export a considerable amount of their production to other Member States. The figure varies, however, considerably from one company to the other and from one Member State to the other. From the production and export data provided by Éclair Prym, that is to say Prym Group's zip fastener business, exports from, for example, Belgium to other Member States in 2002 accounted for more than **[*]**percent of the company's Belgian turnover both in volume and value. Exports from France to other Member States in 2002 was more limited than in Belgium, but still accounted for approximately **[*]**percent of the company's total turnover (in value) in France. With regard to Coats (based on data covering both internal trade within group companies and external), the exports from Germany of industrial zips to other Member States in 2002 accounted for approximately **[*]**percent in volume and **[*]**percent in value of total sales. Exports from the United Kingdom and Ireland to other Member States in 2002 accounted for approximately **[*]**percent in volume and **[*]**percent in value of the company's total sales of industrial zips. As for YKK **[*]**, the inter-state trade within the Member States accounted for less than **[*]** percent of the company's turnover in value, **[*]**. If export accounted for less than **[*]** percent of **[*]** turnover in Germany, it accounted for approximately **[*]** percent of the company's turnover in Sweden.

(39) It can therefore be concluded that there are trade flows between Member States in relation to the products covered in this Decision.

3. PROCEDURE

(40) This Decision arises out of investigations carried out by the Commission on 7 and 8 November 2001 pursuant to Article 14 (3) of Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty[8] at the premises of several Community producers of hard and soft haberdashery and thread **[*]**. By means of those investigations and subsequent enquiries under Article 11 of Regulation No 17 (sent to participant undertakings to the agreements and concerted practices between April and June 2003), the Commission discovered documentary evidence in relation to 'other fasteners', attaching machines and zip fasteners, which showed that infringements of Article 81 of the Treaty had been committed by the addressees of the two Statements of Objections and this Decision.

(41) On 26 November 2001, William Prym made for itself and on behalf of Éclair Prym an application relating to zip fasteners under the Commission Notice on the non-imposition or reduction of fines in cartel cases [9](hereafter "the 1996 Leniency Notice").

(42) On 26 November 2001, Coats made an application relating to zip fasteners under the 1996 Leniency Notice. In addition to this application, Coats sent a further letter on 22 February 2002 **[*]** in which it confirmed its intention to co-operate with the Commission.

(43) On 8 August 2003, Stocko made an application relating to 'other fasteners' under the Commission Notice on immunity from fines and reduction of fines in cartel cases[10] (hereafter "the 2002 Leniency Notice"). The Commission acknowledged receipt of this application on 2 October 2003 and indicated to Stocko that the Commission could not grant non-imposition or reduction of fines due to the absence of evidence or even an admission of the infringements. The Commission gave Stocko the opportunity to submit an admission and/or evidence of the infringement.

(44) After 26 February 2003, the Commission addressed several requests for information under Article 11 of Regulation No 17 to a number of parties concerned.

(45) On 16 September 2004 the Commission addressed a Statement of Objections (hereafter "the first Statement of Objections") concerning 'other fasteners', attaching machines and zip fasteners to Prym Fashion GmbH & Co. KG, William Prym GmbH & Co. KG, Éclair Prym Sarl, **[*]**., **[*]**, YKK Stocko Fasteners GmbH (formerly Stocko Verschlusstechnik GmbH & Co.), YKK Holding Europe BV, YKK Corporation [*], Coats plc, A. Raymond Sarl, Berning & Söhne GmbH & Co. KG, **[*]**, Scovill Fasteners Europe SA (formerly called Unifast), Scovill Fasteners Inc., **[*]**and VBT. The CD-Rom containing the documents in the Commission file was sent on 1 October 2004.

(46) On 12 November 2004 William Prym GmbH & Co. KG submitted on behalf of all its subsidiaries a leniency application pursuant to which the company

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8 OJ 13, 21.2.1962, p. 204. Regulation as last amended by Regulation (EC) No 1/2003.

9 OJ C 207, 18.07.1996, p. 4.

10 OJ C 45, 19.2.2002, p. 3.

requested immunity or alternatively reduction of fines under the 2002 Leniency Notice regarding the sector of 'other fasteners' (hereafter "Prym's leniency application") and completed William Prym GmbH & Co. KG's initial leniency application under the 1996 Leniency Notice regarding the sector of zip fasteners. The submission of **[*]** consists of **[*]**.

(47) On 18 November 2004, William Prym submitted by fax a supplement to its leniency application of 12 November 2004. The evidence submitted with the supplement consists of **[*]**. On 3 January 2005, William Prym sent by electronic mail to the attention of the Commission **[*]**. On 4 January 2005, **[*]** was sent by electronic mail to the attention of the Commission. On 11 January 2005, William Prym sent by electronic mail **[*]**. The Commission acknowledged receipt of these different statements and annexes on 21 January 2005 by fax. Furthermore on 27 January 2005 William Prym sent by e-mail to the Commission **[*]**.

(48) On 18 February 2005, YKK Stocko Fasteners GmbH, YKK Holding Europe BV and YKK Corporation [*] submitted by fax an application for a reduction of fines in accordance with point 24 of the 2002 Leniency Notice (hereafter "YKK's leniency application"). The application concerns alleged cartels in relation to 'other fasteners' and zips in Europe. The submission consists of **[*]**.

(49) On 25 February 2005, YKK Stocko Fasteners GmbH, YKK Holding Europe BV and YKK Corporation [*] submitted by letter a supplement to the application, including **[*]**. The Commission acknowledged receipt **[*]** on 22 March 2005 by fax.

(50) The elements provided by the leniency applications of both William Prym GmbH & Co. KG and by YKK Stocko Fasteners GmbH, YKK Holding Europe BV and YKK Corporation [*] enabled the Commission to send a supplementary Statement of Objections (hereafter "the supplementary Statement of Objections"), as they were considered by the decisions of the Commission adopted on 14 December 2005 to constitute significant added value within the meaning of points 21 and 22 of the 2002 Leniency Notice.

(51) On 7 March 2006 the Commission addressed the supplementary Statement of Objections concerning 'other fasteners', attaching machines and zip fasteners to A. Raymond Sarl, Berning & Söhne GmbH & Co. KG and **[*]**, Coats Holdings Ltd and Coats Deutschland GmbH, Éclair Prym Sarl, VBT, Prym Fashion GmbH & Co. KG, **[*]**., Scovill Fasteners Europe SA, Scovill Fasteners Inc., William Prym GmbH & Co. KG, YKK Corporation [*], YKK Holding Europe BV, and YKK Stocko Fasteners GmbH. The CD-Rom containing the Commission file was sent to the parties on 13 March 2006.

(52) The supplementary Statement of Objections covered the same products as the first Statement of Objections and where necessary, corrected, refined, consolidated and widened the objections identified in the first Statement of Objections on the basis of the leniency applications submitted in 2004 and 2005 by Prym Group and YKK Group respectively. In the supplementary Statement of Objections the Commission did not systematically mention all the infringements defined in the first Statement of Objections notably when these infringements were not modified or amended through the leniency applications.

(53) The first and/or supplementary Statement of Objections was addressed also to **[*]**. Proceedings against those companies have, however, been closed in the absence of evidence that they would be liable for any infringement.

(54) The Oral Hearing took place on 11 July 2006. All parties with the exception of the association VBT and Scovill Fasteners Europe SA participated.

(55) With the agreement of the Hearing Officer, YKK Group submitted on the occasion of the Oral Hearing of 11 July 2006 a supplementary document to support the arguments in its reply to the Statements of Objections. A copy of the document was sent via fax to all parties on 10 July 2006 by the Commission. The undertakings concerned were given an opportunity to comment on the document submitted by YKK Group and asked to do so within one week of the date of the Oral Hearing.

4. DESCRIPTION OF THE EVENTS

4.1. Introduction

(56) The infringements discovered by the Commission form part of four overall schemes. Some of the arrangements found to exist concern the relevant markets for 'other fasteners' and attaching machines whereas others concern the market for zip fasteners. The first arrangement concerns William Prym, Prym Fashion, Schaeffer, Berning, A. Raymond, Scovill, Scovill USA and Stocko which met within the framework of the Baseler, Wuppertaler and the Amsterdamer circles. The circle meetings were organised by the association VBT. The products concerned by this first scheme are 'other fasteners' and attaching machines. Secondly, the Commission has discovered a co-operation scheme **[*]** between on the one hand Prym Fashion and on the other hand Stocko and YKK [Corporation]. The products concerned by this second scheme are 'other fasteners' and attaching machines. The third arrangement concerns the three main actors in the zip fastener market, that is to say YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym. The products concerned by this third arrangement are zip fasteners. Fourthly, the Commission has identified a bilateral market sharing arrangement between Coats and William Prym/Prym Fashion. The products concerned by this fourth scheme are 'other fasteners' and zip fasteners.

4.2. The Baseler-Wuppertaler and Amsterdamer co-operation

(57) This heading regroups a series of meetings named the Baseler circle, the Wuppertaler circle and the Amsterdamer circle that were held in different European cities and were organised by the VBT.

4.2.1. Participants and meetings

(58) According to the documents copied during the inspections, the Baseler circle met at 18 different occasions from 24 May 1991 to 19 August 2000. The Baseler circle was the framework for European concerted practices and agreements involving undertakings principally based in Germany, France, and Belgium.

(59) The members and participants at the various meetings are listed in Table 1 below:

Table 1: Baseler circle – Meetings and participants

Date, location	William Prym / Prym Fashion	Schaeffer	Stocko	Berning	A. Raymond	Scovill Unifast	VBT
24.5.91 Beaune	X	X	X	X	X	X	X
21.11.91 Basel Hotel Euler	X	X	X	(X)	X	X	X
28-30.5.92 Budapest Hotel Beke	X		X	(X)	X	X	X
25.11.92 Basel Hotel Euler	X	X	X	X	X	X	X
10-12.6.93 Florenz Hotel Brunnelleschi	X	X	X	X	X	X	X
17.2.94 Basel Hotel Euler	X	X	X	X	X	X	X
2-4.6.94 München	X	X	X	X	X	X	X
17.11.94 Basel	X	X	X	X	X	X	X
16.6.95 Brügge	X	X	X	X	(X)	X	X
2.11.95 Basel	X	X	X	(X)	X	X	X
16-18.5.96 Wien Hôtel de France	X	X	X	X	X	X	X
22.11.96 Basel, Hotel Euler	X	X	X	(X)	X	(X)	X
2.5.97 Venedig, Hotel Metropole	X	X	X	X	X	X	X
18-20.6.98 Zurich, Hotel St Gotthard	X	X	X	(X)	X	(X)	X
17.11.98 Basel Hotel Euler	X	X	X	(X)	X	(X)	X
21-23.5.99 Lyon Hotel Sofitel	X	(X)	X	(X)	X	X	X
1.12.99 Basel Hotel Euler	X	(X)	X	X	X	(X)	X
18-20.8.00 Amsterdam Grand Hotel Krasnapolsky	X		X	(X)		X	X

(X) means that a participant was duly invited but did not attend.
X means that a participant participated at the meeting in question.

(60) The participants in the Baseler circle were part of the senior management (**[*]**) of the various companies:

– William Prym/Prym Fashion: **[*]**

– Schaeffer: **[*]**

– Stocko: **[*]**

– Berning: **[*]**

– A. Raymond: **[*]**

– Scovill: **[*]**

– VBT: **[*]**

(61) According to the documents copied during the inspections, the Wuppertaler circle met on at least 15 different occasions from July 1991 to November 1997. The Commission has evidence of infringing discussions taking place as of the meeting of 9 September 1991. The members and participants at the various meetings are listed in Table 2 below:

Table 2: Wuppertaler circle – Meetings and participants

Participants	William Prym/Prym Fashion	Schaeffer	Stocko	Berning	VBT
09.07.91 in Düsseldorf	X	X	X	(X)	X
09.09.91 in Düsseldorf	X	X	X	X	X
31.03.92 in Düsseldorf	X	X	X	X	X
30.04.92 in Düsseldorf	X	X	X	X	X
21.10.92 in Düsseldorf	X	X	X	X	X
05.07.93 in Düsseldorf	X	X	X	X	X
05.10.93 in Düsseldorf	X	X	X	X	X
21.01.94 in Düsseldorf	(X)	X	X	X	X
10.10.94 in Düsseldorf	X	X	X	X	X
13.12.94 in Düsseldorf	X	X	X	X	X
13.10.95 in Düsseldorf	X	X	X	(X)	X
06.05.96 in Düsseldorf	X	X	X	X	X
13.11.96 in Düsseldorf	X	X	X	(X)	X
20.03.97 in Düsseldorf	X	X	X	X	X
25.11.97 in Ratingen	X	X	X	X	X

(X) means that a participant was duly invited but did not attend.
X means that a participant participated at the meeting in question.

.

(62) The participants in the Wuppertaler circle were part of the senior management (**[*]**) of the various undertakings:

– William Prym/Prym Fashion: **[*]**

– Schaeffer: **[*]**

– Stocko: **[*]**

– Berning: **[*]**

– VBT: **[*]**

(63) On the basis of documents copied during the inspections, the parties' submissions in response to the Commission's requests for information and **[*]**, the

Commission has evidence that the Amsterdamer circle met once after its establishment, that is to say on 15 March 2001 in Ratingen.

(64) The participants in the Amsterdamer circle were part of the senior management (**[*]**) of the various participating undertakings:

– William Prym/Prym Fashion: **[*]**

– Scovill/Scovill USA: **[*]**

– Stocko: **[*]**

(65) Scovill USA denies in its reply to the supplementary Statement of Objections that a formal meeting would have taken place on 15 March 2001, instead Scovill USA argues that the companies met for lunch, **[*]**.

4.2.2. The link between the Baseler, Wuppertaler and Amsterdamer circles

(66) As can be seen in the chronology of meetings described in section 4.2.5 the Baseler, Wuppertaler and Amsterdamer circle meetings were part of the same continuous attempt to distort competition. The main difference between the three circles was in their composition; the Wuppertaler circle gathered exclusively the German manufacturers, the Baseler meetings gathered in addition to the German manufacturers also other European manufacturers and the Amsterdamer circle, in its attempt to extend the cooperation of the Baseler and Wuppertaler circles, gathered the remaining players on the market in Europe. In the Wuppertaler circle, the focus was on matters relating to the German market, although non-German markets were also discussed, whereas in the Baseler and the Amsterdamer circles the focus was on Europe-wide matters.

(67) The link between the three circles can be noted at several occasions in VBT's meeting notes of the various Baseler and Wuppertaler circle meetings. Specific references to the Wuppertaler circle can be found in the notes covering the Baseler circle meetings of 24 May 1991 (Beaune), 25 November 1992 (Basel), 10-12 June 1993 (Florence), 16 June 1995 (Bruges), and 22 November 1996 (Basel). Similarly, specific references to the Baseler circle can be found in the notes covering the Wuppertaler circle meetings in Düsseldorf of 21 October 1992, 5 July 1993, 21 January 1994, 13 November 1996, and 20 March 1997. Finally, reference to the Amsterdamer circle can be found in VBT's meeting notes of the Baseler circle meeting of 19 August 2000.

(68) The link between the circles is clear from the annual 'price rounds' described in see section 4.2.5, in which price measures were discussed and agreed upon separately for the various national markets in Europe, with different percentage increases agreed upon for the different national markets. Within the framework of the Wuppertaler circle, and ahead of the next Baseler circle meeting (usually the meeting held in the autumn), the German undertakings agreed on a common proposal as regards the annual price increase for Germany to be presented (in general by **[*]** of VBT on behalf of the German undertakings) to their non-German counterparts in the next Baseler circle meeting. In addition to the German market, the Wuppertaler circle also discussed and agreed on proposals

for price increases in relation to "*export markets*", that is to say other Community [*] markets, to be subsequently discussed and agreed upon in the following Baseler circle meeting. It is, however, clear from VBT's meeting notes, that the final proposal for price increases on the non-German markets was left to the undertakings established in those markets (for example A. Raymond for France, Prym Group for Italy).

(69) **[*]**

(70) **[*]**

(71) It is therefore clear that the three circles formed part of the same co-operation between competitors. The Wuppertaler circle must be seen as a forum for the Germany-based undertakings to discuss and prepare the topics that would be discussed further with their non-German counterparts in the Baseler circle whereas the Amsterdamer circle should be seen as a continuation of the cooperation that to that date had taken place within the Baseler and Wuppertaler circles.

4.2.3. General functioning and principles

(72) According to **[*]**, the founding meeting of the Baseler circle took place already on 25 May 1953 in Basel. At the beginning, the Baseler circle met once a year, whereas later on the meetings became biannual, with one meeting taking place in the spring and another one in the autumn.

(73) **[*]**

(74) **[*]**

(75) **[*]**

(76) At the last Baseler circle meeting on 19 August 2000, involving representatives from Prym Fashion, Scovill, Stocko and the VBT, the participants agreed to continue the cooperation, which had to that date taken place within the framework of the Baseler and Wuppertaler circles within a new circle named “Amsterdamer Kreis”. The composition of the Amsterdamer circle reflected the evolution of the market structure for ’other fasteners’ and of the level of concentration on the various European markets. **[*]**According to **[*]** the activities stopped due to the lack of interest for continuing the talks.

(77) As can be seen in the chronology of the Baseler-Wuppertaler and Amsterdamer circle meetings, the members of the circles pursued two main objectives between themselves on a national (German) level within the framework of the Wuppertaler circle and on a European level within the framework of the Baseler and Amsterdamer circles, namely:

(a) co-ordination of price increases between the parties with respect to 'other fasteners' and attaching machines;

(b) exchanging confidential information on prices and the implementation of price increases.

(78) In pursuing those two objectives the participants in the Baseler and Wuppertaler circles also exchanged views on the creation of a uniform European price list, discussed the fixing of minimum prices for 'other fasteners' and attaching machines and the fixing of discount rates for 'other fasteners' within the framework of the discussions to create a European price list.

(79) As can be seen in section 4.2.5, the regular meetings between the members of the Baseler and Wuppertaler circles, during which information on prices and price increases were exchanged, were the focus of the implementation and the monitoring of the implementation of the price arrangements. Indeed, at the regular meetings, the members proposed and agreed on price increases for the next semester and simultaneously also reported on the application of the price increases in the past semester.

4.2.4. Evidence

(80) **[*]**

(81) **[*]**

(82) **[*]**

(83) **[*]**

(84) **[*]**

(85) **[*]**

(86) **[*]**

(87) **[*]**

(88) Apart from **[*]**, the Commission relies in this section to a large extent on hand-written notes of the Baseler and Wuppertaler circle meetings found during the unannounced inspections at the premises of the VBT. These notes were written, to the Commission's knowledge, by **[*]**, who was also in charge of the organisation of the Baseler and Wuppertaler circle meetings.

(89) In their replies to the Statement of Objections and/or the supplementary Statement of Objections Berning, Scovill and A. Raymond have contested the statements of the leniency applicants, the accuracy of the documentary evidence relied upon by the Commission (particularly VBT's meeting notes) and/or the conclusions that the Commission has drawn from them. The companies have argued that VBT's notes do not represent the actual contents of the meetings and do not prove that any agreement was reached between the parties. It is argued that the notes should be seen as personal notes of the author instead of as actual minutes of the meetings.

(90) Although the VBT's notes are not official meeting minutes, it remains a fact that these documents were drafted at the time the events were taking place, that is to say *in tempore non suspectu*, and show clearly and in detail the nature and

contents of the circle meeting discussions. The notes follow systematically the Agenda that had been set in advance of the various meetings. **[*]**

4.2.5. Chronology of the Baseler, Wuppertaler and Amsterdamer circle meetings

1991

(91) At the Baseler circle meeting in Beaune on 24 May 1991, the participants exchanged information on the implementation of price increases for 'other fasteners'. **[*]**of William Prym reported on the situation in England and stated that a price increase of 7% could not be reached because of competition by **[*]**. Under the agenda item on export markets the proposal to increase prices by 4.5% as from 1 April 1991 was discussed. It was stated that this increase could not always be achieved due to the unfavourable market situation, while **[*]**noted that a 3-4% price increase could partly be reached.

(92) From the same meeting notes as well as from a memorandum, entitled "Besprechungsnotiz" of 8 April 1991, it emerges that the members also co-ordinated rental prices for attaching machines. Different percentages were proposed by the German members depending on scale and machine type, with proposals ranging from from 5 to 15% and "new rents" remaining unchanged. Furthermore the members discussed how increases in rental prices would be accepted by customers. A comparison was made between France, where the machines were largely sold, and Belgium, where rents were implemented without difficulty. The possibility to classify machines was also raised and it was noted that this matter would be intensively discussed in the German circle (that is to say the Wuppertaler circle).

(93) At the Wuppertaler circle meeting in Düsseldorf on 9 September 1991, the participants agreed on price increases for 1992. With regard to the German market ("*inland*"), it was agreed that the aim was to raise "*special*" prices ("*Sonderpreise*") by 5.5% as of 1 February 1992. According to VBT's notes, the members agreed on the order in which they would introduce the increases on the market, starting with Prym and Schaeffer, followed by Stocko and Berning. It is furthermore noted that the "*main groups of products will be composed for press buttons"*, while the "*costs for colours, extras for minimum quantities*" needed to be regulated, and that price lists should be recalculated and harmonised. Finally, the members agreed that the price lists for "*rivets, hollow rivets, rotary fasteners, shoe eyelets, lift the dot etc.*" should be increased by 5.5%. A price increase of 5.5% was also agreed in relation to tools. As for export markets (that is to say non-German markets), the members agreed on proposals for price increases for 1992 in relation to the Benelux countries, 'Scandinavia', France, Austria, Portugal, Greece, **[*]**, **[*]** and Spain. For the first two groups of countries as well as for Portugal and Greece a price increase of 5.5% was envisaged as of 1 January 1992 whereas for the French market it was noted that the price increase would be set by A. Raymond (member of the Baseler circle), and for Austria a list would be drawn up by Prym.

(94) A note dated 8 October 1991, which apparently describes the contents of a discussion with Messrs **[*]**and **[*]** (Prym Fashion) on that date and found at the premises of the VBT, confirms the above price increase for Germany, as follows:

[*]

(95) Further, it emerges from this document that Stocko, Prym and Schaeffer had compared price lists, which, according to the note, had not contained substantial differences. Consequently, it was stated, that a '*revised list'* would be unnecessary. It is further noted in the document that **[*]** (of Berning) and **[*]**had been informed about this matter on 8 October 1991.

(96) At the Baseler circle meeting in Basel on 21 November 1991, prices for 1992 were agreed upon on the basis of reports by the various members. VBT's meeting notes show how **[*]**of VBT indicated a price increase of 5.5% on behalf of the German group, applicable in Germany as of 1 February 1992 (see recital (93)). For France a price increase of 3% as of 1 January 1992 was indicated. It was further noted that the price differences between France and Germany were increasing. The reason for this was said to be the competitive situation on the French market. Similar price differences were said to exist between France and Italy/Spain. For Belgium an increase of 3% was reported by **[*]**of Unifast, for **[*]**a price increase of 4.7% as of 1 January 1992 was indicated, and for the United Kingdom a price increase of 4.5 to 5% for 1992 was indicated by **[*]**of William Prym. Finally, an export price increase of 5.5 % proposed by the German group was '*generally accepted*'.

(97) In addition, as is clear from the VBT's meeting notes, the participants at this meeting agreed to establish a European price list, or "*Euro list*". The price list would contain a detailed comparison of every price by article in every European country. It also emerges that in this connection, the members considered the possibility to fix minimum prices, or as it is stated in VBT's notes: **[*]**

1992

(98) As can be seen from VBT's meeting notes, the members agreed at the Wuppertaler circle meeting in Düsseldorf on 31 March 1992 that the takeover of the Italian company Fiocchi by William Prym would have to be taken into account when increasing prices. Furthermore, the members discussed a proposal on how a European price list would be developed. Apart from stating specifically that the market prices for Italy and Austria should be added to such a list, it was proposed that the list should be worked out for all European countries, having a proposal by Stocko as a basis to compare each companies' prices with. A methodology was outlined according to which the first step would be to align the Europe list with the German domestic list ("*Inlandsliste*"). Then, corresponding discount rates (measured against the maximum prices) would be set for the individual countries (and possibly also individual product groups), with "*special customers*" ("*sonderkunden*") receiving higher deductions. The second step would take place "*in due course*" and would entail the removal of different national discount rates and the alignment of the various prices with the European price list level. It is also indicated that further discussions on the matter would take place at the following meeting on 30 April 1994 between **[*]**.

(99) The discussions on the European price list continued in the Wuppertaler circle meeting in Düsseldorf on 30 April 1992. The procedure to be followed when compiling this list was discussed once again. In VBT's notes of the meeting it is

mentioned that the "*domestic list*" ("*Inlandsliste*", that is to say the German list) should form the starting point for the European list. Discount rates for each country would then be determined with due account taken of structural differences. The possibility to divide countries into three or four groups was discussed and the following four phase methodology proposed:

[*]

(100) It is noted that the procedure to be followed was to first start with jeans buttons as a "*sample product group*" ("*Muster Produktgruppe*"). Members would examine a proposal by Berning and report back a few weeks later. Berning would then compile a list for Germany for jeans buttons. Discount rates would then be set for the Member States. The same scheme would be applied for the other product groups to be included in the list.

(101) At the Baseler circle meeting in Budapest on 28-30 May 1992, the participants exchanged information on the implementation of price increases. VBT's meeting notes indicate a price increase of 5.1% for **[*]**, as well as a 3% increase for France (report by **[*]**). The notes also show how the participants discussed rental prices for attaching machines and agreed on an increase ranging from 3 to 6% for both semi- and fully automatic machines.

(102) From the same notes and the meeting agenda, it also emerges how **[*]** (VBT) and **[*]** (Stocko) were expected to report to the members of the Baseler circle on the envisaged harmonised European price list. It was however noted that the matter would be postponed to the following meeting.

(103) At the Wuppertaler circle meeting in Düsseldorf on 21 October 1992, the participants agreed on price increases for 1993. With regard to the German market ("*inland*"), the members agreed on 3.5% across-the-board price increases for "*lists and special prices*" ("*Liste u. Sonderpreise*") as of 1 February 1993. The VBT's notes show how Prym would be the first company to introduce the increases. As for non-German markets, price increase were agreed upon for the markets in Benelux, Scandinavia, Austria, **[*]**and France, while leaving the decision on France to A. Raymond and on **[*]**to **[*]**:

[*]

(104) At this same occasion, the price increases for attaching machines applicable for 1993 were also discussed and agreed upon. The members also discussed the creation of a European price list. It was stated that at the 1992 general meeting in Budapest (that is to say the Baseler circle meeting of 28-30 May 1992, see recitals (101), (102)), the participants had decided to '*file the subject*', but independently of this fact, the German companies would continue the development of a European list and decided to develop draft listings for certain product articles. It is stated in VBT's notes that this work would include the companies Berning, Schaeffer and Stocko.

(105) At the Baseler circle meeting of 25 November 1992 in Basel, prices for 1993 were agreed upon on the basis of reports by the various members. **[*]**of A. Raymond indicated a price increase of 2% for press buttons as of 1 March 1993

and a 3.5% increase for rivets in France. With respect to the price increases, **[*]**further stated that a larger increase in France would be difficult to implement due to the competition from Fiocchi, that according to A. Raymond, was undercutting the company's prices by 30-50%. **[*]**concluded that unless harmonization of prices was achieved, A Raymond would not be willing to continue with the price increases. With regard to the company Fiocchi, it was noted that the company was endeavouring to increase its prices more than the general price increase, but would do so without endangering its previous market share.

(106) As for the other markets, the meeting notes of VBT show that price increases were indicated for **[*]** (3% increase as of February/March 1993), Belgium (2% increase as of February/March 1993 reported by **[*]**of Unifast), Germany (3.5% increase as of 1.2.1993 reported by **[*]**, see recital (103)), the United Kingdom (3.5% increase as of 1.6.1993 reported by **[*]** of William Prym). In addition, a 4% price increase was indicated and price lists exchanged for Portugal, Greece, **[*]** and **[*]**. It is stated in the notes that Fiocchi would raise its prices above this level.

(107) At this meeting the discussions on the creation of a European price list continued under the agenda heading "*Reorganisation and harmonisation of the European markets within the EC as of 1993*". From the notes it appears that the concept would be worked on further in the German circle, that is to say the Wuppertaler circle.

1993

(108) According to VBT's notes of the Baseler circle meeting in Florence on 10-12 June 1993, the members exchanged information on the implementation of price increases. It was noted that the price increases agreed for 1993 could only partly be implemented and that certain concessions had to be made on the percentages and dates of implementation. However, as it is noted in the meeting notes, the price objective was still to be aimed at in the long term. With respect to France it was, nevertheless, specifically noted that the 2% increase had been achieved. Furthermore, **[*]** of Unifast indicated that the company had not raised prices in 1993. As to the increases for the rental prices of attaching machines, the participants agreed that there were no problems in 1993 with regard to their implementation. It was agreed that the "lower rents" would be raised while "list rents" would remain unchanged.

(109) At the Wuppertaler circle meeting in Düsseldorf on 5 October 1993, the members agreed on price increases for 1994 and discussed the implementation of price increases in 1993. As for the implementation of the 1993 "*price round*" ("*Preisrunde*"), it was stated that the envisaged 3.5% price increase to be introduced as of 1 February 1993 (see recitals (103), (106)) could not be reached and increases would be a maximum of 1%. Members however agreed on a 2.8% across-the-board price increases for the German market as of 1.1.1994. In connection with this, the harmonisation of prices was discussed. The notes show that the aim was to harmonise certain price lists, starting with jeans buttons (tack buttons), on the basis of a list provided by Berning. As for non-German markets, it is noted that the (price) arrangement for Germany should be extended to the

non-German markets as well. As for attaching machines, the price situation on the market was discussed and it was decided that list prices and rents should not be changed in 1994.

1994

(110) At the Wuppertaler circle meeting in Düsseldorf on 21 January 1994, the members discussed the implementation of the price increases decided upon in their meeting of 5 October 1993 (see recital (109)). At this point the attitude of A. Raymond (member of the Baseler circle) was brought up and reference was made to a fax of 8 December 1993 on the matter. It was decided that the issue (what seems to be the reaction of A. Raymond to the proposed price increases for 1994) would be discussed further at the Baseler circle meeting of 17 February 1994. As regards the implementation of the agreed price increases, it was stated that there were relatively few problems with acceptance from smaller customers. The members reported, however, on difficulties in introducing price increases in relation to larger customers, which were the main focus of the 1994 '*price round*' both domestically (that is to say Germany) and in export markets (that is to say non-German market).

(111) The members also discussed the creation of a European price list, and VBT's meeting notes show the exchange of price information between the members with a view to finding an agreement first in relation to jeans buttons (tack buttons) and other articles for the jeans sector by March 1994 (on a proposal by Berning) and then with regard to the other products. The notes show that a previous proposal by Berning had not been accepted, the differences of opinion between Schaeffer and Stocko had been resolved and that an agreement on the issue was foreseeable. As to the list price proposals it was stated that it would have to be "*reasonable and at the upper edge of the market price level*".

(112) According to VBT's meeting notes of the Baseler circle meeting of 17 February 1994 in Basel, prices increases for 1994 were agreed upon on the basis of reports by the various members. In the notes it is stated that for France (reporting by **[*]**), Belgium (reporting by **[*]**) and **[*]**, no price increases were possible or envisaged whereas for Germany, on the basis of reporting by **[*]** (VBT), a 2.8% increase was indicated as of 1 February 1994 (see recital (109)). An increase of 2.8% on export prices as of 1.4.1994 was furthermore agreed (see recital (109)).

(113) At the Baseler circle meeting in Munich on 3 June 1994 the implementation of price increases was discussed. VBT's meeting notes show participants discussing the end of the "*price campaign*" ("*Preisaktion*") and noting it difficult to achieve an increase in prices. The members concluded that price increases should not be discussed for the moment as the clients reacted badly to them.

(114) At the Wuppertaler circle meeting in Düsseldorf on 10 October 1994, the members agreed on price increases for 1995 both for 'other fasteners' and attaching machines. In relation to 'other fasteners', a linear price increase of 4% for all products ("*list and special prices*" ("*Liste und Sonderpreise*")) as of 1 January 1995 was agreed upon for Germany as well as for export markets (that is to say non-German markets). As for attaching machines it was agreed that rental

prices would be raised by 4% in relation to new machines and 10% in relation to old machines and "*small parts/tools etc*" ("*Kleinteile*").

(115) According to the VBT's notes of the Baseler circle meeting of 17 November 1994 in Basel, price increases for 1995 were agreed upon on the basis of reports by the various members. Price increases were indicated for Germany (4% increase as of 1 January 1995 reported by **[*]**of VBT, see recital (114)), France (approx. 1.5% increase as of February 1995 reported by **[*]**of A. Raymond), Belgium (3-4% increase as of January 1995 reported by **[*]**of Unifast), the United Kingdom (4% increase as of January 1995 reported by **[*]**of Prym Fashion) and Italy (approx. 5% increase for 1995 reported by **[*]**of Prym Fashion). For **[*]**it was indicated that no general price increase would take place. During the same meeting, a linear 4% export price increase was agreed upon for all products and countries as of January 1995 (see recital (114)).

(116) The VBT's notes of this meeting also show the members discussing price lists in France and noting for the product group of grip-fix press buttons, that the ideas and structure for price lists used in Germany could also be used in France. It was stated that Stocko would prepare such a price list structure for France.

(117) At the Wuppertaler circle meeting in Düsseldorf on 13 December 1994, the members discussed prices for 1995 in relation to attaching machines. Price information was exchanged, and the fixing of minimum prices was envisaged. The minimum prices would be based on "*current prices*" ("*aktuelle Preise*") and on the various member companies' price lists that were being sent around.

(118) At this meeting, the implications for the Wuppertaler cooperation of YKK acquiring Stocko were also discussed. It is mentioned that **[*]**.

1995

(119) At the Baseler circle meeting in Bruges on 16 June 1995, the members discussed the implementation of price increases. It emerges from VBT's meeting notes that information on the implementation of price increases was exchanged at least for Germany (report by **[*]**of VBT), the United Kingdom (report by **[*]**of Prym Fashion) and **[*]**. The particiants also agreed that prices and rents for machines for 1996 should be discussed at the following Baseler circle meeting in the autumn. The members discussed their competitors and how to make them co-operate with the circle. It was stated that Stocko (which had just been bought by YKK) would attempt to exert a positive influence on YKK, to induce the company to cooperate in the Baseler circle.

(120) At the Wuppertaler circle meeting in Düsseldorf on 13 October 1995, price increases for 1996 were agreed upon for both 'other fasteners' and attaching machines. For the German market the increase for the various 'other fasteners' would be either 3.5% or 4.5% depending on the raw material used and introduced as of 1 January 1996. As for attaching machines a linear 2% rent increase was agreed. It is noted that the sales prices for attaching machines in 1996 would be 'frozen'. In the margin of the VBT's meeting notes it is further mentioned that **[*]** (of Berning), who had not been present in the meeting, had been contacted on the same day and had accepted the price increase. As for non-German markets

(export markets), it is noted that the agreement on Benelux and France would be subject to discussions with A. Raymond, but the objective for the German members would be to agree on the same increase as in Germany. According to the notes, **[*]**, who was not present at the meeting but had been contacted, had noted that a realistic increase for France would be 2.5%. As for **[*]** the matter was said to be very problematic and would possibly need to be settled '*bilaterally*'.

(121) According to VBT's meeting notes of the Baseler circle meeting of 2 November 1995 in Basel, the members agreed on price increases for 1996 on the basis of reports by the various members. Price increases were indicated for the United Kingdom (3.5-4.5% increase for 1996 reported by **[*]**of Prym Fashion), Belgium (maximum 2% increase for 1996 reported by **[*]**of Unifast), Germany (3.5-4.5% increase as of 1.1.1996 reported by **[*]**of VBT, see recital (120)), Italy (at least 6% increase for 1996 reported by **[*]** of Prym Fashion) and France (1.5-2% increase as of February 1996 reported by **[*]**of A. Raymond). For **[*]**, it was indicated that no price increase in 1996 was planned. It was also mentioned that individual increases should not be allowed to drift too far apart. **[*].**

(122) The French market was particularly in focus during the meeting of 2 November 1995. The members agreed to exchange information on prices: **[*]**

1996

(123) At the Wuppertaler circle meeting in Düsseldorf on 6 May 1996, the members discussed the implementation of price increases. It was noted that the price increase in Germany for 1996 had generally been implemented as planned. Members also discussed prices for attaching machines in 1996 and 1997 but noted that the decision for 1997 had to be made at the following meeting.

(124) At the Baseler circle meeting in Vienna on 16-18 May 1996, members exchanged information on the implementation of price increases. For France, A. Raymond reported on a price increase of 1.5% that had been introduced in February/March (see recital (121)). For Belgium, **[*]**of Unifast reported on a price increase of 3% which, as stated in the notes, was only feasible with 20 to 30% of the customers. For **[*]**, **[*]**reported of a 2-3% price increase for that year but noted that this increase faced major resistance from customers. Finally, for the United Kingdom, **[*]** reported on a price increase of 3.5% in January 1996, which had been implemented with success (see recital (121)). It was further agreed that the discussion on the 1997 prices and rents for attaching machines would be postponed to the following meeting.

(125) At the Wuppertaler circle meeting in Düsseldorf on 13 November 1996, proposals for price increases for 1997 in relation to 'other fasteners' and attaching machines were agreed upon. For the German market the members agreed on a proposal for an across-the-board price increase of 3.5% and "*up to 3% net*" ("*bis 3 % netto*") for all products ("*list and special prices*" ("*Sonderpreise und Liste*")). As for non-German markets, the price increase in 1997 for Austria, Benelux, Scandinavia and the United Kingdom was proposed to be the same as for Germany, while the decision on Southern Europe **[*]**was left to the Baseler circle

to decide upon. The VBT's notes show, however, that an increase of 2-2.5% was envisaged.[11]

(126) At the Baseler circle meeting of 22 November 1996 in Basel, price increases for 1997 were agreed upon on the basis of reports by the various members. For Germany, **[*]**of VBT indicated on behalf of the German members[12] a price increase of 3.5% to be introduced as of 1 February 1997 (see recital (125)). For France, **[*]**indicated a price increase of up to 2% for press buttons as of 15 February 1997. It emerges from the notes that **[*]** (of Stocko) considered that no price increases could be implemented in France in the first half of 1997, while **[*]**was not seen to be as negative on the matter. It is further stated that the German companies would follow "*R*", that is to say A. Raymond's proposal. For **[*]**, it was indicated that no price increases were possible. For Austria, Scandinavia and Benelux, the same price increase as for Germany was proposed, that is to say 3.5%, but it is noted that A. Raymond did not agree with the proposal in relation to Benelux (see recital (125)). For Italy, it was indicated that Fiocchi would increase its prices by 3-5%. In the meeting notes, a 2% "*objective*" ("*Zielvorstellung*") for 1997 is mentioned in connection with the discussions on Portugal, Spain and **[*]**, but it is then stated that this matter would need to be discussed again (see recital (125)). In addition, the participants agreed that rental prices for attaching machines should be reconsidered and a "*uniform arrangement*" ("*einheitliche Regelung*") would need to be found. It is noted that such discussions would take place in the Wuppertaler circles and the companies **[*]**and A. Raymond would be informed.

1997

(127) At the Wuppertaler circle meeting in Düsseldorf on 20 March 1997, the members exchanged information on the implementation of the 1997 price increases ("*1997 price round*" ("*Preisrunde 1997*")) for the German and non-German markets. At the meeting it was noted that the price increase for 1997 had been implemented as planned, in particular in relation to small customers, while larger customers, although accepting the prices, were "*exploiting the time frame*" ("*die Zeitschiene ausgenutzt*"). As for the non-German markets, it was noted that the markets in Portugal, Spain and **[*]**were problematic, with strong competition from '*outsiders*' ("*Außenseitern*") and unstable price levels. As for France, it was stated as follows:

[*]

(128) It is further noted, that **[*]** (of Stocko) would take up the subject of (price) "*undercutting*" ("*Unterbietungen*") by **[*]** and, with regard to the company "*UNIFAST/Scovill/Daudet*" (namely Scovill), it is stated that "*no troubles known*" in France. It is also noted in relation to discussions on attaching machine prices

[11] It is noted in the margin of the VBT's meting notes that Berning, who was not present at the meeting, had been contacted on 19 November 1996 and agreed with the various proposals for price increases (or had made certain own proposals).

[12] In a remark in the margin of the meeting notes it is noted that Berning had been informed about the price increases on 3 December 1996.

that no agreement had yet been reached (see discussion on the topic in the Baseler circle meeting of 22 November 1996, recital (126)).

(129) At the Baseler circle meeting in Venice on 2 May 1997, members exchanged information on the implementation of price increases in the various markets. **[*]**of VBT informed the circle members that the price increase in Germany for 1997 had been accepted without resistance. For France, **[*]**reported on a price increase of 1.9% (see recital (126)). For Belgium, **[*]** of Scovill informed the members that no price increases were possible for the moment. For the United Kingdom, **[*]** reported a 3% price increase for press studs, whereas for Italy it was stated that it had been difficult to increase prices.

(130) At the same meeting, the parties reviewed the business situation on the export markets in 1997-1998. In the Agenda for the meeting a distinction was made between non-problematic markets (for example Austria, Benelux, Scandinavia, United Kingdom) and critical markets (for example **[*]**, Southern Europe (Spain, Portugal)). It was noted that for unproblematic markets, it had been possible to implement a 3.5% price increase (see recital (126)), whereas for critical markets, which were reported to be problematic, basic rules for market and price policy, or a "*general arrangement*" ("*Generelle-Regelung*"), would have to be found. In addition to such a general arrangement, the members agreed that bilateral agreements would be entered into in individual cases.

(131) At the Wuppertaler circle meeting of 25 November 1997 in Ratingen, proposals for price increases for 1998 in relation to 'other fasteners' and attaching machines were agreed upon. In relation to the German market a 3% price increase for all products was proposed ("*list*" prices) to be introduced as of 1 February 1998. As for non-German markets, the same increase as for Germany was proposed for Austria, Scandinavia, Benelux, France and the United Kingdom. As for Southern Europe (including Portugal and **[*]**) the situation was said to be problematic and an agreement was currently not possible. The members further agreed on price increases for new and old attaching machines as well as tools for 1998.

(132) Evidence of price exchanges between the members can be found in a fax message (found at the premises of the VBT) and addressed to **[*]**dated 2 December 1997 (sender unknown). According to this fax, one harmonised price list with minimum prices was already in force and an additional list would be presented for "*small clients*" ("*Kleinkunden*").

1998

(133) At the Baseler circle meeting in Zurich on 19 June 1998, the members exchanged information on the implementation of price increases. According to VBT's meeting notes, **[*]**of VBT reported that the German market was showing great resistance to price increases, with large companies refusing it. **[*]** reported that in France the price increases had been introduced in March 1998, but with major problems. It was further stated that there were problems in harmonising the price levels in the various European countries. As to the increases of rental prices for attaching machines, the German members, together with A Raymond, concluded that no increase was possible for the time being. **[*].**

(134) At the same meeting the members discussed the market behaviour of Scovill (Unifast) and Berning. According to VBT's meeting notes, it was agreed that **[*]** (Prym Fashion) and **[*]** (Stocko) would talk to the companies whose behaviour did not appear to be in line with the expectations of the other members of the circle:

[*]

(135) At the Baseler circle meeting of 17 November 1998 in Basel, price increases for 1999 were agreed upon. For the German market a 0 to 3% price increase (depending on type of customer) was indicated. This arrangement would be extended to other markets as well, including Benelux and Scandinavia. With regard to "*critical markets*" ("*Kritische Märkte*") (for example **[*]** Southern European markets), the members agreed that no price changes were possible. During that same meeting, the members also discussed the sales and rental prices for attaching machines, agreeing that no increases would be made in 1999.

(136) From VBT's meeting notes of this meeting it also appears that under the agenda item "*Conversion to Euro schedule and harmonisation*", a uniform price list in Europe was again discussed. Noting the diversity of prices in Europe, the members agreed that the discussions on a uniform price list in Europe would have to be continued.

1999

(137) At the Baseler circle meeting in Lyon on 22 May 1999, the members exchanged information on the implementation of price increases. **[*]**of VBT reported a price increase for Germany of 0 to 3% (depending on customer type) for all products and materials as of April 1999 (see recital (135)). From VBT's meeting notes it emerges that price developments in Germany were also discussed on the basis of a report/statement by **[*]**. It is noted that market resistance had impeded implementation, of what, to the Commission's understanding, cannot have been other than price increases. It is further stated in the meeting notes that there was discussion on "*customer structure, size and behaviour as well as strategic thoughts*" on the topic.

(138) During this meeting, the members also sought to reach an agreement on pricing policy and maintenance, by establishing minimum prices. The proposal that was agreed upon was to look at minimum prices on a product by product and market by market basis. Each participant would send their proposals to VBT, who in turn would have the responsibility for the coordination and organisation. The products to be looked at would be: s-spring press buttons, grippers, jeans buttons and ring spring press buttons. **[*].**

(139) At a Baseler circle meeting in Basel on 1 December 1999, the market situation in the various national markets and the price increases for 2000 were discussed and agreement was reached on the rental policy for attaching machines. With regard to the "*organised*" export markets ("*organisierte Märkte*"; for example Austria, Benelux, Scandinavia), the members agreed that price increases could only be implemented to a limited extent and that the existing price levels with the main customers should be maintained in 2000. With regard to small customers, the

participants agreed that an increase of 1 to 3% was possible. As for the non-organised markets (for example **[*]**, Southern Europe), it emerges from VBT's notes that the matter could not be resolved at the time. **[*].**

2000

(140) At the last meeting of the Baseler circle, held on 19 August 2000 in Amsterdam, the usefulness of the Baseler circle as a platform for the classification and harmonisation process for products was acknowledged and it was stated that the aim was to "find" ("*Preisfindung*") prices on the European level and market. When discussing the situation on the various national markets, it was stated that a moderate price increase for 2000/2001 was required due to the increase in the cost of raw materials.

(141) At this last meeting, **[*]** (of Prym Fashion) made a slide presentation entitled "*Status Quo Basel Circle*" which was distributed after the meeting to all members by **[*]** (VBT). In this presentation the objectives of the Baseler circle cooperation were outlined. According to the slides, one of the purposes of the cooperation was: "*Discussion and decision on general measures regarding pricing policy (product and system in Europe)*", which obviously presupposed an exchange of price information between the participants. Other objectives that were outlined were the "*Exchange of information about non-participating competitors*", as well as "*discussion and exchange about the actual business of the branch in Europe"* which was further described as relating to the "*situation of competitive behaviour of non-participants"*.

(142) Although **[*]** slide presentation was shown at the last meeting of the Baseler circle, that is to say 19 August 2000, the Commission considers that the presentation reflects the objectives of the Baseler circle as a whole. In fact, the aim with the presentation seems to have been to remind the participants of the main objectives of the Baseler cooperation. As **[*]** states in **[*]** slide presentation: **[*]**

(143) At this last Baseler circle meeting, involving representatives from Prym Fashion, Scovill and Stocko, agreement was reached on continuing the cooperation, within a new circle named "Amsterdamer Kreis". According to VBT's meeting notes, the new circle, with meetings to be held twice a year, would revive the cooperation between the main three remaining market players under the direction and supervision of the business association VBT. **[*]** (of Berning) had been invited to the Baseler circle meeting of 19 August 2000, but due to reservations of the other participants on the presence of **[*]** at the meeting, **[*]** participation came to an end.

(144) **[*]**

2001

(145) **[*]**

(146) **[*]**

4.2.6. The end of the infringement

(147) The Baseler, Wuppertaler and Amsterdamer circles were part of the same continuous scheme. The Baseler circle represented the European side of the arrangement whilst the Wuppertaler circle represented the German side. Despite the difference in their composition, the discussions in one circle were reflected in the other circle. This is especially true for the annual 'price rounds' that were prepared in the Wuppertaler circle (proposals for Germany and other EC markets) in advance of the next Baseler circle meeting (normally the meeting in autumn), in which all proposals were presented and agreement reached with regard to the various national markets. The Amsterdamer circle, that brought together the three remaining major actors on the market, namely Prym Fashion, Stocko, and Scovill/Scovill USA, was an extension of the successful cooperation that had taken place within the Baseler and Wuppertaler circles.

(148) The Commission has evidence that the Baseler-Wuppertaler and Amsterdamer cooperation lasted at least until 15 March 2001, which is also the last date of infringement for the three Amsterdamer circle members, that is to say Stocko, Prym Fashion and Scovill/Scovill USA. For Berning and the VBT, the infringement came to an end on 19 August 2000, whereas for A. Raymond the infringement came to an end on 1 December 1999.

4.3. The bilateral cooperation between Prym Fashion and Stocko/YKK [Corporation]

4.3.1. General organisation and functioning

(149) This bilateral cooperation involved on the one hand Prym Fashion and on the other Stocko and YKK [Corporation] and ran in parallel with the Baseler and Amsterdamer circles and in the period immediately following their termination.

(150) Within the framework of this cooperation the two parties agreed at Community level **[*]** to:

– fix prices, notably minimum, average and target prices;

– monitor price increases through the regular exchange of price lists and through frequent bilateral contacts; and

– allocate customers by not undercutting each other's offers to clients.

(151) The products concerned in this arrangement are 'other fasteners' and attaching machines.[13]

[13] Prym has argued **[*]** that while various types of press buttons (grip-fix, s-spring and ring spring) were discussed within this bilateral scheme, the scheme overwhelmingly concerned a particular type, that is to say grip-fix press buttons, as well as jeans buttons and rivets. The Commission notes, however, that although Prym argues that the arrangements concerned primarily grip-fix press buttons, it is clear from

(152) [*]

4.3.2. Evidence

(153) [*]

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(155) [*]

(156) [*]

4.3.3. Chronology and the relevant events

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(158) **[*]**

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(162) **[*]**

(163) **[*]**

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(169) **[*]**

(170) **[*]**

(171) **[*]**

(172) **[*]**

(173) **[*]**

(174) **[*]**

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the contemporaneous documents in the Commission file that the price fixing concerned various types of press buttons (grip-fix, s-spring and ring spring) as well as jeans buttons and rivets. Interestingly, the documents outlining the price fixing mechanism refer to "products", 'other fasteners', in general **[*]**.

(175) **[*]**

(176) **[*]**

(177) **[*]**

4.3.4. The end of the infringement

(178) Prym Fashion and Stocko/YKK [Corporation] agreed **[*]** to fix prices (minimum, average and target prices), to monitor price increases through the regular exchange of price lists and through regular bilateral contacts and to allocate customers by not undercutting each other's offers from 13 August 1999 until at least 13 January 2003.

(179) **[*]**. The Commission has therefore evidence to show that the infringement lasted at least until 13 January 2003.

4.4. The tripartite co-operation between YKK Holding/[*], Coats/Coats Germany, Prym Fashion/Éclair Prym

4.4.1. Introduction

(180) **[*]**

(181) **[*]**

(182) The objective of the undertakings was to establish minimum prices for the standard products across Europe by the end of 2000 following the methodology agreed upon by Coats, Prym and YKK Groups.

(183) In the course of achieving this, during the meetings the participants:

– exchanged price information among the undertakings;

– discussed prices and price increases;

– agreed to establish and worked on the implementation of the methodology to set minimum prices for their standard products across Europe.

(184) YKK Group, Coats/Coats Germany and Prym Fashion/Éclair Prym met several times in 1998 and 1999 to discuss prices and sales, and to agree on the methodology to set minimum prices for zip fasteners in Europe.

(185) **[*]**

(186) **[*]**

4.4.2. Chronology

(187) **[*]**

(188) **[*]**

(189) **[*]**

(190) **[*]**

(191) **[*]**

(192) **[*]**

(193) **[*]**

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(195) **[*]**

(196) **[*]**

(197) According to the email of 4 June 1999, which was found during the inspections at the premises of Coats Group **[*]** it was agreed during the meeting of 2 June 1999 that the parties would establish minimum price levels for their standard products across Europe by the end of 2000. They would reduce the price differentials between Member States by ensuring that standard products would not be priced at less than 85% of a German benchmark price. It is argued that YKK Group agreed to prepare a list of standard products which would be worked on at the following meeting, envisaged for 29 September 1999.

(198) The agreed methodology was the following: select standard products as defined by YKK, use German market prices in euro as benchmark, set 85% of these benchmark prices as the minimum to be achieved, define priority markets and take appropriate action on the markets. The meeting of 29 September 1999 was planned to gather together the same participants and to take place at the same location as the meeting of June. The aim was to find an agreement between the parties on the key elements of the methodology and thereafter to take actions for implementing it.

(199) **[*]**

(200) **[*]**

(201) **[*]**

(202) **[*]**

(203) **[*]**

(204) **[*]**

(205) **[*]**

(206) **[*]**

(207) **[*]**

(208) **[*]**

(209) **[*]**

4.4.3. The end of the infringement

(210) There is no evidence indicating that the infringement still lasts, but, according to the documents in the Commission file **[*]**, the price discussions between the three undertakings, YKK Group, Prym Fashion/Éclair Prym and Coats/Coats Germany, were held from 28 April 1998 to at least 12 November 1999.

4.5. The bilateral co-operation between Coats and William Prym/Prym Fashion in the 'other fasteners' and zip fasteners markets

4.5.1. Introduction

(211) The bilateral co-operation between Prym and Coats had been initiated in the mid-1970's at the highest level involving senior general managers, **[*]** of Coats and **[*]** of Prym. Several subsidiaries of William Prym were directly involved in talks or agreements with Coats, for example Prym Consumer/Prym Fashion participated in a meeting with Coats in July 1998. In these latter cases, the highest level of management was always involved.

(212) Coats Group manufactures the following products: industrial thread, industrial embroidery, hand knitting thread, hand sewing thread, crochet thread, embroidery thread and industrial and consumer zips under the "OPTI" brand (since it acquired "OPTI" in 1988 and previously under its own brand). Coats Group was manufacturing needles via its wholly owned subsidiary Needles Industries Ltd ("NIL") until February 1991 when it sold its manufacturing assets to Entaco Ltd. Coats Group retained the needle finishing and packaging business until it was sold to Entaco in September 1994.

(213) Prym Group mainly manufactures needles, accessories to needles, knitting pins, crochet hooks, non-sew press fasteners, eyelets, rivets, button and snap fasteners, garment fasteners and accessories, elastics and accessories, non-elastic tapes, hook and loop fasteners and zips (under the "Prym" brand). Coats and Prym do not manufacture any competing products except for needles and industrial and craft zips. The antitrust infringements on the needles market have already been addressed by the Commission in the *Needles* decision (Case F-1/38.338 – PO/Needles), and will not be addressed here.[14]

(214) **[*]**

(215) The objective of this bilateral co-operation was as follows:

– to share the haberdashery market by preventing Coats Group from entering the European 'other fasteners' market.

[14] *See* Commission Decision of 26 October 2004 in Case F-1/38.338 – PO/Needles.

(216) As the market sharing agreements and the co-ordination of behaviour within the scope of the Coats-Prym agreements took place within the framework of meetings between high level management of both undertakings or in the context of the definition of a global strategy (for example the meeting of 15 July 1998), it can be legitimately concluded that monitoring must have been put in place during the implementation period of these agreements or of the overall framework.

4.5.2. Chronology and the relevant events

(217) In 1975, Coats and Prym agreed to cooperate in the area of sales and distribution for a large number of countries worldwide by acting as joint trading companies or exclusive distributors of each other's products, according to their respective market strength in each country. The minutes of a meeting held in Stolberg on 16/17 November 1975 outlines the framework for this cooperation between the two groups.

(218) Working on the basis of this framework for cooperation, Coats and William Prym entered into a general market sharing agreement for the haberdashery sector **[*]** (hereafter "1977 Agreement") **[*]**.

(219) **[*]**

(220) **[*]**

(221) **[*]**

(222) **[*]**

(223) **[*]**

(224) 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]*."* [15]

(225) **[*]**

(226) **[*]**

(227) All this explains how the arrangement between Prym and Coats with regard to the zip fasteners area was modified with time. In 1988 Coats acquired the zip manufacturer Opti, which had encountered economic difficulties due to competitive pressure from YKK. **[*]**

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[15] **[*]** The products referred to in this fax were: a Milward branded range of hard haberdashery; domestic machine needles; and knitting pins and crochet hooks.

(228) **[*]**

(229) Coats claims that its acquisition of Opti would, had the 1977 Agreement existed, have changed the nature of the Prym/Coats relationship because it would have made the Agreement invalid. However, **[*]**, Coats was already present on the zip market at the time the general market sharing agreement was signed in 1977. At the time, that is to say late 1970's, zips (and needles) were the only overlap between the companies. However, it appeared not to pose a problem for the general market sharing as Prym and Coats were not large zip manufacturers at the time and were not facing each other's competition on the same geographical markets.

(230) **[*]**

(231) **[*]**

(232) According to the minutes of a meeting with Coats Patons (Coats' subsidiary) held on 11 February 1993, **[*]**of William Prym had referred in a clear manner to the 1977 Agreement: "**[*]** *alluded to the background of the Coats/Prym relationship - Prym seen to be responsible for hard haberdashery. He believed that there was a moral obligation on Coats to tidy up the present NI*[16] *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.*" **[*]**.

(233) In **[*]** Coats sold its stake in William Prym to the Prym family, which took effect as of **[*]**. **[*]**. Prym and Coats met on 11 June 1996 in Stolberg (Germany) where **[*]** 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".

(234) This statement illustrates the fact that after 1995, following Coats selling its stake in William Prym, Coats and Prym were still acting in a spirit of sharing markets with non-compete strategies. This apparently was confirmed by the Umbrella Agreement signed in 1997. **[*]**.

(235) Coats submits that such agreement was indeed signed on 3 September 1997 and established a broad framework for joint distribution of consumer haberdashery products. Coats argues that it is hard to see why there would have been a need for the Umbrella Agreement if the 1977 Agreement actually continued to apply as the latter *"laid down the principles that neither party would distribute products competing with the other party's."*

(236) The Umbrella Agreement established that Coats and Prym Consumer would set up exclusive supply and distribution contracts for their respective products, that is to say hard haberdashery manufactured by Prym Consumer and soft haberdashery manufactured by Coats. The agreement established rules for the joint distribution

[16] Needle Industries Limited (NIL) (former Coats' subsidiary sold to Entaco Ltd in 1991).

of the parties' products, however, it did not regulate the manufacturing or distribution of the *competing* products. The 1977 Agreement, on the other hand, established that neither of the companies would manufacture or distribute products reserved for the other party, with hard haberdashery being reserved to Prym and soft haberdashery respectively to Coats. It is therefore clear that the arrangement to partition the markets between Prym and Coats, as established in 1977, continued to be respected, irrespective of the Umbrella Agreement of 1997.

(237) In 1998 Prym Group bought (via Prym Fashion) a shareholding of 50% in the zip fastener activity of the manufacturer Bonduel. From the minutes of the meeting held in Stolberg on 15 July 1998, it can be seen that Coats reacted to this acquisition in a similar way as Prym had reacted to the acquisition by Coats of Opti in 1988 (see recital (227)):

*"***[*]** *generally spoke about the case Bonduel Prym.* **[*]** *has shown his disappointment about the information which was delivered on short notice. The critics were especially based upon the fact that* **[*]***was not discussing the zip fasteners problems with Coats Opti in general meetings and that it was not brought to one's attention that the agreement was not valid anymore."*

(238) Coats' reaction in 1998, **[*]**, demonstrate the existence of a continuous arrangement between Prym and Coats, based upon the 1977 Agreement, during the 1980's and the 1990's, according to which the companies had a moral obligation to avoid competition with each other, including on the sole over-lapping market, that for zip fasteners. As the two companies' presence was not strong on the same markets, it appeared not to pose obstacles for the general market sharing agreement. Difficulties started to arise, when Prym Group and Coats Group both in turn started to increase their presence on the market for zip fasteners. Even though the market sharing arrangement had been modified with Coats acquiring Opti in 1988 and with Prym re-developing its zip activities through Bonduel-Prym (Éclair Prym), thus factually changing the object of the agreement in relation to zip fasteners, the overall object of sharing markets between Prym Group and Coats was continuously maintained throughout the period, with Coats' not entering Prym's core market of 'other fasteners', at least until 15 July 1998.

(239) This is corroborated by the minutes of the meeting held in Stolberg on 15 July 1998 between Prym Consumer, Prym Fashion, Schaeffer (presence of **[*]** of Schaeffer and handwritten minutes with Schaeffer letterhead) and Coats, where it is stated that there should be no price competition with Opti. The companies need to have a strategic dialogue.

(240) The following is also stated:

"*Prym is not interested in competition with Opti, especially not price competition. Prym is offering talks about the zip fastener solution and the existing agreements*".

(241) In this meeting, the participants expressed their intention not to compete, especially not on prices, regarding the zip business (both industrial and consumer zips) in which they were both active at that time. They anticipated an implementation consisting of further talks.

(242) In a memorandum written by **[*]**relating to a discussion with **[*]**of Coats dated on the same 15 July 1998, it is stated that:

*"***[*]***brought up the question, whether Prym would see the constellation, that one would be free in the industry business and Coats could enter the fastener (press-buttons) markets respectively Prym could enter the thread market. This question has to be answered cleanly and clearly."*

(243) It is clear that **[*]**, by his statement, referred to the market sharing arrangement as it was originally established in the 1977 Agreement.

(244) With regard to the documents describing the contents of the meeting on 15 July 1998, Coats argues that the conclusions drawn by the Commission are false. First, Coats argues that the meeting was a yearly round-up meeting to discuss everything affected by the Umbrella Agreement. During the meeting, the company, as it is argued by Coats, "*took the opportunity to start a very preliminary discussion about the possibility of a joint venture (i.e. structural merger) between Coats Opti and Bonduel Prym in order to seek to rationalise production and improve the position of these loss-making businesses*." According to Coats, the companies also discussed a possible termination of the existing supply agreement between Bonduel Prym (Éclair Prym) and Opti for the supply of raw zip chain. In this context, therefore, the reference to "existing agreements" (in the case of the minutes of the meeting) and "the Agreement" and "Zip Fastener Agreement" (in the case of the memorandum of **[*]**), according to Coats, are not references to the 1977 Agreement, but to the outsourcing agreement between Bonduel Prym (Éclair Prym) and Opti.

(245) Without going into a detailed analysis as to what agreement Coats and Prym were in fact referring to in the minutes of the meeting of 15 July 1998 and the memorandum on the contents of the same meeting, Coats cannot possibly argue that the Commission is wrong to conclude that the original market sharing between the two companies (hard haberdashery and soft haberdashery) was still followed by them. This is clearly referred to in the memorandum of the meeting of 15 July 1998 (recital (244)) (that is to say *"Coats could enter the fastener* […] *markets respectively Prym could enter the thread market"*). It is also evident that in the zips market, following a number of changes in their relationship throughout the period, Prym and Coats began encountering problems with regard to this overlap product. However, despite the fact that they were competitors as to zips, they continued to follow their moral arrangement of non-competition, and expressly stated that they were not interested in price competition on the zips market.

4.5.3. The end of the infringement

(246) **[*]**. The minutes and the memorandum of the meeting on 15 July 1998 indicate that the market sharing arrangement was followed by the parties at least until then. Therefore, the Commission has evidence to prove that the market sharing agreement was followed by the companies at least until 15 July 1998.

PART II – LEGAL ASSESSMENT

5. APPLICATION OF ARTICLE 81 OF THE TREATY

5.1. Article 81 (1) of the Treaty

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

5.2. Principles concerning agreements and concerted practices

(248) Article 81 (1) prohibits anticompetitive agreements, concerted practices between undertakings and decisions by associations of undertakings.

(249) 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 agreement may be express or implicit in the behaviour of the parties, since a line of conduct may be evidence of an agreement. Furthermore, for there to be an infringement of Article 81 (1) of the Treaty, it is not necessary 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 inherent understanding and partial and conditional agreements in the bargaining process which lead up to the definitive agreement.

(250) In its judgment in *Limburgse Vinyl Maatschappij NV and Others v Commission (PVC II)*[17], the Court of First Instance of the European Communities 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*".

(251) If, for instance, an undertaking is present at meetings in which the parties agree on certain behaviour on the market, it may be held liable for an infringement even where its own conduct on the market does not comply with the conduct agreed.[18] It is, indeed, settled case law that "*the fact that an undertaking does not abide by the outcome of meetings which have a manifestly anti-competitive purpose is not such as to relieve it of full responsibility for the fact that it participated in the*

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[17] Joined Cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, *Limburgse Vinyl Maatschappij and Others v Commission (PVC II)* [1999] ECR II-931, paragraph 715.

[18] Case T-334/94, *Sarrió v Commission*, [1998] ECR II-1439, paragraph 118.

cartel, if it has not publicly distanced itself from what was agreed in the meetings".[19] Such distancing should take the form of an announcement by the company, for instance, that it would take no further part in the meetings (and therefore did not wish to be invited to them).

(252) Although Article 81 of the 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 of that Article a form of coordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical cooperation between them for the risks of competition.[20]

(253) The criteria of co-ordination and co-operation laid down by the case-law of the Court of Justice of the European Communities, far from requiring the elaboration of an actual plan, must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition, according to which each economic operator must determine independently the commercial policy which he intends to adopt in the common market. Although that requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it strictly precludes any direct or indirect contact between such operators the object or effect of which is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market.[21]

(254) 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 nevertheless knowingly adopt or adhere to collusive devices which facilitate the coordination of their commercial behaviour.[22] 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.

(255) 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

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19 Ibidem. *See*, inter alia, also Case T-141/89, *Tréfileurope Sales v Commission* [1995] ECR II-791, paragraph 85; Case T-7/89, *Hercules Chemicals* v *Commission* [1991] ECR II-1711, paragraph 232; and Case T-25/95 *Cimenteries CBR / Commission* [2000] ECR II-491, paragraph 1389.

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

21 Joined Cases 40-48/73, 50, 54 to 56, 111, 113 and 114-73, *Suiker Unie and Others v Commission* [1975] ECR 1663, paragraphs 173 and 174.

22 *See* also Case T-7/89, *Hercules Chemicals v Commission* [1991] ECR II-1711, paragraph 255.

long period. Such a concerted practice is caught by Article 81 (1) of the Treaty even in the absence of anti-competitive effects on the market.[23]

(256) 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.[24]

(257) It is not necessary, particularly in the case of a complex infringement of long duration, for the Commission to characterise the conduct 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 having one and the same overall objective into several discrete forms of infringement. A cartel may therefore be an agreement and a concerted practice at the same time. Article 81 of the Treaty lays down no specific category for a complex infringement of that type.[25]

(258) 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 infringement are covered by Article [81] of the Treaty*".[26]

(259) 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 *Commission v Anic Partecipazioni SpA*[27], it follows from the express terms of Article 81 (1) of the Treaty that agreement may consist not only of an isolated act but also of a series of acts or a continuous conduct.

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

24 *See*, to that effect, 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.

25 Case T-7/89, *Hercules Chemicals v Commission*, [1991] II-1711, paragraph 264.

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

27 Case C-49/92 P, *Commission v Anic Partecipazioni* [1999] ECR I - 4125, paragraph 81.

5.3. Principles concerning single and continuous infringements

(260) A complex cartel may 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 violation of Article 81 (1) of the Treaty.

(261) In fact, as the Court of Justice stated in its judgment in *Commission v Anic Partecipazioni*[28], 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 course of 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 Treaty.[29]

(262) Although a cartel is a joint enterprise, each participant may play its own particular role. Some participants may have a more dominant role than others. Internal conflicts and rivalries, or even cheating may occur, but will not prevent the arrangement from constituting an agreement and/or concerted practice for the purposes of Article 81 (1) of the Treaty where there is a single common and continuing objective.

(263) 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 anti-competitive object or 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 it and was prepared to take the risk.[30] In this regard, the Courts have consistently stated that *"an undertaking may be held responsible for an overall cartel even though it is shown that it participated directly only in one or some of the constituent elements of that cartel, if it is shown that it knew, or must have known,*

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28 Ibid., paragraph 79.

29 *See Commission v Anic Partecipazioni*, paragraphs 78-81, 83-85 and 203.

30 *See Commission v Anic Partecipazioni*, at paragraph 83.

that the collusion in which it participated was part of an overall plan and that the overall plan included all the constituent elements of the cartel".[31]

(264) The agreements and concerted practices found to exist in this Decision form part of several overall schemes which laid down the lines of the competitors' action in the market and restricted their individual commercial conduct with the aim of pursuing identical anti-competitive objects and a single economic aim, namely to distort the normal movement of prices in the Community markets for respectively 'other fasteners', attaching machines and zip fasteners, and to restrict national, Community-wide **[*]** production by the allocation of markets and the exchange of prices and the fixing of minimum and target prices. Moreover, the Commission considers that it would be artificial to split up such continuous lines of conduct within each overall scheme, each of which is characterised by a single purpose, by treating each scheme as consisting of several separate infringements.

5.4. The nature of the infringements in this case

5.4.1. The Baseler-Wuppertaler and Amsterdamer cooperation

5.4.1.1. Agreements and/or concerted practices

(265) It is demonstrated in Part I of this Decision and notably in section 4.2 that during the relevant period the members of the Baseler, Wuppertaler and Amsterdamer circles attended regular meetings and participated in discussions in which they, *inter alia*:

– agreed on coordinated price increases for 'other fasteners' and attaching machines in the Community (see recitals (91), (92), (93), (94), (96), (101), (103), (104), (105), (106), (108), (109), (112), (114), (115), (120), (121), (125), (126), (130), (131), (133), (135), (138), (139), (140))

– exchanged confidential information on prices and the implementation of price increases (recitals (91), (92), (95), (101), (106), (108), (109), (110), (111), (113), (117), (119), (122), (123), (124), (127), (128), (129), (130), (132), (133), (137), (138), (139), **[*]**, **[*]**)

(266) Furthermore, in the course of pursuing the main objective of agreeing on price increases, the parties exchanged views on the creation of a uniform European price list (see recitals (97), (98), (99), (100), (102), (104), (107), (109), (111), (136)), discussed the fixing of minimum prices for 'other fasteners' and attaching machines (recitals (97), (117), (132), (138)) and the fixing of discount rates for 'other fasteners' as an integral part of the efforts to create a uniform European price list (see recitals (98), (99), (100)).

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[31] Cases T-295/94, T-304/94, T-310/94, T-311/94, T-334/94, T-348/94, *Buchmann v Commission, Europa Carton v Commission, Gruber + Weber v Commission, Kartonfabriek de Eendracht v Commission, Sarrió v Commission* and *Enso Española v Commission*, at paragraphs 121, 76, 140, 237, 169 and 223, respectively. *See* also Case T-9/99, *HFB Holding and Isoplus Fernwärmetechnik v Commission*, paragraph 231.

(267) The parties therefore adhered to a common plan which limited or was likely to limit their individual commercial conduct by determining the lines of their mutual action on the market. They clearly expressed their joint intention and/or reached a common understanding to behave on the market in a specific way, with a common objective to restrict competition, and monitored implementation by regular exchanges of information. These patterns of conduct led to conditions of competition which did not correspond to the normal conditions on the market and formed part of the same overall and illegal scheme which had all the characteristics of a full "agreement" within the meaning of Article 81 (1) of the Treaty.

(268) Some factual elements of the illicit arrangements, such as exchanges of confidential information, could aptly be characterised as concerted practices that facilitated the coordination of the parties' commercial behaviour on the market. For instance, comparisons of price information enabled the parties to influence their competitors' conduct and to adjust their own behaviour according to their competitors' strategies. In so far as the characterisation of a certain behaviour as a concerted practice requires subsequent conduct on the market following the exchanges of information, it can be presumed that the undertakings taking part in such concerting and remaining active on the market take account of the information exchanged with competitors in determining their own conduct on the market (for the legal principle, see recital (255)). In this case, there are examples in the Commission file showing that these contacts indeed influenced the concrete conduct of the parties on the market (see recitals (108), (124), (129), (133), (137)). Hence, even if strictly speaking no agreement was reached, this behaviour would still constitute infringement of Article 81 of the Treaty as a concerted practice.

(269) In general, however**,** regardless of whether the different elements of behaviour qualify separately as agreements or concerted practices, it is not necessary for the Commission, particularly in the case of a complex infringement of long duration, to characterise conduct as exclusively one or the other of these forms of illegal behaviour.[32] The concepts of agreement and concerted practice are fluid and may overlap, as in this case. The anti-competitive behaviour may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. Indeed, it may not even be possible to make such a distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while when considered in isolation some of its manifestations could accurately be described as one rather than the other. It would indeed be artificial to analytically sub-divide into several different forms of infringement what is clearly a continuing common enterprise having one and the same overall objective, which in this case was to restrict competition in the markets for 'other fasteners' and their attaching machines.

(270) In the light of the considerations in section 5.2, the meetings of the Baseler, Wuppertaler and Amsterdamer circles, and the exchanges and decisions made

[32] Joint cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, *Limburgse Vinyl Maatschappij NV et al. v. Commission*, ECR [1999], p. II-00931, para. 696 (the "*PVC II*" judgment).

therein, may be characterised as agreements and/or concerted practices, and, over the period of time during which these agreements and concerted practices were implemented, they constituted a common overall enterprise for which all members of the co-operation bear responsibility for the period of their respective adherence to the scheme, irrespective of their precise involvement from day to day.

The parties' arguments

(271) Berning, A. Raymond, Scovill/Scovill USA, and the VBT have argued in their responses to the first and/or supplementary Statement of Objections that no anti-competitive agreements were reached between the parties during the various circle meetings, or alternatively, that the undertakings did not comply with or implement any agreements reached during the circle meetings or were absent from specific meetings of the various circles during the period under investigation. They have further contested their awareness of and involvement in any illegal price exchanges and questioned the credibility of the evidence relied upon by the Commission. VBT has further argued in its response to the Statement of Objections that it did not at any time issue any invitations to attend meetings that had as their object to organise or to promote any conduct in breach of competition law.

(272) With regard to the coordination of price increases, A. Raymond, Berning and Scovill contest that they would have taken part in any agreement to coordinate price increases. The companies argue that the contemporaneous evidence presented does not show the coordination of price increases but instead points to unilateral statements from companies on past price increases, which corresponded in practice to the annual inflation rate and increases in raw material prices. A. Raymond claims that it only provided average prices and did not provide specific prices for specific products. As the information provided by A. Raymond only concerned the French market, it could not be of any interest to the other participants that were mainly Germany based. Furthermore, it is argued, as A. Raymond was mainly active on the French market, it would not have had any reason to enter into price discussions in relation to other markets within the Community.

(273) A. Raymond, Berning and Scovill state that they set their prices independently, or in the case of Scovill, had very limited power to set prices. Berning claims that VBT's meeting notes of the Baseler and Wuppertaler circle meetings of 24 May 1991, 13 December 1994, 25 November 1997 and 18-20 June 1998 show that the company's independent price policy was debated by the circle members and indicate how the company was in fact a target of attacks by other members of the circles as a result of its independent price policy. In fact, Berning claims, the documentary evidence in the Commission file show that price increases were agreed upon bilaterally by Prym Fashion and Stocko in advance of circle meetings, for which Berning cannot be held responsible. Scovill argues that, during the period 1991 to 2000, **[*]** percent of its sales were channelled through distributors, which set their sales prices independently of Scovill. With regard to the direct sales of Scovill, it is argued that the company was faced with large customers with buyer power in relation to which 'unrealistic' price increases would not have been possible. Scovill USA claims that the notes **[*]** of the

Baseler circle meeting of 18-20 June 1998 in Zurich show that Scovill pursued an independent pricing policy on the market and this was a matter debated by the other participants at the meeting in which Scovill itself did not participate. Similarly, it is argued by A. Raymond, that the undertaking was pursuing an independent pricing policy, as evidenced by three documents from 1995 found in the Commission file, that is to say an internal Prym Group letter of 30 May 1995 from which it appears that A. Raymond's had reacted reluctantly to a proposal to enter into a bilateral price agreement with Schaeffer Prym, a letter by A. Raymond to Prym of 22 May 1995 with regard to the price undercutting by Prym in relation to certain large customers of A. Raymond in France, and finally an internal Prym Group note of December 1995 concerning the higher average price level of A. Raymond compared to Prym in France.

(274) With regard to attaching machines, A. Raymond claims that, as attaching machines in France were in general sold instead of rented, the discussions on the rental prices could not have been of any relevance to A. Raymond. Similarly, Berning claims that the financial insignificance of the attaching machines business for the company is evidence showing the lack of any price agreements with regard to attaching machines. Finally, it is argued by Scovill **[*]**.

(275) With regard to the exchange of price information, the parties have denied the conclusions of the Commission including its finding that the parties would have created a European price list. Likewise, the parties have also denied the Commission's conclusions as to the fixing of minimum prices and the fixing of discount rates on the basis that a European price list was never finalised and claim that they did not take part in specific meetings mentioned by the Commission in which discussions on the issues had been taken place; they submit that the documentary evidence presented was insufficient to show an infringement.

(276) With regard to the Amsterdamer circle, Scovill USA disputes the Commission’s conclusions as to the infringing nature of the meeting of 15 March 2001 and argues that the Commission’s allegations are contradictory with **[*]**, which, according to the company, show that Scovill did not actively participate in the Amsterdamer circle meeting and did not have the objective of engaging in anti-competitive conduct. Scovill USA claims that no sensitive information was exchanged and only issues of a general nature were discussed.

Commission's assessment

(277) With regard to the standard of proof in general, the Commission points out that since the prohibition of cartels and the penalties which offenders may incur are well known, it is normal for cartel behaviour to take place in a clandestine fashion, for meetings to be held in secret and for the associated documentation to be reduced to a minimum. Even if the Commission discovers evidence explicitly showing unlawful contact between traders, it will normally be only fragmentary and sparse, so that it is often necessary to reconstitute certain details by deduction. In most cases, the existence of an anti-competitive practice or agreement must be inferred from a number of coincidences and indicia which,

taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules.[33] In this case, far-reaching inferences are not even necessary, since the Commission can rely on explicit contemporaneous notes taken in the cartel meetings, together with detailed, concording statements and other evidence provided by **[*]**.

(278) Moreover, whilst sufficiently precise and consistent evidence must be produced to support the firm conviction that the alleged infringement took place, it is not necessary for every item of evidence produced by the Commission to satisfy those criteria in relation to every aspect of the infringement. Rather, it is sufficient if the body of evidence relied on by the institution, viewed as a whole, meets that requirement.[34] Hence, even if Berning, A. Raymond, Scovill/Scovill USA and the VBT contest certain elements of behaviour, they have not succeeded in weakening the Commission's position, based on the all the evidence and indicia, taken together, that they were involved in agreements and/or concerted practices during the period 24 May 1991-15 March 2001 with regard to Scovill, 31 December 1996-15 March 2001 with regard to Scovill USA, 24 May 1991-1 December 1999 with regard to A. Raymond, 24 May 1991-19 August 2000 with regard to Berning, and finally 24 May 1991-19 August 2000 in relation to the VBT. In this regard it is sufficient to refer to section 4.2 of this Decision in which ample contemporaneous evidence concerning the involvement of the parties, including A. Raymond, Scovill/Scovill USA, Berning and the VBT, to the infringements is set out.

(279) In relation to the parties' argument concerning the credibility of the written evidence, the documents relied upon, for example VBT's meeting notes, were drafted at the time the events were taking place, that is to say *in tempore non suspectu,* and clearly show, on the one hand, the coordination of price increases and, on the other, the exchange of confidential information on prices and the implementation of price increases. These contemporaneous documents also give clear evidence of detailed discussions between the members with the objective of creating a uniform European price list, fixing minimum prices and fixing discount rates as part of the efforts to create a uniform European price list.

(280) Insofar as the parties claim that they did not comply with any alleged anti-competitive agreements, the Commission recalls that when an undertaking is present at meetings in which the parties agree on certain behaviour on the market, it may be held liable for an infringement even where its own conduct on the market does not follow the conduct agreed.[35] It is, indeed, well-settled case law that "*the fact that an undertaking does not abide by the outcome of meetings which have a manifestly anti-competitive purpose is not such as to relieve it of full responsibility for the fact that it participated in the cartel, if it has not*

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33 *See* the analysis of the Court of Justice in the "*Cement*" case: Joined cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, *Aalborg and others v Commission*, judgment of 7 January 2004, paragraphs 55-57.

34 Joined Cases C-238/99P, C-244/99P, C-245/99P, C-247/99P, C250/99P to C-252/99P and C-254/99P, *Limburgse Vinyl Maatschaapij and Others v Commission*, [2002] ECR I-8375, paragraphs 513 to 523; *See* also Case T-67/00, T-68/00, T-71/00 et T-78/00, *JFE et al*, judgment of 8 July 2004, ECR [2004] I-123, paragraphs 179 and 180.

35 Case T-334/94, *Sarrió v Commission*, [1998] ECR II-01439, paragraph 118.

publicly distanced itself from what was agreed in the meetings".[36] Such distancing should take the form of withdrawal from the agreement and public distancing from what occurred at the meetings and the cartel activities.[37]

(281) It is also settled case law that, where participation in an anticompetitive meeting has been established, as in this case, it is for the undertaking in question to put forward evidence to establish that its participation in that meeting was without any anti-competitive intention by demonstrating that it had indicated to its competitors that it was participating in the meeting in a spirit that was different from theirs.[38]

(282) In relation to the argument of A. Raymond, Berning and Scovill concerning the lack of coordination of price increases and the unilateral nature of the participants' declarations in this regard, the Commission further refers to the case law cited above in recital (253). Indeed, the criteria of coordination must be understood in the light of the concept of competition and the principle of independence of the undertakings' market behaviour, which strictly precludes any direct or indirect contact between the operators the object or effect of which is either to influence the conduct on the market of a competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market.[39]

(283) In relation to the argument that no illegal exchanges of price information took place for example in relation to the coordination of price increases and the development of a European price list, the Commission notes that its findings, which are based on contemporaneous documentary evidence (see recitals (265), (266)), have been confirmed by the leniency applications of Prym Group and YKK Group. **[*]**

(284) Even if the Commission acknowledges that a uniform European price list was probably never completed, the attempts to create such a list have to be seen as a part of the same price arrangement evidence of which is presented in section 4.2. The same considerations as those referred to in recital (282) apply to the parties' attempts to create a European price list as well.

(285) Furthermore, as an integral part of the efforts to create a European price list, VBT's meeting notes show how the members of the Baseler and Wuppertaler circles contemplated the fixing of minimum prices and, as part of the methodology to create the harmonised European price list, the fixing of discount rates (see recitals (97), (98), (99), (100)). Evidence of discussions to fix minimum prices can also be found in VBT's notes for the Wuppertaler meeting on 13

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36 Ibidem. *See*, inter alia, also Case T-7/89, *Hercules Chemicals v Commission*, [1991] ECR II-1711, paragraph 232, and Joined cases C-204/00P, C-205/00P, C-211/00P, C-213/00P, C-217/00P and C-219/00P, *Aalborg Portland and others v Commission*, judgment of 7 January 2004, paragraphs 55-57.

37 *See* Case T-329/01, *ADM*, judgment of 27 September 2006, paragraph 246 (with further references in para. 242).

38 *See* the above cited case *Cement*, paragraph 81. *See* also Case C-199/92P, *Hüls v Commission*, [1999] ECR I-4287, paragraph 155, and Case C-49/92P, *Commission v Anic*, [1999] ECR I-4125, paragraph 96.

39 Joined Cases 40-48/73 etc., *Suiker Unie and Others v Commission*, [1975] ECR 1663, at paragraphs 173 and 174.

December 1994 (see recital (117)), in a fax sent to **[*]** of 2 December 1997 (see recital (132)), and in the meeting notes of the Baseler circle meeting of 22 May 1999 (see recital (138)). Furthermore, the VBT meeting notes clearly show how all parties participated at least in some meetings in which the European price list was discussed, including discussions on the fixing of minimum prices and/or the fixing of discount rates (see Table 1 and Table 2). All such discussions were part of the same scheme of fixing prices.

(286) In so far as the monitoring of the export prices is concerned, regardless of Berning's, A. Raymond's and Scovill's arguments that there is not sufficient evidence on such monitoring, the notes of the meetings of the Baseler, Wuppertaler and Amsterdamer circles of 24 May 1991, 9 September 1991, 21 November 1991, 28-30 May 1992, 21 October 1992, 25 November 1992, 10-12 June 1993, 5 October 1993, 17 February 1994, 10 October 1994, 17 November 1994, 16 June 1995, 13 October 1995, 2 November 1995, 16-18 May 1996, 13 November 1996, 22 November 1996, 20 March 1997, 2 May 1997, 25 November 1997, 19 June 1998, 17 November 1998, 1 December 1999 and 15 March 2001 show how members of the circles indicated both future price increases, agreed on increases and reported on the implementation of past price increases for the various national markets in the Community, including non-domestic (that is to say non-German) 'export' markets. Berning, Scovill and A. Raymond took part at least in some of those meetings (see Table 1 and Table 2)[40].

(287) The evidence in the Commission file shows the planning, agreement, implementation and monitoring of price increases in the various national markets in the Community (both the "*domestic*" or "*inland*" market, that is to say Germany, and "*export*", that is to say non-German markets within the Community) between the members of the Baseler-Wuppertaler and Amsterdamer cooperation. As regards 'export' markets, that is to say non-German markets within the Community, the Commission notes that the monitoring was conducted within the framework of the main objective of the Baseler and Wuppertaler circles, and in particular within the framework of the exchanges of confidential information on the implementation of the coordinated price increases. The fact that markets were divided into 'non-problematic' and 'critical' show that members agreed to increase prices, but in certain markets, there were problems in the implementation of such agreements.

(288) For the sake of completeness, the Commission has detailed in recitals (289) to (295) separately for each of the parties the evidence proving the participation of the undertaking in the price fixing scheme.

Berning

(289) The Commission observes that it has clear evidence of Berning participating at meetings where agreements on price increases were entered into (see recitals (59) Table 1, (61) Table 2, (91), (92), (93), (103), (104), (105), (106), (108), (109), (112), (114), (115), (130), (131), (139)) and exchanges of confidential information on prices and the implementation of price increases took place (see

[40] *See* Tables 1 and 2 (recitals (59), (61))

recitals (91), (108), (110), (113), (119), (123), (124), (127), (129), (130)). Contrary to Berning's claims, the Commission has also evidence of Berning agreeing to and/or being aware of anti-competitive agreements entered into in the meetings in which the company was absent, that is to say in VBT's meeting notes of the Wuppertaler circle meeting of 13 October 1995 (see recital (120)) and 13 November 1996 (see recital (125)), it is mentioned in the margin that Berning accepted the price agreement that had been proposed and in the meeting notes of the Baseler circle meeting of 22 November 1996 (see recital (126)) it is noted that Berning had been informed about the price increases agreed upon in the meeting. This finding is further corroborated by **[*]**

(290) Although Berning acknowledges in its replies to the Statements of Objections that **[*]**of VBT may have phoned **[*]**on the proposed price increases after individual meetings at which Berning had not been present, these contacts, Berning argues, had in no way been desired or requested by Berning and could therefore have constituted neither an agreement nor a concerted practice. The Commission has established that Berning participated in a series of cartel meetings in the period from 24 May 1991 until 19 August 2000 (See Table 1 and Table 2). Berning has not disputed that it attended the meetings referred to in recital (289), which manifestly had an anticompetitive purpose. Furthermore, although claiming that it pursued an independent pricing policy and withdrew from the Baseler circle in the summer of 1997, Berning has not adduced any evidence that it publicly distanced itself from the outcome of such meetings. Rather, the subsequent events and Berning's own behaviour clearly confirm the Commission's conclusion that Berning did not distance itself from the cartel but rather adhered to it. For instance, it never announced to the other parties that it would take no further part in similar meetings, nor did it decline similar contacts with the other participants. On the contrary, it willingly participated in discussions about price agreements and other exchanges of confidential information until the meeting of 19 August 2000. The fact that Berning decided not to attend the Baseler circle meetings of 18-20 June 1998, 17 November 1998 and 21-23 May 1999, although it was invited, does not constitute public distancing.

A. Raymond

(291) The Commission has presented ample evidence showing the involvement and the active participation of A. Raymond in the discussions and agreements on price increases on the European level within the framework of the Baseler circle (see recitals (91), (101), (105), (112), (124), (126), (129), (133)). It is shown that not only were price increases discussed after their implementation but future price increases were agreed upon by the participants (see for example recitals (92), (96), (101), (105), (106), (112), (115), (121), (126), (130), (135)). The evidence presented shows how A. Raymond was responsible for indicating and proposing the price increases for the French market. Illustrative of A. Raymond's role for the French market is a statement in the VBT's meeting notes of the Wuppertaler circle meeting of 21 October 1992 in relation to future price increases in France:

[*]

(292) Moreover, the Commission has established A. Raymond's participation in a series of cartel meetings during the period 24 May 1991 – 1 December 1999 (see Table 1 and Table 2). As in Berning's case (see recital (290)), A. Raymond has failed to demonstrate that its participation in those meetings was without any anti-competitive intention by publicly distancing itself from the outcome of such meetings.[41] Rather, the subsequent events and A. Raymond's own behaviour clearly confirm the Commission's conviction that it adhered to the cartel, as it never announced to the other parties that it would take no further part in similar meetings. On the contrary, it willingly participated in discussions about the follow up and implementation of the price agreements and other exchanges of confidential information (see, for instance, recitals (91), (101), (124), (129), (133)). The Commission further notes that although the documents relating to the year 1995 invoked by A. Raymond to show its independent pricing policy (see recital (273)) may show that A. Raymond's average prices were higher than Prym's in France, that Prym was pursuing a price undercutting strategy in relation to certain customers of A. Raymond, and that A. Raymond had expressed its reluctance to enter into a bilateral price agreement with Schaeffer Prym, such documents do not show the absence of price coordination by means of across-the-board price increases within the framework of the Baseler-Wuppertaler and Amsterdamer cooperation. In fact the letter from A. Raymond to William Prym of 22 May 1995, alludes to the existence of price coordination between the companies on a European level, as follows:

[*]

(293) Furthermore, as is evident from VBT's meeting notes of the Baseler circle meeting of 2 November 1995 (see recitals (121)-(122)), A. Raymond continued during that same period its participation in the multilateral price discussions within the framework of the Baseler circle, despite the instances of price undercutting by Prym in France. In fact, as emerges from the meeting notes of the Baseler circle meeting of 2 November 1995, the issue of price undercutting had been brought up for discussion during the meeting and the members had agreed to exchange price lists for the French market and organise an additional meeting in order to resolve the situation in France before the end of that same year.

Scovill Group

(294) The Commission has ample evidence of the members of the Baseler circle, including Scovill, agreeing on price increases and monitoring their implementation (see for example recitals (91), (92), (96), (101), (105), (106), (108), (112), (113), (115), (119), (121), (124), (129), (130), (137), (138)). The fact remains that Scovill participated regularly at meetings for which the Commission has evidence of anti-competitive conduct (see Table 1). Hence, the Commission's reasoning (see recitals (290) and (292)) in relation to Berning's and A. Raymond's arguments is equally applicable to Scovill and Scovill USA.

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41 *See* the above cited case *Cement*, paragraph 81. *See* also Case C-199/92P, *Hüls v Commission*, [1999] ECR I-4287, paragraph 155, and Case C-49/92P, *Commission v Anic*, [1999] ECR I-4125, paragraph 96.

(295) With regard to Scovill/Scovill USA's involvement in the Amsterdamer circle, the Commission acknowledges that in the light of the statements of **[*]**, Scovill did not appear interested in the discussions of the Amsterdamer circle. The fact that Scovill took part in the setting up of the Amsterdamer circle during the meeting of 18-20 August 2000 and the fact that the company was present (with representatives of both Scovill and Scovill USA[42]) at the meeting of the new circle on 15 March 2001, shows that the undertaking was aware of the nature and content of this cooperation. The meeting notes **[*]** furthermore demonstrate that Scovill/Scovill USA participated in the discussions on prices and price increases as shown in recitals **[*]**.

Conclusion

(296) In light of the facts presented in section 4.2, the considerations set out in recitals (265) to (295) and the general principles concerning agreements and concerted practices outlined in section 5.2, it has been demonstrated that the different elements of behaviour of the members of the Baseler, Wuppertaler and Amsterdamer circles must be considered to form part of an overall scheme to distort prices and regulate the markets for 'other fasteners' and attaching machines. In those circumstances, the Commission considers that this complex of conducts presents all the characteristics of an agreement and/or concerted practice within the meaning of Article 81 (1) of the Treaty.

5.4.1.2. Single and continuous infringement

(297) As has been set forth in Part I, the Commission has clear evidence of a practically uninterrupted series of collusive activities between the members of the Baseler, Wuppertaler and Amsterdamer circles in at least the period 24 May 1991 to 15 March 2001. Those activities took place primarily in multilateral meetings held at least twice a year in which *inter alia* price increases were agreed upon and confidential information on prices and the implementation of price increases was exchanged. The price measures were, therefore, without any doubt an ongoing process within those circles and not single or sporadic occurrences, and there was a clear continuity of method and practice of the cartel scheme throughout the entire period of the infringement.

(298) The existence of a single and continuous infringement between the members of the Baseler, Wuppertaler and Amsterdamer circles in the market for 'other fasteners' and attaching machines, lasting from 24 May 1991 to 15 March 2001 is demonstrated in Part I of this Decision, notably in section 4.2. Indeed, the

[42] **[*]** was the representative of Scovill in the Baseler and Wuppertaler meetings from 1997 onwards and acted as a representative of Scovill/Scovill USA in the Amsterdamer circle. Indeed, **[*]** was **[*]**, representing as such the interests of Scovill USA at Scovill from 8 January 1997 to January 2001 and then moved to Scovill USA as **[*]**. It is as a representative of both Scovill and Scovill USA that **[*]** participated at the Amsterdamer meeting of 15 March 2001. Scovill USA, claims in its response of 10 July 2006 to the Supplementary Statement of Objections **[*]** that **[*]** was **[*]**. According to Scovill USA, **[*]** was therefore still a representative of Scovill at the meeting of the Amsterdamer circle on 15 March 2001.

evidence presented in section 4.2, that is to say extracts from the notes of the Baseler and Wuppertaler circle meetings found at the premises of the VBT, together with the statements made, and documents submitted to, the Commission by the leniency applicants, Prym Group and YKK Group, clearly show the link between the three circles. The Baseler circle and the Wuppertaler circle were two sides of the same coin; the Baseler circle bringing together most of the European producers, and the Wuppertaler circle gathering exclusively the German producers. The Wuppertaler circle has to be seen as a "pre-meeting" to the Baseler circle, where the Germany-based members of the Baseler circle discussed and prepared the same topics as in the Baseler circle. The Amsterdamer circle was an extension of the Baseler and Wuppertaler circles gathering together, as a result of the restructuring of the sector, a more limited number of participants with the intention to continue pursuing the objectives of the existing cooperation within the Baseler and Wuppertaler circles.

(299) 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 setting prices, that is to say by agreeing on coordinated across-the-board price increases for 'other fasteners' and attaching machines, and by exchanging confidential information on prices and the implementation of price increases. The objectives were common to all three circles, that is to say the Baseler, the Wuppertaler and the Amsterdamer circles, as shown by the evidence presented in section 4.2 of this Decision. The Baseler and Wuppertaler circles ran in parallel until late 1997 (when the last Wuppertaler circle meeting took place) sharing the common objectives of price coordination and exchange of confidential information on prices and the implementation of price increases. When the Wuppertaler circle ended in late 1997, the cooperation continued within the Baseler circle until August 2000 at which point the Amsterdamer circle was established to revive the longstanding cooperation within a smaller group of companies. The link between the Baseler and Wuppertaler circles is particularly clear with regard to the annual exercise to increase prices. In the Wuppertaler circle, the German undertakings prepared not only the proposals for price increases for the German market but also for various 'export markets', that is to say non-German markets within the Community. These price proposals, together with those of the non-German companies, were then presented in the Baseler circle in which the members agreed on the price increases for the various national markets. For certain non-German markets the proposal had been prepared by the German undertakings in the Wuppertaler circle and on the basis of that proposal a decision was adopted in the Baseler circle (see recitals (93), (96), (109), (112), (114), (115), (125), (126)). The cooperation within the Amsterdamer circle was a mere continuation of the cooperation within the Baseler and Wuppertaler circles and succeeded at least in the exchange of confidential information on the implementation of price increases (see recitals **[*]**). It was as such integrated in a long standing scheme and aimed at prolonging it.

(300) The collusion was in pursuit of a single anti-competitive economic aim: preventing any competition on prices on the 'other fasteners' and attaching machines markets in the Community by agreeing on coordinated price increases on a regular (annual) basis throughout the period under investigation. The Commission has further established that the participants exchanged confidential

information on prices and the implementation of price increases, and in the framework of the above price measures, exchanged views on the creation of a uniform European price list, discussed the fixing of minimum prices for 'other fasteners' and attaching machines, and the fixing of discount rates for 'other fasteners' as an integral part of the efforts to create a uniform European price list.

(301) The agreements and/or concerted practices described notably in section 4.2, relating to the markets for 'other fasteners' and attaching machines, form part of an overall scheme which laid down the guidelines of the suppliers' 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 distort the normal movement of prices in the markets for 'other fasteners' and attaching machines in the Community . In light of that consideration and the principles outlined in section 5.3, such continuous conduct as in this case, is deemed to constitute a single infringement in accordance with the case law of the Court of Justice.

(302) In their replies to the Statements of Objections, Berning, A. Raymond and Scovill/Scovill USA claim that the companies cannot be held responsible for any anti-competitive practices that may have taken place in those meetings in which they were not present. Consequently, the companies argue that any allegations in relation to such meetings cannot be upheld against them as they were neither aware nor informed about the contents of those meetings. This includes all the Wuppertaler circle meetings in which the non-German manufacturers, that is to say A. Raymond and Scovill/Scovill USA, did not participate. It is claimed, therefore, that the Baseler, Wuppertaler and Amsterdamer circles should be assessed as separate infringements. In light of those contentions, Berning claims that its participation in the Wuppertaler circle came to an end already on 20 November 1997[43] and with regard to the Baseler circle Berning's participation came to an end on 2 May 1997. Although Berning did participate in the Baseler circle meeting of 1 December 1999 and arrived for the last Baseler circle meeting of 19 August 2000 (but left the meeting without taking part in any of the discussions), Berning claims that that action does not constitute a continuation of any infringement that occurred prior to 1998. Berning claims that it had withdrawn from the Baseler circle already in the summer of 1997, which triggered an interruption to the company's participation in the infringement. In addition, it is claimed, no anti-competitive agreements or concerted practiced were entered into, at least not by Berning, in either the meeting of 1 December 1999 or that of 19 August 2000.

(303) Although Berning, A. Raymond and Scovill are correct in their claims that they did not participate in all of the Baseler and Wuppertaler circle meetings (and with regard to Berning and A. Raymond that they were not members of the Amsterdamer circle), all three parties regularly took part in the longstanding

[43] In its reply of 15 May 2006 to the supplementary Statement of Objections, Berning acknowledges that **[*]**, participated in the Wuppertaler circle meeting of 25 November 1997, but any anti-competitive agreements entered into in that meeting could not be ascribed to Berning, as the company was, it is claimed, by that time a target of price attacks by Prym and YKK Stocko who were trying to push the company out of the market (*See* **[*]**)

cooperation. Berning participated to at least 10 Baseler circle meetings and 12 Wuppertaler circle meetings from 24 May 1991 until 19 August 2000. In addition, the Commission has evidence that Berning was invited but did not attend to another 8 meetings of the Baseler circle and 3 meetings of the Wuppertaler circle. The Commission has also presented evidence of Berning agreeing to and/or being aware of anti-competitive agreements entered into in meetings in which the company was absent (see recitals (120), (125), (126)). Although Berning did not participate in the Baseler circle meetings of 18-20 June 1998, 17 November 1998 and 21-23 May 1999, the company had been invited to all three meetings and had received the meeting agenda but had decided not to attend, for example due to scheduling problems. There is no indication that Berning had withdrawn from the cooperation, which is confirmed by the fact that the company was present once again in the meeting of 1 December 1999. As for A. Raymond, although the company did not participate in the Wuppertaler circle, it was present in at least 16 Baseler circle meetings during the period from 24 May 1991 to 1 December 1999 and was invited but did not attend to one additional Baseler circle meeting. Similarly, Scovill did not take part in the Wuppertaler circle, but was present in 14 Baseler circle meetings from 24 May 1991 onwards, was invited to another 4 Baseler circle meetings, and furthermore participated in the Amsterdamer circle meeting of 15 March 2001.[44] In addition, both A. Raymond and Scovill, although not taking part in any of the Wuppertaler circle meetings, took part in such Baseler circle meetings in which proposals for price increases, which had been prepared in advance in the Wuppertaler circle, were discussed and agreed upon (see for example recitals (93), (96), (109), (112), (114), (115), (125), (126)). The contemporaneous evidence presented in section 4.2 also shows that the proposals for price increases in respect of the French market were specifically reserved for A. Raymond, despite the fact that the Wuppertaler circle prepared proposals for price increases also for various non-German markets (see in particular recitals (103), (120), (126)). It is therefore clear that Berning, A. Raymond and Scovill took actively part in the longstanding scheme of coordinating price increases and must have been aware of the infringing nature also of those meetings in which they themselves did not take part.

(304) Although the meeting notes used as evidence do not always explicitly mention each meeting participant in relation to the various anti-competitive practices, the fact remains that Berning, A. Raymond and Scovill participated regularly in the meetings for which the Commission has evidence of anti-competitive conduct. As already stated, it is settled case law that 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.[45]

(305) In light of the considerations in recitals (303) and (304) and the principles concerning single and continuous infringements in section 5.3, the fact that a company did not participate at certain specific meetings cannot be used as defence from responsibility.

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44 For a list of attendees for the various meetings of the Baseler and Wuppertaler circles, *see* recitals (59)-(65).

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

(306) In their responses to the Statements of Objections, Berning, Scovill and A. Raymond further contest the links between the Baseler and the Wuppertaler circles and argue that the two circles had different objectives. According to Berning, the fact that the two circles ran in parallel for a number of years is evidence of the difference in content of the two circles. Considering that the common objectives of coordinating price increases and exchanging confidential information on prices and the implementation of price increases have been established for the three circles in section 4.2, the argument, according to which the Baseler, Wuppertaler, and Amsterdamer circles should be dealt with separately, cannot be accepted. The link between the various circles has been shown above in section 4.2.2, and the common objectives and the participation of each undertaking to the realisation of such objectives is shown in sections 4.2.3, 4.2.4 and 4.2.5.

(307) Consequently, and in the light of the principles outlined in section 5.3, the Commission finds that the agreements and concerted practices within the Baseler, Wuppertaler and Amsterdamer circles constitute a single and continuous infringement for which all members are held accountable.

5.4.2. The bilateral cooperation between Prym Fashion and Stocko/YKK [Corporation]

5.4.2.1. Agreements and/or concerted practices

(308) It is demonstrated in Part I of this Decision and notably in section 4.3 that during the relevant period Prym Fashion and respectively Stocko and YKK [Corporation] attended regular meetings, participated in discussions, and exchanged letters and/or e-mails in which they, in Europe **[*]**, *inter alia*:

– fixed prices, notably minimum, average and target prices for 'other fasteners' and attaching machines (see recitals **[*]**);

– monitored price increases of 'other fasteners' and attaching machines through the regular exchange of price lists and through frequent bilateral contacts (see recitals **[*]**); and

– allocated customers by not undercutting each other's offers to clients (see recitals **[*]**).

(309) The parties adhered to a common plan which limited or was likely to limit their individual commercial conduct by determining the lines of their mutual action on the market. They clearly expressed their joint intention and/or reached a common understanding to behave on the market in a specific way, with a common objective of restricting competition, and monitored implementation by regular contacts and exchanges of information. These patterns of conduct led to conditions of competition which did not correspond to the normal conditions on the market and formed part of the same overall and illegal scheme which had all the characteristics of a full "agreement" within the meaning of Article 81(1) of the Treaty.

(310) It can be seen that the two parties exchanged at frequent intervals detailed price lists and participated in regular meetings and/or phone conversations, in order to implement these agreements. They also defined a methodology to ensure an effective implementation of the agreements (see recitals **[*]**).

(311) Some factual elements of the illicit arrangements, such as exchanges of confidential information, could aptly be characterised as concerted practices that facilitated the coordination of the parties' commercial behaviour on the market. For instance, comparisons of price information enabled the parties to influence their competitor's conduct and to adjust their own behaviour according to their competitor's strategies. In so far as the characterisation of a certain behaviour as a concerted practice requires subsequent conduct on the market following the exchanges of information, it can be presumed that the undertakings taking part in such concerting and remaining active on the market take account of the information exchanged with competitors in determining their own conduct on the market (for the legal principle, see recital (255)).

(312) In general, however**,** regardless of whether the different elements of behaviour qualify separately as agreements or concerted practices, it is not necessary for the Commission, particularly in the case of a complex infringement of long duration, to characterise conduct as exclusively one or the other of these forms of illegal behaviour.[46] The concepts of agreement and concerted practice are fluid and may overlap, as in this case. The anti-competitive behaviour may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. Indeed, it may not even be possible to make such a distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while, when considered in isolation, some of its manifestations could accurately be described as one rather than the other. It would indeed be artificial to analytically sub-divide into several different forms of infringement what is clearly a continuing common enterprise having one and the same overall objective, which in this case was to restrict competition on the markets for 'other fasteners' and attaching machines **[*]**.

(313) In light of the facts presented in section 4.3, the above considerations and the general principles concerning agreements and concerted practices outlined in section 5.2, it has been demonstrated that the different elements of behaviour of Prym Fashion, on the one hand, and Stocko and YKK [Corporation] on the other, must be considered to form part of an overall scheme to distort prices and regulate the markets of 'other fasteners' and attaching machines in the Community **[*]**. Under these circumstances, the Commission considers that this complex of conducts presents all the characteristics of an agreement and/or concerted practice in the sense of Article 81 (1) of the Treaty.

5.4.2.2. Single and continuous infringement

[46] Joint cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, *Limburgse Vinyl Maatschappij NV et al. v Commission*, ECR [1999], p. II-00931, paragraph 696 (the "*PVC II"* judgment).

(314) As has been set forth in Part I, the Commission has clear evidence of a practically uninterrupted series of collusive activities between Prym Fashion and Stocko/YKK [Corporation] within the framework of their bilateral cooperation scheme at least in the period from 13 August 1999 until 13 January 2003. Those activities took place primarily in bilateral meetings held several times per year in which prices were fixed and monitored according to a detailed price fixing scheme, and customers were allocated. In between meetings, the parties also compiled and exchanged detailed price charts on a product-by-product and country-by-country basis. The price measures were, hence, without any doubt an ongoing process within the cooperation, and not single and sporadic occurrences, and there was a clear continuity of method and practice of the cartel throughout its duration.

(315) The evidence presented in section 4.3 shows the existence of a single and continuous infringement in the markets for 'other fasteners' and attaching machines between on the one hand Prym Fashion and on the other Stocko and YKK [Corporation]. The infringement lasted for the period extending at least from 13 August 1999 until 13 January 2003.

(316) The collusion was in pursuit of a single anti-competitive economic aim: preventing any competition between themselves in Europe **[*]**on prices on the 'other fasteners' and attaching machines markets by fixing prices, notably minimum, average and target prices, monitoring price increases through the regular exchange of price lists and through frequent bilateral contacts, and allocating customers by not undercutting each other's offers. The establishment of a three-phased price fixing scheme between the two companies together with regular exchange of price lists and the frequent bilateral contacts allows the Commission to conclude that this is a continuous infringement.

(317) Consequently, and in the light of the principles outlined in section 5.3, the Commission finds that the agreements and concerted practices within the bilateral scheme between Prym Fashion and Stocko/YKK [Corporation] constitutes a single and continuous infringement for which both parties are held equally accountable.

*5.4.3. The tripartite cooperation between YKK Holding/***[*]***, Coats/Coats Germany and Prym Fashion/Éclair Prym*

5.4.3.1. Agreements and/or concerted practices

(318) It is demonstrated in Part I of this Decision and notably in section 4.4 that during the relevant period YKKGroup, Coats/Coats Germany and Prym Fashion/Éclair Prym attended several meetings, in which they, in relation to the European markets for zip fasteners, *inter alia*:

– exchanged price information among themselves (see recitals **[*]**);

– discussed prices and price increases (see recitals **[*]**);

– agreed to establish and worked on the implementation of a methodology to fix minimum prices for their standard products across Europe (see recitals **[*]**).

(319) It can be seen that the parties exchanged price information in the framework of the various meetings organised in 1998 and 1999. Furthermore, they agreed to fix minimum prices for their standard products and agreed on a methodology to establish such prices. In the course of achieving this objective, the companies created lists of standard products, which they later on complemented with the average prices and exchanged orally amongst themselves during the meeting of 29 September 1999.

(320) As it was stated in section 5.2, under Article 81 (1) of the EC Treaty, an agreement can be said to exist when the parties adhere to a common plan which limits or is likely to limit their individual commercial conduct. It does not have to be made in writing and no enforcement measures need to be present. According to the Court *"…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"*.[47]

(321) Although it is evident from the facts that the parties clearly expressed their joint intention and/or reached a common understanding to behave on the market in a specific way, and took steps towards the implementation of the joint intent, YKK Group argues that no agreement to fix prices was reached between the three parties at the meetings of 2 June 1999, 29 September 1999 and 12 November 1999. The Commission notes, however, that the documentary evidence found during the unannounced inspections of 7-8 November 2001, the leniency statements of Coats and Prym Groups as well as the documentary evidence submitted by the latter two parties in respect of these meetings, clearly show the existence of an agreement to harmonize minimum prices on the basis of a detailed methodology developed by the parties at the meeting of 2 June 1999 (see recitals **[*]**).

(322) As for YKK Group's argument that it always refused any price discussions despite the pressure from Prym and Coats Groups, it suffices to recall that if an undertaking is present at meetings in which the parties agree on certain behaviour on the market, it may be held liable for an infringement even where its own conduct on the market is not in conformity with the conduct agreed.[48] It is, indeed, well-settled case law that *"the fact that an undertaking does not abide by the outcome of meetings which have a manifestly anti-competitive purpose is not such as to relieve it of full responsibility for the fact that it participated in the cartel, if it has not publicly distanced itself from what was agreed in the meetings"*.[49]

(323) In any case, as was stated in recitals (252)-(253), the prohibition contained in Article 81 (1) of the Treaty has an object to forbid forms of co-operation between

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47 *PVC II*, *see* footnote 428

48 Case T-334/94, *Sarrió v Commission*, [1998] ECR II-01439, paragraph 118.

49 Ibidem. *See*, inter alia, also Case T-7/89, *Hercules Chemicals v Commission*, [1991] ECR II-1711, paragraph 232, and the Joined cases C-204/00P, C-205/00P, C-211/00P, C-213/00P, C-217/00P and C-219/00 P, *Aalborg Portland and others v Commission*, judgment of 7 January 2004, paragraphs 55-57.

the companies by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical co-operation between them for the risks of competition. Each economic operator must determine independently its course of conduct on the market, which precludes any direct or indirect contact between competing companies, the object or effect of which is either to influence the conduct on the market of their actual or potential competitors or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market. There is no objective reason for the companies to exchange prices with their competitors, to agree with them on a methodology to fix minimum prices or to exchange their average prices for a list of standard products, unless it is to give their competitors an opportunity to adapt their future course of conduct on the market accordingly.

(324) Therefore, 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. Such concerted practice is caught by Article 81 (1) of the Treaty even in the absence of anti-competitive effect on the market. Hence, even if strictly speaking no agreement was reached between the parties to this scheme, this behaviour would still qualify as a concerted practice.

(325) Consequently, in light of the facts presented in section 4.4, the considerations in recitals **[*]** and the general principles concerning agreements and concerted practices outlined in section 5.2, it has been demonstrated that the different elements of behaviour of YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym, must be considered to form part of an overall scheme to distort prices and regulate the market for zip fasteners in the Community. Under these circumstances, the Commission considers that this complex of conducts presents all the characteristics of an agreement and/or concerted practice within the meaning of Article 81 (1) of the Treaty.

5.4.3.2. Single and continuous infringement

(326) As has been set forth in Part I of this Decision, the Commission has evidence of a set of collusive activities between YKK Group, Prym Fashion/Éclair Prym and Coats/Coats Germany for the period extending from 28 April 1998 until 12 November 1999. Those activities took place primarily in tripartite meetings held in 1998 and 1999, in which exchanges of price information occurred, price increases were discussed and the harmonization of minimum prices for a set of standard products was agreed on the basis of a methodology agreed upon by the parties. Those activities were part of the same process to harmonise prices and co-ordinate price increases in the Community, which had as its final object the distortion of competition. Each discussion or exchange at the various meetings was part of the ongoing co-operation between the three competitors and forms part of a single and continuous infringement.

(327) The existence of a single and continuous infringement between the three parties on the market for zip fasteners, lasting from 28 April 1998 until 12 November 1999, is demonstrated in section 4.4.

(328) The collusion described in section 4.4, was in pursuit of a single anti-competitive economic aim: preventing competition on prices of zip fasteners, by for example agreeing to establish minimum prices for the standard products and agreeing on a methodology to adapt the existing prices to a certain level, to be set using the German prices as a benchmark. Moreover, the meetings were attended by the same undertakings. The collusion formed part of an overall scheme which laid down the guidelines of the suppliers' 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 distort the normal movement of prices in the market for zip fasteners in the Community. In the light of that consideration and the principles outlined in section 5.3, such continuous conduct as in this case, is deemed to constitute a single infringement in accordance with the case law of the Court of Justice.

(329) Prym Group has argued that the three latter meetings of 1999 (that is to say the meetings of 2 June 1999, 29 September 1999, and 12 November 1999) were separate from the earlier meetings between the parties to this cooperation. Furthermore, it is stated that as Prym Fashion was only active on the German and Austrian markets before acquiring Éclair Prym (Bonduel) in July 1998, it could not have taken part in agreements for Portugal and Finland reached at the meeting in April 1998 (see recital **[*]**).

(330) The Commission notes, however, that the documentary evidence clearly show that zip fastener prices were discussed for various European markets in the meetings of 1998 and 1999, and although the detailed methodology for fixing prices was only developed in the three latter meetings of 1999, the same object of fixing prices existed all throughout the duration of the infringement, that is to say from 28 April 1998 until 12 November 1999.

(331) Consequently, and in the light of the principles outlined in section 5.3, the Commission finds that the agreements and/or concerted practices within the tripartite scheme between YKK Holding/**[*]**, Prym Fashion/Éclair Prym and Coats/Coats Germany constitutes a single and continuous infringement for which all parties are held equally accountable.

5.4.4. The bilateral cooperation between Coats and William Prym/Prym Fashion

5.4.4.1. Agreements and/or concerted practices

(332) It is demonstrated in Part I of this Decision and notably in section 4.5 that during the relevant period Coats and William Prym/Prym Fashion:

– agreed to share the haberdashery market by preventing Coats Group from entering the European 'other fasteners' market.

(333) The documents referred to in recitals **[*]** together with Prym Group's leniency statement demonstrate that the 1977 Agreement was the basis for a continuing co-operation between William Prym and its subsidiaries on the one hand and Coats on the other hand, notably in the hard and soft haberdashery market. The aim of the 1977 Agreement was to share the whole haberdashery market by preventing Coats from entering Prym's core market, that is to say the hard haberdashery markets such as 'other fasteners' and needles.[50] The Commission has shown that the agreement was applied, with certain adaptations in relation to the market for zip fasteners (Coats entering the zip market in 1989 by aquiring the zip manufacturer Opti, and Prym strengthening its position on the zip market by aquiring Bonduel in 1998), until at least 15 July 1998. In spite of these modifications, the morally binding arrangement leading to a market sharing of the haberdashery market between Coats and Prym was respected at least until 15 July 1998 and applied throughout the European Community.

(334) The parties adhered to a common plan which limited or was likely to limit their individual commercial conduct by determining the lines of their mutual action on the market. They clearly expressed their joint intention and/or reached a common understanding to behave on the market in a specific way, with a common objective to restrict competition, and monitored implementation by regular contacts. These patterns of conduct led to conditions of competition which did not correspond to the normal conditions on the market and formed part of the same overall and illegal scheme which had all the characteristics of a full "agreement" within the meaning of Article 81 (1) of the Treaty.

(335) In general, however**,** regardless of whether the different elements of behaviour qualify separately as agreements or concerted practices, it is not necessary for the Commission, particularly in the case of a complex infringement of long duration, to characterise conduct as exclusively one or the other of these forms of illegal behaviour.[51] The concepts of agreement and concerted practice are fluid and may overlap, as in this case. The anti-competitive behaviour may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. Indeed, it may not even be possible to make such a distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while, when considered in isolation, some of its manifestations could accurately be described as one rather than the other. It would indeed be artificial to analytically sub-divide into several different forms of infringement what is clearly a continuing common enterprise having one and the same overall objective, which in this case was to restrict competition in the whole haberdashery market.

(336) While Prym Group **[*]**, Coats argues that the Commission has failed to discharge its burden of proof that a long standing market sharing agreement was in fact

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50 The impact on the needles market for the years 1994 to 1999 has been separately dealt with in the Commission Decision concerning the infringements (Case COMP/38.338 – PO/Needles) in the needles market of 26 October 2004. Even though the decision covered only the period 1994 to 1999, as it was implicating a third party, namely Entaco, this impact is not assessed further in the present Decision.

51 Joint cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, *Limburgse Vinyl Maatschappij NV et al. v Commission*, ECR [1999], p. II-00931, paragraph 696 (the "*PVC II*" judgment).

concluded. Alternatively, Coats submits that the Commission did not prove that such agreement continued to apply for any period of time.[52] Coats' argumentation as to the non-existence of a long standing agreement is based on the argument that the 1977 Agreement was not signed and on the argument that the Commission has misinterpreted the documentary evidence in its file to show the continuation of the collusive practice until 15 July 1998.

(337) As it was stated in recital **[*]**, the principles of the market sharing agreement were discussed by the companies two years before the actual agreement dated 15 January 1977, which is confirmed by the minutes if the meeting of 15-17 November 1975. A number of documentary evidence presented in section 4.5 confirms the continuation of the arrangement. As was stated in recital (249) above, an agreement under Article 81 (1) of the Treaty may be express or implicit in the behaviour of the parties, it does not necessarily have to be made in writing, no formalities are necessary and no contractual sanctions or enforcement measures are required. In its judgment in *Limburgse Vinyl Maatschappij NV and Others v Commission* (PVC II)[53], 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*".

(338) Therefore, in light of the facts presented in section 4.5, the considerations in recitals (332) to (337) and the general principles concerning agreements and concerted practices, outlined in section 5.2, it has been demonstrated that the different elements of the behaviour of Coats and William Prym/Prym Fashion within the framework of their bilateral cooperation must be considered to form part of an overall scheme to distort competition on the haberdashery markets for 'other fasteners' and zip fasteners. Under these circumstances, the Commission considers that this complex of conducts presents all the characteristics of an agreement and/or concerted practice within the meaning of Article 81 (1) of the Treaty.

5.4.4.2. Single and continuous infringement

(339) As has been set forth in Part I of this Decision, the Commission has evidence of a continuous collusive agreement and/or concerted practice between Coats on the one hand, and William Prym/Prym Fashion on the other, according to which the companies agreed to share the haberdashery market by reserving the hard haberdashery market to William Prym/Prym Fashion. As it was established in section 4.5, the market sharing agreement and/or concerted practice was followed by the companies from 15 January 1977 until at least 15 July 1998.

(340) Coats contests the Commission's conclusion and states that the burden of proof was not met by the Commission in establishing the continuity of the market sharing between the companies. It argues that the very long gaps between

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

sporadic and isolated events do not in any way allow the Commission to establish the existence of a continuous infringement.

(341) As it was established by the Commission in section 4.5, William Prym/Prym Fashion and Coats entered into an agreement to share markets in 1977, following up on their intentions in this respect, which were put in writing in the minutes of the meeting of 15-17 November 1975 (recitals **[*]**). The continuation of the market sharing agreement and/or concerted practice was proven on the basis of a number of items of documentary evidence collected by the Commission **[*]**. The evidence refers to the market sharing between the companies throughout the years 1977 to 1998.

(342) With regard to the standard of proof in general, as it was already noted in recital (277) with regard to the co-operation within the Baseler-Wuppertaler and Amsterdamer circles, it is normal for cartel behaviour to take place in a clandestine fashion, for meetings to be held in secret and for the associated documentation to be reduced to a minimum, since the prohibition of cartels and the penalties which offenders may incur are well known. Even if the Commission discovers evidence explicitly showing unlawful contact between traders, it will normally be only fragmentary and sparse, so that it is often necessary to reconstitute certain details by deduction. In most cases, the existence of an anti-competitive practice or agreement must be inferred from a number of coincidences and indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules.[54]

(343) In this case, far-reaching inferences are not required as the existence of an agreement is confirmed by a number of items of documentary evidence and corroborated by **[*]**. In particular, it must be noted that contrary to a price fixing agreement, contacts between parties to a market sharing agreement and/or concerted practice, can be less frequent as the monitoring of the agreement is less challenging. There is furthermore no indication that any of the parties put an end to the infringement by withdrawing from the market sharing arrangement.

(344) Moreover, whilst sufficiently precise and consistent evidence must be produced to support the firm conviction that the alleged infringement took place, it is not necessary for every item of evidence produced by the Commission to satisfy those criteria in relation to every aspect of the infringement. Rather, it is sufficient if the body of evidence relied on by the institution, viewed as a whole, meets that requirement.[55]

(345) More specifically, the Court of Justice has recently ruled, as regards whether or not the Commission had adduced sufficient evidence of the continuation of an

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54 *See* the analysis of the Court of Justice in the "*Cement*" case: Joined cases C-204/00P, C-205/00P, C-211/00P, C-213/00P, C-217/00P and C-219/00P, *Aalborg and others v Commission*, judgment of 7 January 2004, paragraphs 55-57.

55 Joined Cases C-238/99P, C-244/99P, C-245/99P, C-247/99P, C250/99P to C-252/99P and C-254/99P, *Limburgse Vinyl Maatschaapij and Others v Commission*, [2002] ECR I-8375, paragraphs 513 to 523; *see* also Case T-67/00, T-68/00, T-71/00 et T-78/00, *JFE et al*, judgment of 8 July 2004, ECR [2004] I-123, paragraphs 179 and 180.

infringement, that "*the fact that such evidence was not adduced for certain specific periods does not preclude the infringement from being regarded as having been established during a more extensive overall period than those periods, provided that such a finding is based on objective and consistent indicia. In the context of such an infringement, extending over a number of years, the fact that the infringement is demonstrated at different periods, which may be separated by more or less long periods, has no impact on the existence of that agreement, provided that the various actions which form part of the infringement pursue a single aim and come within the framework of a single and continuous infringement* ".[56]

(346) In the same vein, in *Aalborg Portland and Others v Commission*, the Court of Justice ruled that *"[s]ince each of those actions comes within the concept of infringement within the meaning of Article 85 (1) of the Treaty, it is necessary to distinguish as manifestly irrelevant to the present case the judgment in Dunlop Slazenger v. Commission, which dealt with legal certainty in relation to the burden of proof. In the context of an overall agreement extending over several years, a gap of several months between the manifestations of the agreement is immaterial. The fact that the various actions form part of an overall plan owing to their identical object, on the other hand, is decisive*".[57]

(347) Consequently, and in the light of the principles outlined in section 5.3, the Commission finds that the agreement and/or concerted practice within the bilateral market sharing between William Prym/Prym Fashion and Coats constitutes a single and continuous infringement for which both parties are held equally accountable.

5.4.5. Principles concerning associations of undertakings

(348) Article 81 (1) of the Treaty also prohibits as incompatible with the common market behaviour by associations of undertakings which has as its object or effect the prevention, restriction or distortion of competition within the common market. In order to be able to apply sanctions to an association and its members for their involvement in the same infringement the Commission must demonstrate that the conduct of the association is separate from the conduct of its members. It is not necessary that associations of undertakings engage in commercial or manufacturing activity for Article 81 of the Treaty to apply to them. The Court stated: "*it is not necessary for trade associations to have a commercial or economic activity of their own for* [Art. 81 (1)] *of the Treaty to be applicable to them* […] [Art. 81 (1)] *of the Treaty applies to associations in so far as their activities or those of the undertakings belonging to them are calculated to produce the results which it aims to suppress. To place any other interpretation on* [Art. 81 (1)] *of the Treaty would be to remove its substance* […] *The Court points out in that regard that the wording of Article 85(1)* [Art. 81 (1)] *of the Treaty does not exclude agreements between associations of undertakings and*

[56] Judgment of 21 September 2006, Case C-113/04P, *TU v Commission*, paragraph 169.
[57] *See* footnote 438 above.

undertakings from the scope of the prohibitions which it lays down. In order to find that an association and its members have participated in one and the same infringement the Commission must establish conduct on the part of the association which is separate from that of its members".[58]

5.4.5.1. Associations of undertakings in this case

(349) With regard to VBT, the Commission has evidence that implicates VBT directly in the agreements and/or concerted practices agreed upon in the framework of the Baseler-Wuppertaler and Amsterdamer cooperation. VBT acted as a secretariat for the Baseler and Wuppertaler circle meetings, and was responsible for the running and organisation of the meetings. VBT compiled the Agenda for the various circle meetings and took notes of the discussions. From VBT's meeting notes it is clear that the discussions, including the illegal price discussions, followed the Agenda prepared in advance by VBT. VBT also coordinated the preparatory meetings of the German undertakings in the Wuppertaler circle, and then participated in the price discussions in the Baseler circle (see for example recitals (93), (96), (103), (106), (109), (112), (133)). VBT also acted as a coordinator for the members of the Baseler circle, namely in the development of a European price list (see recital (102)) and in the setting of minimum prices on a product-by-product basis (see recital (138)). VBT's meeting notes also reveal how VBT directly discussed proposals and agreements on price increases with cartel members that had been absent at circle meetings in which price increases had been discussed and agreed upon.

(350) VBT, therefore, was directly implicated in the concerted practices and/or agreements taking place within the Baseler-Wuppertaler and Amsterdamer cooperation. Although VBT has argued that it is not an undertaking within the meaning of Article 81 of the Treaty and that it lacks legal personality (see recital (450)), it must be recalled that the Treaty is equally applicable to associations of undertakings in so far as their activities are calculated to produce the results which it aims to suppress. By facilitating the implementation of the price arrangements, VBT acted against the Treaty as an association of undertakings in pursuing an anti-competitive arrangement. VBT actively accepted the task entrusted to it by the manufacturers and facilitated the implementation of the agreements and/or concerted practices. VBT's tasks (see recital (349)) involved a certain power of discretion and independent decision making.

(351) Consequently, the Commission considers that VBT knowingly contributed to the objective of restricting competition in the markets of 'other fasteners' and attaching machines by supporting the overall plan for coordinating price increases for 'other fasteners' and attaching machines, although it does itself not produce either product. The Commissions finds that VBT participated inthe agreements and/or concerted practices in the Baseler-Wuppertaler and Amsterdamer cooperation as an association of undertakings and it intends to address this Decision to it.

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[58] Joined cases T-25/95, T-26/95, T-30/95 to T—32/95, T-34/95 to T-39/95, T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-103/95 and T-104/95, *Cimenteries CBR SA and others v Commission* [2000] ECR II-491, paragraph 1325.

5.5. Restriction of competition

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

5.5.1. Object

(353) Article 81 (1) of the Treaty expressly mentions as restrictive of competition agreements and concerted practices which[59]:

(a) directly or indirectly fix selling prices or any other trading conditions;

(b) limit or control production, markets or technical development;

(c) share markets or sources of supply.

(354) The principal aspects of the complex of agreements and concerted practices in this case, which can be characterised as restrictions of competition, are:

(a) as regards the Baseler-Wuppertaler and Amsterdamer co-operation*:*

– agreeing to raise prices of 'other fasteners' and attaching machines in the European Community

– exchanging confidential information on prices and the implementation of price increases;

(b) as regards the bilateral co-operation between Prym Fashion and Stocko/YKK [Corporation]:

– fixing prices, notably minimum, average and target prices;

– allocation of customers by not undercutting prices between the competitors;

– monitoring price increases;

(c) as regards the tripartite co-operation between YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym:

– exchanging price information among the undertakings;

– agreeing to establish minimum prices between the undertakings for their standard zip fastener products across Europe by the end of 2000 following the methodology agreed upon by them;

(d) as regards the bilateral co-operation between Coats and William Prym/Prym Fashion:

[59] The list is not exhaustive.

– sharing the haberdashery market by preventing Coats Group from entering the European 'other fasteners' market.

(355) In addition, in relation to the Baseler-Wuppertaler and Amsterdamer co-operation, it has been established that the participants exchanged views on the creation of a uniform European price list, discussed the fixing of minimum prices for 'other fasteners' and attaching machines and, as part of the efforts to create a uniform European price list, the fixing of discount rates for 'other fasteners'.

(356) Specifically, the fixing of a price, even one which merely constitutes a target, affects competition because it enables all the participants in a cartel to predict with a reasonable degree of certainty what the pricing policy pursued by their competitors will be.[60] More generally, such cartels involve direct interference with the essential parameters of competition on the market in question.[61] By expressing a common intention to apply a given price level for their products, the producers concerned cease to determine independently their policy in the market and thus undermine the concept inherent in the provisions of the Treaty relating to competition.[62]

(357) The restrictions listed in Article 81 (1) of the Treaty are the essential characteristics of the horizontal arrangements under consideration in this case, in which the parties to the various arrangements fixed prices (of which agreeing upon percentage price increases is a typical example), allocated customers by not undercutting competitors' prices, and shared product markets. By planning common action on price initiatives with price increases, the undertakings aimed at eliminating the risks involved in any unilateral attempt to increase prices, notably the risk of losing market share. Price being the main instrument of competition, the various collusive arrangements and mechanisms adopted by the producers were all ultimately aimed at inflating prices to their benefit. By dividing markets and customers, the undertakings did not compete for market share and customers, and succeeded in manipulating the market price and output as well as the structure of competition.

(358) By its very nature price fixing, market and customer sharing restricts competition within the meaning of Article 81 (1) of the Treaty. 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 Part I of this Decision and notably in section 4.

5.5.2. Effect

(359) It is settled case-law that for the purpose of the 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-

60 Case 8/72, *Vereeniging van Cementhandelaren v Commission*, [1972] ECR 977, paragraph 21.
61 Case T-141/94, *Thyssen Stahl v Commission*, [1999] ECR II-347, paragraph 675.
62 Case T-311/94, *BPB de Eendracht v Commission*, [1998] ECR II-1129, paragraph 192.

competitive effects where the anti-competitive object of the conduct in question is proved.[63] The same applies in case of concerted practices.[64]

(360) It follows that violation of Article 81 (1) of the Treaty occurs even when a certain price increase agreed upon between competitors does not prove successful or was not implemented. According to well-established case law, factors relating to the aspects demonstrating the intention, and thus the object of the conduct, may be more significant than those relating to its effects, particularly when they relate to infringements which are very serious, such as price fixing and market sharing.[65]

Baseler-Wuppertaler and Amsterdamer cooperation

(361) With regard to the Baseler-Wuppertaler and Amsterdamer cooperation, the Commission considers that, on the basis of the elements put forward in the description of the events, that is to say section 4.2, the parties' anti-competitive agreements clearly aimed at coordinating price increases coupled with exchanges of confidential price information so as to facilitate the conclusion and implementation of the parties' anti-competitive agreements. Restrictions that have such a clear anti-competitive object are, by their very nature, among the most serious violations of Article 81 of the Treaty regardless of their actual impact on the common market.

(362) While the Commission does not attempt to demonstrate the precise effects of the infringement due to the impossibility of determining with sufficient certainty the relevant competitive parameters (price, commercial terms, quality, innovation, and others) absent the infringements, it is likely that the coordination of price increases between the parties to the Baseler-Wuppertaler and Amsterdamer cooperation has had anti-competitive effects on the markets for 'other fasteners' and attaching machines in the Community. The fact that the participants to the Baseler-Wuppertaler and Amsterdamer cooperation reported at regular intervals on the success of the implementation of the agreed price increases (see for example recitals (91), (101), (108), (109), (110), (119), (123), (124), (127), (129), (130), (133), (137), (139)), together with the long duration of the infringement (more than 9 years for the Baseler-Wuppertaler and Amsterdamer cooperation) and the high aggregate market share of the members of the Baseler, Wuppertaler and Amsterdamer circles (especially Prym Fashion and Stocko), provide indication to this effect. Further analysis on the effects and impact of the infringement is set out in recitals (498) to (502).

Bilateral cooperation between Prym Fashion and Stocko/YKK [Corporation]

(363) With regard to the bilateral cooperation between on the one hand Prym Fashion and on the other hand Stocko and YKK [Corporation], the Commission considers that, on the basis of the elements put forward in the description of the events, that is to say section 4.3, the parties' anti-competitive agreements clearly aimed at

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

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

65 *See* Case T-141/94, *Thyssen Stahl v Commission*, [1999] ECR II-347. The judgment has been confirmed by the Court of Justice on 2 October 2003 in Case C-194/99 P, *Thyssen Stahl v Commission.*

fixing prices and allocating customers and were coupled with exchanges of confidential business information so as to facilitate the conclusion and implementation of the parties' anti-competitive agreements. Restrictions that have such a clear anti-competitive object are, by their very nature, among the most serious violations of Article 81 of the Treaty regardless of their actual impact on the common market.

(364) While the Commission does not attempt to demonstrate the precise effects of the infringement due to the impossibility of determining with sufficient certainty the relevant competitive parameters (price, commercial terms, quality, innovation, and others) absent the infringements, it is likely the agreements to fix prices and allocate customers coupled with exchanges of detailed price information between the parties, and considering the high aggregate market share of the parties involved, resulted in anti-competitive effects on the markets for 'other fasteners' and attaching machines in the Community **[*]**. Further analysis on the effects and impact of the infringement is set out in recitals (503)-(506).

Tripartite cooperation between YKK Holding/[*], Coats/Coats Germany and Prym Fashion/Éclair Prym

(365) With regard to the tripartite cooperation between YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym on the market for zip fasteners, the Commission considers that, on the basis of the elements put forward in the description of the events, that is to say section 4.4, the parties' anti-competitive agreements and/or concerted practices clearly aimed at fixing minimum prices for a set of standard zip fastener products on the basis of a methodology agreed upon between the parties, coupled with the exchange of confidential business information so as to facilitate the conclusion and implementation of the parties' anti-competitive agreements. Restrictions that have such a clear anti-competitive object are, by their very nature, among the most serious violations of Article 81 of the Treaty, regardless of their actual impact on the common market.

(366) While the Commission does not attempt to demonstrate the precise effects of the infringement due to the impossibility of determining with sufficient certainty the relevant competitive parameters (price, commercial terms, quality, innovation, and others) absent the infringements, it is likely that the agreement to fix prices and the exchange of confidential business information resulted in effects on the markets for zip fasteners in the Community. Further analysis on the effects and impact of the infringementis set out in recitals (507)-(509).

Bilateral cooperation between Coats and William Prym/Prym Fashion

(367) With regard to the bilateral cooperation between Coats and William Prym/Prym Fashion coverning the European haberdashery market, the Commission considers that, on the basis of the elements put forward in the description of the events, that is to say section 4.5, the parties' anti-competitive agreements and/or concerted practices clearly aimed at sharing the haberdashery market in the Community by preventing Coats from entering the hard haberdashery market for 'other fasteners'. Restrictions that have such a clear anti-competitive object are, by their very nature, among the most serious violations of Article 81 of the Treaty regardless of their actual impact on the common market.

(368) In general, whilst the anti-competitive object of the cartel is sufficient to support the conclusion that Article 81 (1) of the Treaty applies in this case, there is a high likelihood, considering the very long duration of the infringement (more than 21 years), that the parties' unlawful conduct has resulted in anti-competitive effects. In fact, in compliance with 1977 Agreement, Coats has not entered Prym's core market of 'other fasteners'. Further analysis on the effects and impact of the infringement is set out in recitals (510)-(513).

5.6. Article 81 (3) of the Treaty

(369) The provisions of Article 81 (1) of the Treaty may be declared inapplicable under Article 81 (3) in the case of an agreement or concerted practice which contributes to improving the production or distribution of goods or to promoting technical or economic progress, provided that it allows consumers a fair share of the resulting benefit, does not impose restrictions that are not indispensable to the attainment of those objectives and does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

(370) Restrictions of competition being the sole object of price fixing (applicable for the Baseler-Wuppertaler and Amsterdamer cooperation, the bilateral cooperation between Prym Fashion and Stocko/YKK [Corporation] and the tripartite cooperation between YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym), customer allocation (applicable for the bilateral cooperation between Prym Fashion and Stocko/YKK [Corporation]) and product market sharing (applicable for the bilateral cooperation between William Prym/Prym Fashion and Coats) arrangements subject to this Decision, there is no indication that the agreements and concerted practices between the undertakings would have improved the production or distribution of goods or promoted technical or economic progress. In any event, none of the parties has claimed that the conditions of Article 81 (3) of the Treaty were met. Outright cartels, like the ones subject to these proceedings, are indeed, by definition, the most detrimental restrictions of competition that benefit only the participating producers, not consumers.

(371) Accordingly, the conditions of exemption provided for in Article 81 (3) of the Treaty are not met in this case and the prohibition imposed by Article 81 (1) remains fully applicable.

5.7. Effect upon trade between Member States

(372) The continuing agreement between the manufacturers had an appreciable effect upon trade between Member States.

(373) Article 81 of the Treaty is aimed at agreements, which might harm the attainment of a single market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the common market.

(374) According to the Court of Justice judgment in *Bagnasco*, "*in order that an agreement may affect trade between Member States, it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of*

law that it may have influence, direct and indirect, actual or potential, on the pattern between Member States"[66]. In any event, Article 81 of the Treaty "*does not require that agreements referred to in that provision have actually affected trade between Member States, it does require that it be established that the agreements are capable of having that effect*"[67].

(375) As demonstrated in section 2.4 (Inter-state trade), the markets for 'other fasteners', attaching machines and zip fasteners are characterised by a substantial volume of trade between Member States.

(376) The application of Articles 81 of the Treaty to a cartel is not, however, limited to that part of the members' sales that actually involve the transfer of goods from one Member State to another. Nor is it necessary, in order for these provisions to apply, to show that the individual conduct of each participant, as opposed to the cartel as a whole, affected trade between Member States.[68]

Baseler-Wuppertaler and Amsterdamer cooperation

(377) By coordinating price increases, and exchanging sensitive information on prices and the implementation of price increases in the various national markets in the Community, the Baseler-Wuppertaler and Amsterdamer agreements and concerted practices maintained artificially different commercial structures among the Member States, a phenomenon which is likely to explain the difference in prices between the Member States in this industrial sector. These mechanisms affected as well the normal trade flows within the Community.

(378) Due to the parties' large aggregate market share, the cartel arrangements covered a large proportion of all trade throughout the Community in this important industrial sector. The existence of price-fixing mechanisms must have resulted, or was likely to result, in the automatic diversion of trade patterns from the course they would otherwise have followed.[69]

Bilateral cooperation between Prym Fashion and Stocko/YKK [Corporation]

(379) By fixing prices, notably minimum, average and target prices on a product-by-product and country-by-country basis, exchanging detailed price charts and allocating customers by not undercutting each other's offers to clients allowed Prym Fashion and Stocko/YKK [Corporation] to maintain artificially different commercial structures among the Member States, a phenomenon which is likely to explain the difference in prices between the Member States in this industrial sector. These mechanisms affected as well the normal trade flows within the Community.

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

67 Case C-306/96, *Javico*, Judgment of 28 April 1998, ECR 1997, paragraphs 16 and 17; *see* also the Judgment of the Court of First Instance of 15 September 1998 in Case T-374/94, *European Night Services*, paragraph 136.

68 *See* the judgment of the Court of First Instance in Case T-13/89, *Imperial Chemical Industries v Commission*, [1992] ECR II-1021, at paragraph 304.

69 Joined Cases 209 to 215 and 218/78, *Van Landewyck and Others v Commission*, [1980] ECR 3125, paragraph 170.

(380) Due to the parties' large aggregate market share, the cartel arrangements covered a large proportion of all trade throughout the Community in this important industrial sector. The existence of price-fixing mechanisms and customer allocation must have resulted, or was likely to result, in the automatic diversion of trade patterns from the course they would otherwise have followed.[70]

Tripartite cooperation between YKK Holding/[*], Coats/Coats Germany and Prym Fashion/Éclair Prym

(381) By exchanging prices and defining a standard list of products within the framework of the tripartite zip fasteners cooperation between YKK Holding/**[*]** , Coats/Coats Germany and Prym Fashion/Éclair Prym, the collusive agreements restricted the trade opportunities between the Member States by allowing each participant to adjust its output and prices to optimise their sales in accordance with the artificial market transparency. In light of the parties' large aggregate market share, this cartel arrangement, which covered the whole of the Community, must have resulted, or was likely to result, in the automatic diversion of trade patterns from the course they would otherwise have followed.[71]

Bilateral cooperation between William Prym/Prym Fashion and Coats

(382) By agreeing to share the haberdashery market by which Coats was reserved the soft haberdashery market, and Prym Group the hard haberdashery market, Coats and William Prym/Prym Fashion artificially partitioned the Common Market. This agreement, covering the entire area of the Community, allowed the companies to artificially maintain different commercial structures among the Member States and to restrict trade opportunities between them. By restraining competition between themselves, and thereby artificially preserving traditional patterns of trade, Coats and William Prym/Prym Fashion restricted trade between the Member States.

(383) In this case, the cartel arrangements covered virtually all trade throughout the Community in this important industrial sector. The existence of this longstanding market sharing arrangement must have resulted, or was likely to result, in the automatic diversion of trade patterns from the course they would otherwise have followed.[72]

6. ADDRESSEES

6.1. General principles on liability

(384) As a general consideration, the subject of Community competition rules is the "undertaking", a concept that has an economic scope and that is not identical with the notion of corporate legal personality in national commercial or fiscal law. The

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70 Joined Cases 209 to 215 and 218/78, *Van Landewyck and Others v Commission*, [1980] ECR 3125, paragraph 170.

71 Joined Cases 209 to 215 and 218/78, *Van Landewyck and Others v Commission*, [1980] ECR 3125, paragraph 170.

72 Joined Cases 209 to 215 and 218/78, *Van Landewyck and Others v Commission*, [1980] ECR 3125, paragraph 170.

"undertaking" that participated in the infringement is therefore not necessarily the same entity as the precise legal entity within a group of companies whose representatives actually took part in the cartel meetings. The term "undertaking" is not defined in the Treaty. However, in *Shell International Chemical Company v. Commission,* the Court of First Instance held that *"in prohibiting undertakings inter alia from entering into agreements or participating in concerted practices which may affect trade between Member States and have as their object or effect the prevention, restriction or distortion of competition within the common market, Article 85 (1) [now Article 81 (1)] of the EEC Treaty is aimed at economic units which consist of a unitary organization of personal, tangible and intangible elements which pursues a specific economic aim on a long-term basis and can contribute to the commission of an infringement of the kind referred to in that provision".*[73]

(385) Despite the fact that Article 81 of the Treaty is applicable to undertakings and that the concept of undertaking has an economic scope, only entities with legal personality can be held liable for infringements. This Decision should therefore be addressed to legal entities.[74] It is accordingly necessary, as regards each undertaking that is to be held accountable for its infringement of Article 81 of the Treaty in this case, to identify one or more legal entities that represent the undertaking. According to the case law, *"Community competition law recognises that different companies belonging to the same group form an economic unit and therefore an undertaking within the meaning of Articles 81 EC and 82 EC if the companies concerned do not determine independently their own conduct on the market"*.[75] If a subsidiary does not determine its own conduct on the market independently, the company which directed its market strategy forms a single economic entity with that subsidiary and may be held liable for an infringement on the ground that it forms part of the same undertaking.

(386) According to the settled case-law of the Court of Justice and the Court of First Instance, the Commission can generally assume that a wholly-owned subsidiary essentially follows the instructions given to it by its parent company without needing to check whether the parent company has in fact exercised that power.[76] However, the parent company and/or subsidiary can reverse this presumption by producing sufficient evidence that the subsidiary "decided independently on its own conduct on the market rather than carrying out the instructions given to it by

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73 Case T-11/89, [1992] ECR II-757, paragraph 311. *See* also the judgment of the Court of First Instance in Case T-352/94, *Mo Och Domsjö AB v Commission,* [1998] ECR II-1989, paragraphs 87-96.

74 Although an 'undertaking' within the meaning of Article 81 (1) of the Treaty is not necessarily the same as a company having legal personality, it is necessary for the purposes of applying and enforcing decisions to identify an entity possessing legal or natural personality to be the addressee of the measure. *See* Case T-305/94, *PVC,* [1999] ECR, p. II-0931, paragraph 978.

75 Court of Justice in Case 48/69, *Imperial Chemical Industries v Commission,* [1972] ECR 619, paragraphs 132-133; Case 170/83, *Hydrotherm,* [1984] ECR 2999, paragraph 11 and the Court of First Instance in Case T-102/92, *Viho v Commission,* [1995] ECR II-17, paragraph 50, cited in Case T-203/01, *Michelin* v *Commission,* [2003] ECR II-4071, paragraph 290.

76 Court of First Instance in Joined Cases T-71/03 etc. *Tokai Carbon* and Others *v Commission,* 15 June 2005, paragraph 60; Case T-354/94 *Stora Kopparbergs Bergslags v Commission,* [1998] ECR II-2111, paragraph 80, upheld by Court of Justice in Case C-286/98P *Stora Kopparbergs Bergslags v Commission,* [2000] ECR I-9925, paragraphs 27, 28 and 29; and Court of Justice in Case 107/82 *AEG v Commission,* [1983] ECR 3151, paragraph 50.

its parent company and such that they fall outside the definition of an 'undertaking'".[77]

(387) The fact that it has been shown that a parent company is responsible for the conduct of its subsidiary does not in any way exonerate the subsidiary of its own responsibility. The subsidiary continues to be individually accountable for the anticompetitive practices in which it took part. Any responsibility on the part of the parent company, by reason of the influence and control it exercises over its subsidiary, is additional.

(388) It should also be noted that the use of this presumption based on the level of shareholding does not prevent the Commission also relying on other pertinent factors to demonstrate the exercise of decisive influence and therefore to attribute liability to the parent companies concerned.

(389) When an undertaking that has committed an infringement of Article 81 of the Treaty subsequently disposes of the assets which contributed to the infringement and withdraws from the market in question, it continues to be answerable for the infringement if it has not ceased to exist.[78] If the undertaking which has acquired the assets carries on the violation of Article 81 of the Treaty, liability for the infringement should be apportioned between the seller and the acquirer of the infringing assets, each undertaking being responsible for the period of infringement in which it participated through these assets in the cartel. However, if the legal person initially answerable for the infringement ceases to exist and loses its legal personality, being purely and simply absorbed by another legal entity, that latter entity must be held answerable for the whole period of the infringement and thus liable for the activity of the entity that was absorbed.[79] The mere disappearance of the person responsible for the operation of the undertaking when the infringement was committed does not allow it to evade liability.[80] Liability for a fine may thus pass to a successor where the corporate entity, which committed the violation, has ceased to exist in law. "

6.2. Liability in this case

(390) The Commission has chosen to address this Decision not only to the legal entities that participated directly in the cartel arrangements, but also to their parent companies insofar as it can be established that parent companies exercised effective influence on the commercial policy of their respective subsidiaries. In doing so, and in the absence of evidence to the contrary, the Commission

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77 Court of First Instance in Joined Cases T-71/03 etc., *Tokai Carbon and Others v Commission*, judgment of 15 June 2005, paragraph 61.

78 Case T-6/89, *Enichem Anic v Commission (Polypropylene)*, [1991] ECR II-1623; Case C-49/92P, *Commission v Anic Partecipazioni*, [1999] ECR I-3125, paragraphs 47, 48 and 49.

79 *See* Case C-279/98P, *Cascades v Commission*, [2000] ECR I-9693, paragraphs 78-79: *"It falls, in principle, to the natural or legal person managing the undertaking in question when the infringement was committed to answer for that infringement, even if, when the Decision finding the infringement was adopted, another person had assumed responsibility for operating the undertaking ... Moreover, those companies were not purely and simply absorbed by the appellant but continued their activities as its subsidiaries. They must, therefore, answer themselves for their unlawful activity prior to their acquisition by the appellant, which cannot be held responsible for it"*.

80 *See* Court of First Instance in Case T-305/94, *PVC II*, [1999] ECR II-931, paragraph 953.

presumes that parent companies holding the totality of the subsidiaries' shares actually exercise effective control over its subsidiaries.

(391) Although any presumption of effective control in cases of wholly owned subsidiaries remains rebuttable, it is up to the party wishing to rebut the presumption to produce sufficient evidence to support such a rebuttal. General assertions unsupported by convincing evidence are not sufficient in this regard. To rebut the presumption it must be shown either that the parent company was not in a position to exert a decisive influence on it's subsidiary's commercial policy, or that the subsidiary was autonomous (i.e., that the parent company, although being in a position to exert decisive influence, did not actually exert it as regards the basic orientations of the subsidiary's commercial strategy and operations on the market).

6.2.1. A. Raymond

6.2.1.1. Baseler-Wuppertaler and Amsterdamer cooperation:

(392) A. Raymond Sarl, a subsidiary of the holding company A. Raymond & Cie SCS (99% shareholding), participated in the collusive conduct within the framework of the Baseler-Wuppertaler and Amsterdamer cooperation, described in section 4 of this Decision. It has been established in section 4.2 that the undertaking was represented by **[*]** at various meetings of the Baseler circle. A. Raymond should be held liable for its cartel participation starting on 24 May 1991 and continuing until 1 December 1999.

(393) The fact that A. Raymond divested its know-how for the products covered by the collusive conduct in 2000 to Prym Fashion GmbH & Co. KG, that is to say after the termination of A. Raymond's participation in the Baseler-Wuppertaler and Amsterdamer cooperation, does not relieve the undertaking from its liability for the infringements committed during the existence of the circles.

6.2.2. Berning

6.2.2.1. Baseler-Wuppertaler and Amsterdamer cooperation:

(394) Berning & Söhne GmbH & Co. KG participated in the collusive conduct within the framework of the Baseler-Wuppertaler and Amsterdamer cooperation, described in section 4 of this Decision. It has been established in section 4.2 that the undertaking was represented by **[*]** at the various meetings of the Baseler and Wuppertaler circles. Berning & Söhne GmbH & Co. KG should be held liable for its cartel participation starting on 24 May 1991 and continuing until 19 August 2000.

6.2.3. Coats Group

*6.2.3.1. Tripartite cooperation between Coats/Coats Germany, YKK Holding/***[*]** *and Prym Fashion/Éclair Prym:*

(395) Coats Holdings Ltd (legal and economic successor of Coats Patons, Coats Viyella and Coats plc and having Opti as its brand for zip fasteners since 1988) and Coats Deutschland GmbH participated in the collusive conduct within the framework of

the tripartite zip fastener cooperation described in section 4.4 of this Decision. It has been established in section 4.4 that Coats Holdings Ltd and Coats Deutschland GmbH were represented by **[*]** at the various meetings of the tripartite cooperation.

(396) The Commission presumes, and it is undisputed by Coats, that Coats Holdings Ltd, the 100% owner of Coats Deutschland GmbH, was able to exercise decisive influence on the commercial policy of its subsidiary, and that it made use of this power.

(397) Therefore, Coats Holdings Ltd and Coats Deutschland GmbH should be held jointly and severally liable for the infringements committed within the framework of the tripartite cooperation on the zip fasteners market in Europe, described in section 4.4, from 28 April 1998 until 12 November 1999.

6.2.3.2. Bilateral cooperation between Coats and William Prym/Prym Fashion:

(398) Coats Holdings Ltd participated in the collusive conduct within the framework of the bilateral market sharing scheme between Coats Holdings and William Prym/Prym Fashion described in section 4.5 of this Decision. Coats Holdings Ltd should be held responsible for its cartel participation starting on 15 January 1977 and continuing until at least 15 July 1998.

6.2.4. Scovill Group

6.2.4.1. Baseler-Wuppertaler and Amsterdamer cooperation:

(399) Scovill Fasteners Europe SA (legal and economic successor of Unifast) and its parent Scovill Fasteners Inc. participated in the collusive conduct within the framework of the Baseler-Wuppertaler and Amsterdamer cooperation, described in section 4.2 of this Decision. It has been established in section 4.2 that Scovill Fasteners Europe SA was represented by **[*]**at the various Baseler circle meetings whereas its parent, Scovill Fasteners Inc., was represented at the Amsterdamer circle by **[*]**.

(400) The Commission presumes, in the absence of sufficient evidence to the contrary, that Scovill Fasteners Inc., the 100% owner, since 1996, of Scovill Fasteners Europe SA (legal and economic successor of Unifast), was able to exercise decisive influence on the commercial policy of its subsidiary following its acquisition in 1996, and that it made use of this power.

(401) Scovill Fasteners Inc. contests the attribution of liability by arguing that it was neither directly involved nor aware of the infringing behaviour taking place in the Baseler-Wuppertaler and Amsterdamer circle meetings. It claims that Scovill Fasteners Inc. and its wholly owned subsidiary, Scovill Fasteners Europe SA, did not form a single economic entity, and that Scovill Fasteners Europe SA pursued an independent business strategy (including pricing decisions, input decisions). Scovill Fasteners Inc. further argues that its European subsidiary was led by an autonomous management that took its independent decisions, without any interference from its parent company, in relation to all its business activities, including decisions on pricing, investments, marketing plans, and financial

matters. Scovill Fasteners Inc. has provided copies of internal Scovill Fasteners Europe documents to show the autonomous operation of the subsidiary and its independence from the parent company. Scovill Fasteners Inc. argues that it cannot be held responsible for any infringing conduct by its subsidiary, Scovill Fasteners Europe, as no decisive influence was exercised in relation to the latter.

(402) In relation to Scovill Fasteners Inc.'s arguments concerning the alleged autonomy of its subsidiary and the alleged absence of the parent company's decisive influence over its subsidiary's commercial policy, it is sufficient to recall that **[*]**. The Commission acknowledges that Scovill Fasteners Inc. and Scovill Fasteners Europe SA are two separate legal entities, but notes, however, that **[*]**, in his role of **[*]**, represented directly the interests of the parent company, Scovill Fasteners Inc., in the subsidiary, Scovill Fasteners Europe SA. During his tenure of **[*]**, **[*]** attended three meetings of the Baseler circle between 2 May 1997 and 20 August 2000 and was invited to attend (at least) a further two meetings of the circle during that period. **[*]** took part in the last Baseler circle meeting of 19 August 2000 in Amsterdam, in which it was decided to set up a new circle, the Amsterdamer circle, to continue the Baseler cooperation among a more limited group of companies, representing the main remaining players on the relevant market. **[*]**.

(403) Finally, the evidence in the Commission file clearly shows the direct involvement of Scovill Fasteners Inc. in the collusive conduct of the Amsterdamer circle. Together with **[*]** of Scovill Fasteners Inc., **[*]** participated in the Amsterdamer circle meeting of 15 March 2001. **[*]**.

(404) In these circumstances, the Commission considers that Scovill Fasteners Inc. has not rebutted the presumption of liability for the infringements committed within the framework of the Baseler-Wuppertaler and Amsterdamer cooperation. Therefore, Scovill Fasteners and its subsidiary, Scovill Fasteners Europe, should be held jointly and severally liable for the infringements committed within the framework of the Baseler and Amsterdamer circles starting from the moment Scovill Fasteners Inc. acquired Scovill Fasteners Europe (at that time Unifast) in 1996 and continuing until 15 March 2001. Scovill Fasteners Europe SA should be held responsible for the whole period it participated in the collusive conduct within the framework of the Baseler-Wuppertaler and Amsterdamer cooperation, that is to say from 24 May 1991 until 15 March 2001.

(405) Scovill Fasteners Inc. and Scovill Fasteners Europe SA are both addressees of this Decision. The Commission has, however, received evidence that Scovill Fasteners Europe SA was declared bankrupt by court ruling on 13 June 2005, and is in liquidation. As Scovill Fasteners Europe SA still exists as a legal entity, it should be an addressee of this Decision together with Scovill Fasteners Inc.

6.2.5. Prym Group

6.2.5.1. Baseler-Wuppertaler and Amsterdamer cooperation:

(406) William Prym GmbH & Co. KG (legal successor to William Prym-Werke GmbH & Co. KG), its fully owned subsidiary Prym Fashion GmbH & Co. KG (since its establishement on 1 August 1994), and the latter's fully owned subsidiary

Schaeffer GmbH (until being absorbed by Prym Fashion GmbH & Co. KG in 2000) participated in the collusive conduct within the framework of the Baseler-Wuppertaler and Amsterdamer cooperation, described in section 4.2 of this Decision. It has been established in section 4.2 that William Prym GmbH & Co. KG/Prym Fashion GmbH & Co. KG were represented at the Baseler circle meetings by **[*]**, while Schaeffer GmbH was represented by **[*]**. In the Wuppertaler circle William Prym GmbH & Co. KG/Prym Fashion GmbH & Co. KG were represented by **[*]** while Schaeffer GmbH was represented by **[*]**. In the Amsterdamer circle William Prym GmbH & Co. KG/Prym Fashion GmbH & Co. KG were represented by **[*]**.

(407) Since Schaeffer was a wholly owned subsidiary of William Prym GmbH & Co. KG/Prym Fashion GmbH during the period of its infringement from 24 May 1991 to 1 December 1999 and it has subsequently ceased to exist as a legal entity, the Commission assumes the liability of William Prym GmbH & Co. KG/Prym Fashion GmbH & Co. KG over its behaviour in that period. William Prym GmbH & Co. KG/Prym Fashion GmbH & Co. KG have not contested the attribution of liability.

(408) The Commission further presumes, that William Prym GmbH & Co. KG, the 100% owner of Prym Fashion GmbH & Co. KG, was able to exercise decisive influence on the commercial policy of its subsidiaries, and that it made use of this power. In addition to that presumption, the Commission has further evidence that show that during the period under investigation, William Prym exercised decisive influence over the market strategy of all its subsidiaries, notably through the role of **[*]**. William Prym GmbH & Co. KG has not contested the attribution of liability.

(409) Therefore, William Prym GmbH & Co. KG and its subsidiary, Prym Fashion GmbH & Co. KG, should be held jointly and severally liable for the infringements committed within the framework of the Baseler, Wuppertaler and Amsterdamer circles as described in section 4.2, as of the moment Prym Fashion GmbH & Co. KG became a legally independent and fully owned subsidiary of William Prym GmbH & Co. KG, that is to say from 1 August 1994 until 15 March 2001. William Prym GmbH & Co. KG is held responsible for the whole period it participated in the collusive conduct within the framework of the Baseler-Wuppertaler and Amsterdamer cooperation, that is to say from 24 May 1991 until 15 March 2001.

6.2.5.2. Bilateral cooperation between Prym Fashion and Stocko/YKK [Corporation]*:*

(410) Prym Fashion GmbH & Co. KG participated in the collusive conduct within the framework of the bilateral cooperation between Prym Fashion and Stocko/YKK [Corporation], described in section 4.3 of this Decision. It has been established in section 4.3 that Prym Fashion GmbH & Co. KG was represented by **[*]**in the various meetings held within this bilateral scheme.

(411) The Commission presumes, that William Prym GmbH & Co. KG, the 100% owner of Prym Fashion GmbH& Co. KG, was able to exercise decisive influence on the commercial policy of its subsidiary, and that it made use of this power. In addition to the above presumption, the Commission has further evidence that

show that during the period under investigation, William Prym exercised decisive influence over the market strategy of all its subsidiaries, notably throughout the role of **[*]**.William Prym GmbH & Co. KG has not contested the attribution of liability.

(412) Therefore, William Prym GmbH & Co. KG and its subsidiary Prym Fashion GmbH & Co. KG, should be held jointly and severally liable for the infringements committed within the framework of the bilateral cooperation between Prym Fashion and Stocko/YKK [Corporation] as described in section 4.3, from 13 August 1999 until 13 January 2003.

*6.2.5.3. Tripartite cooperation between Prym Fashion/Éclair Prym, Coats/Coats Germany and YKK Holding/***[*]***:*

(413) Prym Fashion GmbH & Co. KG and its subsidiary Éclair Prym Group S.A. (100% subsidiary of Prym Fashion GmbH & Co. KG since 1 January 2001, and already owned at a 50% stake from 1 July 1998 (with Bonduel Sarl, an independent undertaking owning another 50%))[81] participated in the collusive conduct within the framework of the tripartite cooperation on the zip fasteners market between Prym Fashion/Éclair Prym, Coats/Coats Germany and YKK Holding/**[*]**, described in section 4.4 of this Decision. It has been established in section 4.4 that Prym Fashion GmbH & Co. KG and Éclair Prym Group S.A. were represented at the various meeting within this collusive scheme by **[*]**.

(414) The Commission has evidence that Prym Fashion GmbH & Co. KG, the 50% owner of Éclair Prym Group S.A. since 1 July 1998 and 100% owner since 1 January 2001, exercised decisive influence on the commercial policy of its subsidiary since its 50% acquisition of the undertaking on 1 July 1998, which remains undisputed by Prym Fashion GmbH & Co. KG. As admitted by Prym Group in **[*]**, **[*]** acted on behalf of Éclair Prym at the various meetings of the tripartite scheme in 1999.

(415) The Commission further presumes, that William Prym GmbH & Co. KG, the 100% owner of Prym Fashion GmbH & Co. KG and ultimate parent of Éclair Prym Group S.A. (following the acquisition by Prym Fashion GmbH & Co. KG of a 50% stake in Éclair Prym Group S.A. on 1 July 1998), was able to exercise decisive influence on the commercial policy of its subsidiaries, and that it made use of this power. This remains undisputed by William Prym GmbH & Co. KG.

(416) The Commission has further evidence to show that during the period under investigation, William Prym exercised decisive influence over the market strategy of all its subsidiaries, notably through the role of **[*]**.

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81 Before it was fully acquired by Prym Fashion in 2001, Éclair Prym was known as Bonduel Prym and was effectively a Joint Venture between Bonduel Sarl and Prym Fashion. In a meeting **[*]**, it is stated that Bonduel-Prym was due to be fully acquired by Prym Fashion and **[*]** could be seen as having a preponderant role in the management of Bonduel-Prym. In the same manner, it is clear that in a meeting held in Stolberg on 15 July 1998 (*See* **[*]**), it is **[*]** representing Prym Fashion that reached agreement with Coats on non competition in the zip market between Bonduel-Prym (Éclair Prym) and Coats.

(417) Therefore, William Prym GmbH & Co. KG and its subsidiaries, Prym Fashion GmbH & Co. KG and Éclair Prym Group S.A., should be held jointly and severally liable for the infringements committed within the framework of the tripartite cooperation between Prym Fashion/Éclair Prym, Coats/Coats Germany and YKK Holding/**[*]**, as described in section 4.4, for the whole duration of the infringement, that is to say from 28 April 1998 until 12 November 1999, with the exception of Éclair Prym Group S.A., which is liable for the infringement only as of 13 January 1999 onwards.

6.2.5.4. Bilateral cooperation between Coats and William Prym/Prym Fashion:

(418) William Prym GmbH & Co. KG (legal successor to William Prym-Werke GmbH & Co. KG as of 1 August 1994) and its fully owned subsidiary, Prym Fashion GmbH & Co. KG (since its establishement on 1 August 1994), participated in the collusive conduct within the framework of the bilateral cooperation with Coats Holdings Ltd, described in section 4.5 of this Decision.

(419) The Commission presumes, that William Prym GmbH & Co. KG, the 100% owner of Prym Fashion GmbH & Co. KG, was able to exercise decisive influence on the commercial policy of its subsidiary, and that it made use of this power. The Commission has further evidence that shows that during the period under investigation, William Prym exercised decisive influence over the market strategy of all its subsidiaries, notably through the role of **[*]**. William Prym GmbH & Co. KG has not contested the attribution of liability.

(420) Therefore, William Prym GmbH & Co. KG and its subsidiary, Prym Fashion GmbH & Co. KG, should be held jointly and severally liable for the infringements committed within the framework of the bilateral cooperation between William Prym/Prym Fashion and Coats as described in section 4.5 of this Decision, as of the moment Prym Fashion GmbH & Co. KG became a legally independent and fully owned subsidiary of William Prym GmbH & Co. KG, that is to say from 1 August 1994 until 15 July 1998. William Prym GmbH & Co. KG should be held responsible for the whole period it participated in the collusive conduct within the framework of bilateral cooperation, that is to say from 15 January 1977 until 15 July 1998.

6.2.6. YKK Group

6.2.6.1. Baseler-Wuppertaler and Amsterdamer cooperation:

(421) YKK Stocko Fasteners GmbH (former Stocko Verschlußtechnik GmbH & Co. KG) participated in the collusive conduct within the framework of the Baseler-Wuppertaler and Amsterdamer cooperation, described in section 4.2 of this Decision. It has been established in section 4.2 that YKK Stocko Fasteners GmbH was represented at the Baseler circle meetings by **[*]** and at the Wuppertaler circle meetings by **[*]**. At the Amsterdamer circle the undertaking was represented by **[*]**.

(422) The Commission presumes, in the absence of sufficient evidence to the contrary, that YKK Holding Europe BV, the 100% parent of YKK Stocko Fasteners GmbH

(since March 1997), exercised decisive influence on the commercial policy of its subsidiaries.

(423) The Commission further presumes, in the absence of sufficient evidence to the contrary, that YKK Corporation [*], the 100% owner of YKK Holding Europe BV and ultimate parent of all of the latter's subsidiaries, including YKK Stocko Fasteners GmbH (since March 1997), was able to exercise decisive influence on the commercial policy of its subsidiaries, and that it made use of this power.

(424) YKK Corporation [*] and YKK Holding Europe BV contest the attribution of liability. It is argued that YKK Stocko Fasteners GmbH, YKK Holding Europe BV and YKK Corporation [*] do not form a single economic entity and cannot be considered as one single "undertaking". YKK Group also argues that **[*]**.

(425) With regard to the Baseler-Wuppertaler and Amsterdamer cooperation described in section 4.2, YKK Group argues that neither YKK Corporation [*] nor its fully owned subsidiary, YKK Holding Europe BV, was party to, or had any knowledge of the Baseler, Wuppertaler, and Amsterdamer circle meetings and their contents. It is argued, that only YKK Stocko Fasteners GmbH, the fully owned subsidiary of YKK Holding Europe BV (since March 1997), participated in the infringement, but without the knowledge or approval of YKK Holding Europe BV or YKK Corporation [*].

(426) The Commission notes, however, that for the purposes of attributing liabilities within a group of companies, a parent company can be presumed liable for the illegal conduct of its wholly-owned subsidiaries, unless it reverses the presumption of actual exercise of decisive influence over these subsidiaries. Such presumption cannot be rebutted by alleging that the parent company did not encourage or impose the illegal behaviour upon its subsidiaries. In fact, a parent company can be held liable for the conduct of its subsidiaries, if it exercised or is presumed to have exercised (and the presumption is not reversed) decisive influence over the general commercial policy of the latter (that is to say if the parent company determines or is presumed to have determined the basic orientation of the commercial strategy and operations of the subsidiary), regardless of whether such influence consisted specifically in encouraging the illegal behaviour or in imposing such behaviour upon the subsidiaries. For the same reasons, when the said presumption applies, the undertaking concerned cannot reverse it by simply stating that the parent company was not directly involved in or was not even aware of the cartel.

(427) The contention that **[*]** is not sufficient to reverse the presumption of their decisive influence over YKK Stocko Fasteners GmbH. It is in fact not extraordinary that a parent company, having set up a wholly owned subsidiary for the carrying out of a certain activity, does not continue to remain involved in the daily management of that subsidiary. Furthermore, as is shown in relation to the bilateral cooperation between Prym Fashion and Stocko/YKK [Corporation] (section 4.3 of this Decision) and the tripartite cooperation between YKK Holding/**[*]**, Prym Fashion/Éclair Prym and Coats/Coats Germany (section 4.4 of this Decision), the European subsidiaries of YKK Group, including YKK Stocko Fasteners GmbH, have not acted autonomously on the market but the ultimate parent, YKK Corporation [*], has in fact been informed and directly involved in

the European subsidiaries' (including YKK Stocko Fasteners GmbH) marketing policy (see recitals (430), (434), (435), (437), (438), (442), (446), (447)).

(428) The Commission therefore considers that YKK Corporation [*] and YKK Holding Europe BV have not provided sufficient and convincing evidence to rebut the presumption of liability for the infringements committed within the framework of the Baseler-Wuppertaler and Amsterdamer cooperation described in section 4.2.

(429) Therefore, YKK Corporation [*], and its subsidiaries, YKK Holding Europe BV and YKK Stocko Fasteners GmbH, should be held jointly and severally liable for the infringements committed within the framework of the Baseler-Wuppertaler and Amsterdamer cooperation, described in section 4.2 of this Decision, as of the moment YKK Stocko Fasteners GmbH became a wholly owned subsidiary of YKK Holding Europe BV and ultimately YKK Corporation [*], that is to say from March 1997 until 15 March 2001. YKK Stocko Fasteners GmbH should be held responsible for the whole period it participated in the collusive conduct within the framework of the Baseler-Wuppertaler and Amsterdamer cooperation, that is to say 24 May 1991 until 15 March 2001.

6.2.6.2. Bilateral cooperation between Prym Fashion and Stocko/YKK [Corporation]*:*

(430) YKK Corporation [*] and its fully owned subsidiary YKK Stocko Fasteners GmbH (100% subsidiary of YKK Holding Europe BV, which in turn is a 100% subsidiary of YKK Corporation [*]) participated in the collusive conduct within the framework of the bilateral cooperation with Prym Fashion, described in section 4.3 of this Decision. It has been established in section 4.3 that YKK Stocko Fasteners GmbH was represented by **[*]** in the various meetings held within this bilateral scheme, whereas YKK Corporation [*] was represented by **[*]**.

(431) The Commission presumes, in the absence of sufficient evidence to the contrary, that YKK Holding Europe BV, the parent company of **[*]**, and 100% parent of YKK Stocko Fasteners GmbH, exercised decisive influence on the commercial policy of its subsidiaries.

(432) The Commission further presumes, in the absence of sufficient evidence to the contrary, that YKK Corporation [*], the 100% owner of YKK Holding Europe BV and ultimate parent of all of the latter's subsidiaries, including YKK Stocko Fasteners GmbH, was able to exercise decisive influence on the commercial policy of its subsidiaries, and that it made use of this power.

(433) As argued above in recital (424), YKK [Corporation] and YKK Holding Europe BV contest the attribution of liability. The same considerations, as outlined in recitals (426) and (427), apply also in relation to the bilateral scheme between Stocko/YKK [Corporation] and Prym Fashion.

(434) With regard to the bilateral cooperation described in section 4.3 of this Decision, YKK Group admits to regular bilateral meetings between Prym Fashion GmbH & Co. KG and YKK Stocko Fasteners GmbH during the period of the infringement. YKK Group furthermore acknowledges that in certain bilateral meetings with

Prym Fashion, also representatives of YKK Corporation [*] were present, but downplays the nature of the latter's involvement. YKK Group argues that except for "*anecdotal events*" in which "*personnel belonging to the YKK Group, but not Stocko*" participated in meetings, the "*overwhelming majority of the bilateral contacts and discussions in the hard haberdashery products sector*" were carried out solely by representatives of YKK Stocko Fasteners GmbH, that is to say **[*]** (**[*]** YKK Stocko Fasteners GmbH). As corroborating evidence, YKK Group points to certain documents contained in its leniency submission of 25 February 2005, that is to say **[*]**, **[*]** as well as **[*]**.

(435) According to YKK Group, the document entitled **[*]**, "*confirms that the bilateral arrangements between Prym and Stocko in the hard haberdashery area were aimed at the so-called* **[*]** *area, which was served by Stocko alone and also that the personnel mainly involved in these arrangements was from Stocko only*". However, on the basis of the evidence available, when taken as a whole, the Commission finds that both YKK Corporation [*] and YKK Stocko Fasteners GmbH were directly involved in infringing discussions, in accordance with their respective geographic sphere of influence, pursuing the objectives referred to in recital (308). The parties to the cooperation, that is to say Prym Fashion and Stocko/YKK [Corporation], discussed, exchanged, and agreed on prices in relation to European **[*]** markets (see recitals **[*]**), some of which were beyond the sphere of competence of YKK Stocko Fasteners GmbH[82] but within the area of competence of YKK Holding Europe BV[83] (limited to **[*]** region) whereas some were beyond the area of competence of both YKK Stocko Fasteners GmbH or YKK Holding Europe BV (or any of the latter's subsidiaries)[84]. This demonstrates that the agreement to regulate prices **[*]** (addressed at the meeting of 13 August 1999) involving representatives at the highest levels of Prym Fashion and YKK Group was in fact implemented. YKK Stocko Fasteners GmbH, in fact, was limited at most to a co-ordination role at the **[*]** level (geographic area covered by YKK Holding Europe BV and its subsidiaries, including YKK Stocko Fasteners GmbH) and could not, independently, have addressed for example **[*]**; nevertheless a **[*]** agreement was reached. This was possible since the responsibility for the coordination **[*]** was left to **[*]**. Indeed, as emerges from the note concerning the meeting in **[*]** (see **[*]**), agreements entered into on the European level would be valid **[*]** 'upon confirmation', that is to say upon approval by YKK Corporation [*]. The fact that YKK Group argues that the pricing responsibility of YKK Stocko Fasteners GmbH was "*limited to Germany*", makes the involvement of YKK Corporation [*] to this price fixing scheme ever more obvious.

(436) In relation to the role of YKK Stocko Fasteners GmbH's direct parent YKK Holding Europe BV, the Commission does not have evidence that personnel

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82 YKK Group argues that Stocko's pricing responsibility was limited to Germany, and consequently Stocko would only have had the capability to implement any price agreement for the German customers; **[*]**

83 The documentary evidence indicates price arrangements specifically for the following **[*]**markets: Germany, Austria, the United Kingdom, France, Spain, Portugal, Ireland, Italy, Belgium, the Netherlands, Luxembourg, Poland, Czech Republic, Slovakia, Romania, Hungary, Bulgaria, **[*]**.

84 The documentary evidence indicates price arrangements in relation to the following **[*]** markets **[*]**, that is to say **[*]**. The parties also agreed on price arrangements in relation to **[*]** customers, for example **[*]**.

belonging to it participated in any of the bilateral meetings, but its indirect involvement is shown by the contemporaneous documents describing the price fixing scheme and its participants, that is to say **[*]**. According to these documents, the bilateral price fixing scheme would involve the YKK Group **[*]**, and not only Stocko, and reference is consequently made to **[*]**.

(437) The evidence submitted by Prym Group, **[*]**, the regular exchange of price charts **[*]**, the fact that representatives of YKK Corporation [*] participated in the price discussions with Prym Fashion directly **[*]** corroborate the Commission's finding that not only YKK Stocko Fasteners GmbH but also YKK Corporation [*] was aware and directly involved in this collusive scheme.

(438) Although the most frequent counterparts from YKK Group's side to the bilateral discussions with Prym Fashion GmbH were **[*]** of YKK Stocko Fasteners GmbH, **[*]**, the evidence also clearly points to the direct involvement of YKK Corporation [*] and its representatives **[*]**. The Commission's finding as to the involvement of YKK Corporation [*] is further corroborated by **[*].**

(439) Consequently, it can be concluded that the bilateral cooperation did not only involve YKK Stocko Fasteners GmbH but directly also YKK Corporation [*]. Furthermore, YKK Group's claim in its response to the supplementary Statement of Objections, according to which **[*]** would show the "*restricted number of participants in these arrangements*" is not directly relevant here, as the document in fact relates to the last Baseler Circle meeting of 19 August 2000 where it was agreed that a new circle (the Amsterdamer circle) would be established (see section 4.2 of this Decision). The document does not relate to the bilateral cooperation between Prym Fashion and Stocko/YKK [Corporation] at issue here.

(440) In these circumstances, the Commission considers that YKK Corporation [*] and YKK Holding Europe BV have not provided sufficient and convincing evidence to rebut the presumption of liability for the infringements committed within the bilateral cooperation with Prym Fashion.

(441) Therefore, YKK Corporation [*], and its subsidiaries, YKK Holding Europe BV and YKK Stocko Fasteners GmbH, should be held jointly and severally liable for the infringements committed within the framework of the bilateral cooperation with Prym Fashion GmbH & Co. KG described in section 4.3 of this Decision, that is to say from 13 August 1999 until 13 January 2003.

*6.2.6.3. Tripartite cooperation between YKK Holding/***[*]***, Prym Fashion/Éclair Prym and Coats/Coats Germany*

(442) Entities belonging to the YKK Holding Europe BV group **[*]** participated in the collusive conduct within the framework of the tripartite cooperation on the zip fasteners market between Prym Fashion/Éclair Prym, Coats/Coats Germany and YKK Holding/**[*]**, described in section 4.4 of this Decision. It has been established in section 4.4 that staff from three YKK Holding Europe BV subsidiaries as well as YKK Corporation [*] took part in the various meetings of the tripartite scheme, that is to say **[*]**.

(443) The Commission presumes, in the absence of sufficient evidence to the contrary, that YKK Holding Europe, the parent company of **[*]** subsidiaries in the **[*]**, and 100% parent of YKK Stocko Fasteners GmbH (since 1997), **[*]** exercised decisive influence on the commercial policy of its subsidiaries.

(444) The Commission further presumes, in the absence of sufficient evidence to the contrary, that YKK Corporation [*], the 100% owner of YKK Holding Europe BV and ultimate parent of all of the latter's subsidiaries, including YKK Stocko Fasteners GmbH (since 1997), **[*]**, was able to exercise decisive influence on the commercial policy of its subsidiaries, and that it made use of this power.

(445) YKK Corporation [*] and YKK Holding Europe BV contest the attribution of liability as argued in recital (424) above.

(446) With regard to the tripartite cooperation in the zip fasteners market, YKK Group acknowledges in its reply to the first Statement of Objections that within the framework of this cooperation, the representatives of YKK Corporation [*] (**[*]**), **[*]** (**[*]**, **[*]**) and YKK Stocko Fasteners (**[*]**) met together with representatives of Coats/Opti and Éclair Prym on three occasions in 1999, while at the same time denying their involvement in any infringement in the said meetings. In its leniency application of 18 February 2005, YKK Group admits further to a number of meetings from 1996 onwards in relation to zip fasteners during which representatives of **[*]**, and **[*]** met together with representatives of Coats/Opti and Prym Fashion and Éclair Prym and in which prices were discussed. With regard to the involvement of YKK Stocko Fasteners GmbH, YKK Group claims that **[*]** only participated in two of the tripartite meetings because they were organised in Ratingen, close to the headquarters of Stocko. The involvement of YKK Stocko Fasteners GmbH in any zip fastener scheme is however denied. **[*]**.

(447) On the basis of the evidence available in the Commission file, it is, however, clear that staff members from **[*]**, **[*]**, YKK Stocko Fasteners GmbH and YKK Corporation [*] took part in collusive discussions, within the framework of the tripartite cooperation and covering the Community market, with Prym Fashion/Éclair Prym and Coats/Coats Germany. **[*]**. While the Commission notes that YKK Stocko Fasteners GmbH is not directly involved in the zip fastener business area, the presence of **[*]** at several collusive meetings held within the framework of this scheme shows once again the lack of independence of the various subsidiaries while the presence of YKK Corporation [*] staff members show the direct involvement of YKK Corporation [*] in the pricing and marketing decisions of its subsidiaries.

(448) In those circumstances, YKK Corporation [*] and its subsidiary YKK Holding Europe BV (mainly through its subsidiaries YKK Stocko Fasteners GmbH, **[*]** and **[*]**) should be held jointly and severally liable for the infringements committed within the framework of the tripartite zip fastener cooperation described in section 4.4 of this Decision, that is to say from 28 April 1998 until 12 November 1999.

6.2.7. Fachverband Verbindungs- und Befestigungstechnik (VBT)

6.2.7.1. Baseler-Wuppertaler and Amsterdamer cooperation:

(449) VBT participated as an association of undertakings in the collusive conduct within the framework of the Baseler-Wuppertaler and Amsterdamer cooperation, described in section 4.2 of this Decision. It has been established in section 4.2 that VBT organised and was represented at the various meetings of the Baseler and Wuppertaler circles, including the meeting of 19 August 2000, in which the members founded the new Amsterdamer circle. VBT should be held liable for its conduct, which was separate from that of its members (see recitals (348)-(351)), within the framework of the Baseler-Wuppertaler and Amsterdamer infringement from 24 May 1991 until 19 August 2000.

(450) VBT has argued in its response to the Statement of Objections that it is not an undertaking within the meaning of Article 81 of the Treaty as it pursues no economic interest and that it is not a legal person with its own legal personality, being instead an association without legal capacity ("*nicht-rechtsfähiger Verein*"). The Commission finds, however, that the VBT can be held liable, as an association of undertakings, for its conduct, which was separate from that of its members, in the cartel. It needs to be recalled that even non-registered associations/associations without legal capacity ("*nicht-rechtsfähiger Verein*") can be the object of administrative fines under German law, in line with the provisions in §30 of the *Gesetz über Ordnungswidrigkeiten* (OWiG; 24.05.1968). According to § 54 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*) associations without legal capacity ("*nicht-rechtsfähiger Verein*") can be held liable in the same manner as companies under German law ("*Gesellschaft bürgerlichen Rechts*"). According to the jurisprudence of the Federal Court of Justice of Germany (*Bundesgerichtshof*), associations without legal capacity can have rights and obligations and can have active and passive standing in civil procedures.[85]

7. LIMITATION PERIODS AND DURATION OF THE INFRINGEMENTS

7.1. Applicability of limitation periods

(451) Under Article 23 (2) of Regulation No 1/2003, the Commission may by decision impose fines upon undertakings not exceeding 10% of the turnover in the preceding business year of each of the undertakings participating in the infringement where, either intentionally or negligently, they infringe Article 81 of the Treaty.

(452) Under Article 25 of Regulation No 1/2003, the powers conferred on the Commission by Article 23 are, however, subject to a limitation period of three years in the case of infringements of provisions concerning requests for information or the conduct of inspections and five years in the case of all other infringements.

[85] *See* judgments of the Federal Court of Justice of Germany (Bundesgerichtshof): BGH, 15.7.1997 – XI ZR 154/96; BGH (LM H. 5/2001 § 50 ZPO Nr. 52)

(453) Time begins to run on the day on which the infringement is committed. However, in the case of continuing or repeated infringements, time begins to run on the day on which the infringement ceases. Furthermore, any action taken by the Commission or by the competition authority of a Member State for the purpose of the investigation or proceedings in respect of an infringement shall interrupt the limitation period for the imposition of fines or periodic penalty payments. The limitation period shall be interrupted with effect from the date on which the action is notified to at least one undertaking or association of undertakings which has participated in the infringement.

(454) A list of actions which interrupt the running of the period is provided in Article 25 of Regulation 1/2003, and includes in particular:

– written requests for information by the Commission or by the competition authority of a Member State;

– written authorisations to conduct inspections issued to its officials by the Commission or by the competition authority of a Member State;

– the initiation of proceedings by the Commission or by the competition authority of a Member State;

– notification of the Statement of Objections of the Commission or of the competition authority of a Member State.

(455) Article 25 of Regulation 1/2003 further stipulates that the interruption of the limitation period shall apply for all the undertakings or associations of undertakings which have participated in the infringement.

(456) In this case, the limitation period was interrupted by the Commission decision of 30 October 2001 to conduct unannounced inspections pursuant to Article 14 (3) of Regulation No 17. Inspections were carried out on 7 and 8 November 2001. Hence, for illegal conduct which ceased prior to 30 October 1996 no fines may be imposed.

(457) The scope of the inspection decision of 30 October 2001 is clear. It refers to the ”*main manufacturers and distributors of hard and soft haberdashery, thread and textiles in the EU*” which, according to the Commission’s information at that time participated or had participated “*directly and/or through Fachverband Verbindungs- und Befestigungstechnik in agreements and/or concerted practices and/or in the adoption of decisions of an association of undertakings involving: (i) the fixing of prices for the relevant products; (ii) price agreements providing for percentage increases for each company; (iii) market sharing arrangements in the form of exclusive purchase and distribution agreements between Coats PLC, William Prym GmbH & Co. KG and third parties, with the main aim of partitioning the market for hard haberdashery products; (iv) an exclusive distribution agreement between William Prym GmbH & Co. KG and a third party, the object allegedly being to prevent any market entry initiatives by this third party; (v) sensitive information sharing between William Prym GmbH & Co. KG and Coats PLC.*”

(458) Berning and William Prym have argued in their replies to the first and/or the supplementary Statement of Objections that the inspection decision of 30 October 2001 cannot constitute a measure interrupting the limitation period in this case as it related to the Commission's investigations in relation to Case F-1/38.338 -- PO/Needles[86]. Instead, the first measures that would qualify as interrupting the limitation period (in accordance with Article 1 of Council Regulation (EEC) No 2988/74[87]), are the Commission's requests for information under Article 11 of Regulation 17 of 20 June 2003 (addressed to Berning) and of 14 April 2003 (addressed to William Prym and VBT). Berning argues that the limitation applies in relation to its involvement in the Baseler and Wuppertaler agreements. According to Berning, its involvement in the Wuppertaler circle came to an end on 20 March 1997 and in the Baseler circle on 2 May 1997. Berning's argument cannot, however, be accepted. It has been shown that Berning's participation in the Baseler-Wuppertaler and Amsterdamer infringement came to an end only on 19 August 2000 (see recitals (302), (303), (461)) and the limitation period could therefore in no circumstances be applicable in relation to Berning's involvement in the infringement.

(459) In relation to the affirmations of Berning and William Prym, the Commission finds that the inspection decision of 30 October 2001 was sufficiently precise to interrupt the limitation period for the unlawful agreements and concerted practices in the hard haberdashery sector. Accordingly, the limitation period of five years has not expired and the infringements have not been prescribed.

7.2. Duration of the infringement

7.2.1. The Baseler-Wuppertaler and Amsterdamer co-operation

7.2.1.1. A. Raymond Sarl

(460) As set out in section 4.2, A. Raymond Sarl participated in the Baseler-Wuppertaler and Amsterdamer infringement from 24 May 1991 (first meeting of an infringing nature attended by A. Raymond) to 1 December 1999 (last circle meeting attended by A. Raymond). The Commission has evidence that the undertaking committed infringements of Article 81 of the Treaty during the latter period. The duration of the infringement is therefore 8 years and 6 months.

7.2.1.2. Berning & Söhne GmbH & Co. KG

(461) As set out in section 4.2, Berning & Söhne GmbH & Co. KG participated in the Baseler-Wuppertaler and Amsterdamer infringement from 24 May 1991 (first meeting of an infringing nature attended by Berning) to 19 August 2000 (last circle meeting to which Berning was invited). The Commission has evidence that the undertaking committed infringements of Article 81 of the Treaty during the latter period. The duration of the infringement is therefore 9 years and 3 months.

7.2.1.3. Scovill Fasteners Inc.

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86 *See* Commission Decision of 26 October 2004 in Case F-1/38.338 – PO/Needles

87 OJ L 319, 29.11.197, p. 1.

(462) As set in section 4.2, Scovill Fasteners Inc., is held responsible for the concerted practices and agreements it committed in the Baseler-Wuppertaler and Amsterdamer infringement through its fully owned subsidiary Scovill Fasteners Europe SA and in the Amsterdamer meetings by itself and its subsidiary for the period from 31 December 1996 (Scovill acquired 100% of Scovill Fasteners Europe SA in 1996, but as the Commission does not have knowledge of the exact date of the acquisition it holds Scovill Fasteners Inc. liable only as of the end of the year) to 15 March 2001 (last circle meeting attended by Scovill Fasteners Inc). The duration of the infringement is therefore 4 years and 2 months.

7.2.1.4. Scovill Fasteners Europe SA

(463) As set out in section 4.2, Scovill Fasteners Europe SA participated in the Baseler-Wuppertaler and Amsterdamer infringement from 24 May 1991 (first meeting of an infringing nature attended by Scovill Fasteners Europe SA (then Unifast)) to 15 March 2001 (last circle meeting attended by Scovill Fasteners Europe SA). The Commission has evidence that the undertaking committed infringements under Article 81 of the Treaty during the latter period. The duration of the infringement is therefore 9 years and 9 months.

7.2.1.5. William Prym GmbH & Co. KG

(464) William Prym GmbH & Co. KG, the parent company of Prym Fashion GmbH & Co. KG and Schaeffer GmbH (via Prym Fashion), participated in the Baseler-Wuppertaler and Amsterdamer infringement, for the period from 24 May 1991 (first meeting of an infringing nature attended by Prym Group) to 15 March 2001 (last circle meeting attended by Prym Group) as set out in section 4.2. The duration of the infringement is therefore 9 years and 9 months.

7.2.1.6. Prym Fashion GmbH & Co. KG

(465) As set out in section 4.2, Prym Fashion GmbH & Co. KG, a fully owned subsidiary of William Prym GmbH & Co. KG, participated in the Baseler-Wuppertaler and Amsterdamer infringement from 1 August 1994 (date of establishement) to 15 March 2001 (last circle meeting attended by Prym Group). The duration of the infringement is therefore 6 years and 7 months.

7.2.1.7. YKK Corporation [*]

(466) As set out in sections 4.2 and 6.2.6, YKK Corporation [*], the mother company of YKK Holding Europe B.V. and YKK Stocko Fasteners GmbH, participated in the Baseler-Wuppertaler and Amsterdamer infringement through its subsidiary YKK Stocko Fasteners GmbH, for the period from 1 March 1997 (upon the acquisition of the totality of Stocko's shares) to 15 March 2001 (last circle meeting attended by YKK Group). The duration of the infringement is therefore 4 years.

7.2.1.8. YKK Holding Europe B.V.

(467) As set out in sections 4.2 and 6.2.6, YKK Holding Europe B.V., participated in the Baseler-Wuppertaler and Amsterdamer infringement through its subsidiary

YKK Stocko Fasteners GmbH, for the period from 1 March 1997 (upon its acquisition of the totality of Stocko's shares) to 15 March 2001 (last circle meeting attended by YKK Group). The Commission has evidence that the undertaking committed infringements under Article 81 of the Treaty during the latter period. The duration of the infringement is therefore 4 years.

7.2.1.9. YKK Stocko Fasteners GmbH

(468) As set out in section 4.2, YKK Stocko Fasteners GmbH, formerly Stocko Fasteners, participated in the Baseler-Wuppertaler and Amsterdamer infringement from 24 May 1991 (first meeting of an infringing nature attended by Stocko) to 15 March 2001 (last circle meeting attended by YKK Group). The Commission has evidence that the undertaking committed infringements under Article 81 of the Treaty during the latter period. The duration of the infringement is therefore 9 years and 9 months.

7.2.1.10.VBT

(469) As set out in section 4.2, the association Fachverband Verbindungs- und Befestigungstechnik participated in the Baseler-Wuppertaler and Amsterdamer infringement from 24 May 1991 (first meeting of an infringing nature organised and attended by the VBT) to 19 August 2000 (last circle meeting attended by VBT). The Commission has evidence that the association committed infringements of Article 81 of the Treaty during the latter period. The duration of the infringement is therefore 9 years and 3 months.

7.2.2. The bilateral co-operation between Prym Fashion and Stocko/YKK [Corporation]

7.2.2.1. William Prym GmbH & Co. KG

(470) As set out in section 4.3, William Prym participated through its fully owned subsidiary Prym Fashion GmbH & C. KG in the concerted practices and agreements committed within the frame of the co-operation with YKK Stocko Fasteners GmbH and YKK Corporation [*], during the period from 13 August 1999 (first bilateral meeting in which a **[*]** scheme was developed) to 13 January 2003 (last bilateral meeting for which the Commission has documentary evidence showing the infringing nature of the meeting). The duration of the infringement is therefore 3 years and 5 months.

7.2.2.2. Prym Fashion GmbH & Co. KG

(471) As set out in section 4.3, Prym Fashion GmbH & Co. KG, participated in the concerted practices and agreements committed within the frame of the co-operation with YKK Stocko Fasteners GmbH and YKK Corporation [*] for the period from 13 August 1999 (first bilateral meeting in which a **[*]** scheme was developed) to 13 January 2003 (last bilateral meeting for which the Commission has documentary evidence showing the infringing nature of the meeting). The duration of the infringement is therefore 3 years and 5 months.

7.2.2.3. YKK Corporation [*]

(472) As set out in section 4.3, YKK Corporation, the parent company of YKK Holding Europe B.V. and ultimate parent company of YKK Stocko Fasteners GmbH, participated in the concerted practices and agreements committed within the frame of the co-operation with Prym Fashion GmbH & Co. KG for the period from 13 August 1999 (first bilateral meeting in which a **[*]** scheme was developed) to 13 January 2003 (last bilateral meeting for which the Commission has documentary evidence showing the infringing nature of the meeting). The duration of the infringement is therefore 3 years and 5 months.

7.2.2.4. YKK Holding Europe B.V.

(473) As set out in section 4.3, YKK Holding Europe B.V., participated through its fully owned subsidiary YKK Stocko Fasteners GmbH in the concerted practices and agreements committed within the frame of the co-operation with Prym Fashion GmbH & Co. KG for the period from 13 August 1999 (first bilateral meeting in which a **[*]** scheme was developed) to 13 January 2003 (last bilateral meeting for which the Commission has documentary evidence showing the infringing nature of the meeting). The duration of the infringement is therefore 3 years and 5 months.

7.2.2.5. YKK Stocko Fasteners GmbH

(474) As set out in section 4.3, YKK Stocko Fasteners GmbH, formerly Stocko Fasteners, participated in the concerted practices and agreements committed within the frame of the co-operation with Prym Fashion GmbH & Co. KG for the period from 13 August 1999 (first bilateral meeting in which a **[*]** scheme was developed) to 13 January 2003 (last bilateral meeting for which the Commission has documentary evidence showing the infringing nature of the meeting). The duration of the infringement is therefore 3 years and 5 months.

*7.2.3. The tripartite co-operation between YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym*

7.2.3.1. YKK Corporation [*]

(475) As set out in section 4.4, YKK Corporation, the parent company of YKK Holding Europe B.V. and ultimate parent company of **[*]**, **[*]** and YKK Stocko Fasteners GmbH, participated directly and through its subsidiaries in the tripartite zip fasteners infringement between YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym from 28 April 1998 (first infringing meeting) to 12 November 1999 (last infringing meeting). The Commission has evidence that the undertaking committed infringements under Article 81 of the Treaty during the latter period. The duration of the infringement is therefore 1 year and 6 months.

7.2.3.2. YKK Holding Europe B.V.

(476) As set out in section 4.4, YKK Holding Europe B.V, participated through its fully owned subsidiaries **[*]**, **[*]** and YKK Stocko Fasteners GmbH in the tripartite zip fasteners infringement between YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym from 28 April 1998 (first infringing meeting) to 12 November 1999 (last infringing meeting). The Commission has evidence that the

undertaking committed infringements under Article 81 of the Treaty during the latter period. The duration of the infringement is therefore 1 year and 6 months.

7.2.3.3. Coats Holdings Ltd

(477) As set out in section 4.4, Coats Holdings Ltd participated together with its subsidiary Coats Deutschland GmbH in the tripartite zip fasteners infringement between YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym from 28 April 1998 (first infringing meeting) to 12 November 1999 (last infringing meeting). The Commission has evidence that the undertaking committed infringements under Article 81 of the Treaty during the latter period. The duration of the infringement is therefore 1 year and 6 months.

7.2.3.4. Coats Deutschland GmbH

(478) As set out in section 4.4, Coats Deutschland GmbH participated together with its parent Coats Holdings Ltd in the tripartite zip fasteners infringement between YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym from 28 April 1998 (first infringing meeting) to 12 November 1999 (last infringing meeting). The Commission has evidence that the undertaking committed infringements under Article 81 of the Treaty during the latter period. The duration of the infringement is therefore 1 year and 6 months.

7.2.3.5. William Prym GmbH & Co. KG

(479) As set out in section 4.4, William Prym GmbH & Co. KG participated through its subsidiaries Prym Fashion GmbH & Co. KG (100% subsidiary) and Éclair Prym Group S.A. (50% subsidiary of Prym Fashion GmbH & Co. KG since 1 July 1998) in the tripartite zip fasteners infringement between YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym from 28 April 1998 (first infringing meeting) to 12 November 1999 (last infringing meeting). The Commission has evidence that the undertaking committed infringements under Article 81 of the Treaty during the latter period. The duration of the infringement is therefore 1 year and 6 months.

7.2.3.6. Prym Fashion GmbH & Co. KG

(480) As set out in section 4.4, Prym Fashion GmbH & Co. KG participated directly and through its 50% subsidiary Éclair Prym Group S.A. (50% subsidiary of Prym Fashion GmbH & Co. KG since 1 July 1998) in the tripartite zip fasteners infringement between YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym from 28 April 1998 (first infringing meeting) to 12 November 1999 (last infringing meeting). The Commission has evidence that the undertaking committed infringements under Article 81 of the Treaty during the latter period. The duration of the infringement is therefore 1 year and 6 months.

7.2.3.7. Éclair Prym Group S.A.

(481) As set out in section 4.4, Éclair Prym Group S.A. participated in the tripartite zip fasteners infringement between YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym from 13 January 1999 (first infringing meeting in

which Éclair Prym was represented) to 12 November 1999 (last infringing meeting). The Commission has evidence that the undertaking committed infringements under Article 81 of the Treaty during the latter period. The duration of the infringement is therefore 10 months.

7.2.4. The bilateral co-operation between Coats and William Prym/Prym Fashion

7.2.4.1. William Prym GmbH & Co. KG

(482) As set out in section 4.5, William Prym GmbH & Co. KG (legal successor to William Prym-Werke GmbH & Co. KG) participated in the bilateral market sharing infringement with Coats from 15 January 1977 (date of written market sharing agreement) until at least 15 July 1998 (date of last documentary evidence showing the continuation of the 1977 Agreement). The Commission has evidence that the undertaking committed infringements under Article 81 of the Treaty during the latter period. The duration of the infringement is therefore 21 years and 6 months.

7.2.4.2. Prym Fashion GmbH & Co. KG

(483) As set out in section 4.5, Prym Fashion GmbH & Co. KG, a fully owned subsidiary of William Prym GmbH & Co. KG, participated in the bilateral market sharing infringement with Coats from 1 August 1994 (date of establishement) until at least 15 July 1998 (date of last documentary evidence showing the continuation of the 1977 Agreement). The Commission has evidence that the undertaking committed infringements under Article 81 of the Treaty during the latter period. The duration of the infringement is therefore 3 years and 11 months.

7.2.4.3. Coats Holdings Ltd

(484) As set out in section 4.5, Coats Holdings Ltd participated in the bilateral market sharing infringement with William Prym/Prym Fashion from 15 January 1977 (date of written market sharing agreement) until at least 15 July 1998 (date of last documentary evidence showing the continuation of the 1977 Agreement). The Commission has evidence that the undertaking committed infringements under Article 81 during the latter period. The duration of the infringement is therefore 21 years and 6 months.

8. REMEDIES

8.1. Article 7 of Regulation (EC) No 1/2003

(485) Where the Commission finds that there is an infringement of Article 81 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.

(486) While it appears from the evidence that in all likelihood the infringements effectively ended at least on the following dates, it is necessary to ensure with absolute certainty that the infringements have ceased:

– 15 March 2001 with regard to the Baseler-Wuppertaler and Amsterdamer co-operation;

– 13 January 2003 with regard to the bilateral co-operation between Prym Fashion and Stocko/YKK [Corporation];

– 12 November 1999 with regard to the tripartite co-operation between YKK Holding/**[*]**, Éclair Prym/Prym Fashion and Coats/Coats Germany;

– 15 July 1998 with regard to the bilateral co-operation between Coats and William Prym/Prym Fashion.

(487) It is therefore necessary for the Commission to require the undertakings to which this Decision is addressed to bring the infringements to an end (if they have not already done so) and henceforth to refrain from any agreement, concerted practice or decision of an association which might have the same or a similar object or effect.

(488) The prohibition applies to all secret meetings and multilateral bilateral contacts between competitors aimed at restricting competition between them or enabling them to concert their market behaviour.

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

(489) Under Article 15 (2) of Regulation No 17 and Article 23 (2) of Regulation No 1/2003, the Commission may by decision impose fines on undertakings and associations of undertakings where, either intentionally or negligently, they infringe Article 81 of the Treaty. For each undertaking and association of undertakings participating in the infringement, the fine should not exceed 10% of its total turnover in the preceding business year.

(490) In fixing the amount of any fine the Commission must have regard to all relevant circumstances and particularly to the gravity and duration of the infringement.

(491) In relation to each undertaking, the fine imposed for each infringement should reflect any aggravating or attenuating circumstances.

(492) The Commission proposes to set fines at a level sufficient to ensure deterrence.

9. THE BASIC AMOUNT OF THE FINES

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

(494) VBT is, however, considered separately. In principle every infringement of Article 81 of the Treaty should be penalised by a fine varying in accordance with its gravity and duration. However, given VBT's specific role as an association of undertakings which performed different tasks and made different decisions from the parties to the agreements and considering that VBT's participation in the cartel arrangements was limited primarily to its role as secretariat for the Baseler and Wuppertaler circles and facilitator of the price arrangement between the cartel members (which are addressees of this decision as well), the Commission considers it appropriate to impose a symbolic fine on VBT of EUR 1 000 for its participation in the Baseler-Wuppertaler and Amsterdamer infringement, in accordance with point 5(d) of the Guidelines on the method of setting fines

imposed pursuant to Article 15 (2) of Regulation No 17 and Article 65 (5) of the ECSC Treaty[88] (hereafter "the Guidelines on fines").

9.1. Gravity

(495) In assessing the gravity of the infringement, the Commission takes account of its nature, its actual impact on the market, where this can be measured, as well as the size of the relevant geographic market. Since the four different infringements present common features and call for similar comments, the assessment of gravity will be made in parallel.

9.1.1. Nature of the infringements

(496) The infringements that are the subject of this Decision consisted primarily of secret collusion between cartel members to co-ordinate price increases, exchange confidential information (Baseler-Wuppertaler and Amsterdamer co-operation), fix prices, monitor their increases and allocate customers (bilateral co-operation between Prym Fashion and Stocko/YKK [Corporation]), fix minimum prices and exchange price information (tripartite co-operation between YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym) and to share markets (bilateral co-operation between Coats and William Prym/Prym Fashion). These kinds of horizontal restrictions are, by their very nature, among the most serious violations of Article 81 of the Treaty.

9.1.2. The actual impact of the infringements

(497) At the outset it should be mentioned that the impact of the infringement is assessed only if it is measurable.[89] In the present case, it is impossible to demonstrate the precise effects of the infringements since it is not possible to determine with sufficient certainty the relevant competitive parameters (price, commercial terms, quality, innovation, and others) absent the infringements.

Baseler-Wuppertaler and Amsterdamer cooperation

(498) In their responses to the Statements of Objections all parties have put forward arguments to show that the cartel had no or only limited effect on the market, due to various factors, such as non-implementation or only partial implementation, limited power to set prices due to small market share, strong buyer power of customers and difficult economic conditions. It has also been argued that any price increases were mainly reflecting the inflation rate or the increases in costs of raw materials.

(499) The fact that the price increases were as a general rule implemented by the cartel participants (as demonstrated by the regular exchanges of information on prices and the implementation of prices between the parties, see section 4.2 of this Decision) in itself suggests an impact on the market, even if the actual effect is

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88 OJ C 9, 14.01.1998, p. 3.

89 Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01, *Tokai a.o. v Commission*, [2004] ECR II-1181, paragraph 207.

difficult to measure.[90] Although increases in raw material costs and other factors may cause industry-wide increases in prices, it has been undoubtedly established by the facts in this case that the regular across-the-board price increases were preceded by contacts between the manufacturers in which they agreed or indicated a precise date of implementation of the price increases (and in some cases the order in which the price increases would be introduced by the parties). The high aggregate market shares of the participants to the cartel also make anti-competitive effects appear likely.

(500) Further, while YKK Group and Prym Group have **[*]**, both parties have advanced defensive arguments pertaining to the impact of the infringement on the market. Prym Group has argued that **[*]** YKK Group argues in relation to the price arrangements that **[*]** A. Raymond, Berning and Scovill have contested the implementation of any price increases agreed upon in the Baseler and/or Wuppertaler circles. The companies have argued that (1) they participated in the circle meetings merely for getting technical information as to the production and to possibly finding a buyer for their business (A. Raymond), (2) they never implemented any price increases agreed upon by the competitors (A. Raymond, Berning, Scovill), and (3) they only announced at the meetings past price increases which were geographically limited to the French market (A. Raymond). Qualitative differences of the members' product portfolios have also been raised as indication of the lack of the undertaking's possibility to enter into any price agreements and subsequently their possibility to implement any price agreements on the market. The effects on the market of any price measures agreed upon during the various circle meetings is also contested by VBT.

(501) As to the impact of the infringement, the Commission considers that on the basis of the elements set forth above, it has been shown that the anti-competitive arrangements were as a general rule implemented. This conclusion is not weakened by the fact that on some occasions certain parties did not follow the intended trend. As established by the Court of First Instance, *"[b]ecause it is a precondition for the actual impact of the cartel, the effective implementation of a cartel constitutes an initial indicator that the cartel has had an actual impact"*[91]. The fact that, in spite of the cartel's efforts, the results sought by the participants were not entirely achieved, or the price increases could not be sustained, may illustrate the difficulties encountered by the parties in increasing prices in a specific market situation, but it does not prove in any way that the cartel could not have had an effect on the market, nor that prices were not kept above competitive level at least for some period of time.

(502) It can therefore be concluded that this arrangement, in so far as it pertained to the Community market, was implemented and was likely to have had an impact on the market even where this impact was weaker or shorter than intended by the participants. Consequently, taking also into account that factors relating to the object of a course of conduct may be more significant for the purposes of setting

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90 *See* judgments of the Court of First instance, Case T-241/01, *SAS v Commission* [not yet reported], at paragraph 122 and in Case T-38/02, *Danone v Commission* [not yet reported], at paragraph 148.

91 *See* Case T-329/01, *ADM v Commission*, judgment of 27 September 2006, not yet reported, paragraph 180.

the amount of the fine than those relating to its effects, the gravity of the infringement can still be considered a very serious one, and the fine be set at a level which is independent of the precise impact of the infringement.

Bilateral cooperation between Prym Fashion and Stocko/YKK [Corporation]

(503) The fact that the price increases were implemented by the two cartel participants, Prym Fashion and Stocko/YKK [Corporation] (as demonstrated by the regular exchanges of information on prices between the parties, see section 4.3 of this Decision), in itself suggests an impact on the market, even if the actual effect is difficult to measure.[92] The high aggregate market shares of the competitors make anti-competitive effects appear likely and the relative stability of these market shares throughout the duration of the infringements would confirm these effects.

(504) As established by the Court of First Instance, *"[b]ecause it is a precondition for the actual impact of the cartel, the effective implementation of a cartel constitutes an initial indicator that the cartel has had an actual impact"*[93]. The fact that, in spite of the cartel's efforts, the results sought by the participants were not entirely achieved, or the price increases could not be sustained, may illustrate the difficulties encountered by the parties in increasing prices in a specific market situation, but it does not prove in any way that the cartel could not have had an effect on the market, nor that prices were not kept above competitive level at least for some period of time.

(505) The Commission also considers that the impact of a cartel is not limited to prices, especially where the object of the anti-competitive behaviour also concerns customer allocation, and thus stabilisation of market shares. The contemporaneous documentary evidence and **[*]** testify to the allocation of customers (see recitals **[*]**) and the implementation of such agreements was likely to have an impact on the market, even if its actual effect is difficult to measure.[94]

(506) It can therefore be concluded that this arrangement, in so far as it pertained to the Community market, was implemented and was likely to have had an impact on the market even where this impact was weaker or shorter than intended by the participants. Consequently, taking also into account that factors relating to the object of a course of conduct may be more significant for the purposes of setting the amount of the fine than those relating to its effects, the gravity of the infringement can still be considered a very serious one, and the fine be set at a level which is independent of the precise impact of the infringement.

Tripartite cooperation between YKK Holding/[*], Coats/Coats Germany and Prym Fashion/Éclair Prym

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92 *See* judgments of the Court of First instance, Case T-241/01, *SAS v Commission* [not yet reported], at paragraph 122 and in Case T-38/02, *Danone v Commission* [not yet reported], at paragraph 148.

93 *See* Case T-329/01, *ADM v Commission*, judgment of 27 September 2006, not yet reported, paragraph 180.

94 *See* judgments of the Court of First instance, Case T-241/01, *SAS v Commission* [not yet reported], at paragraph 122 and in Case T-38/02 *Danone v Commission* [not yet reported], at paragraph 148.

(507) The fact that the parties to the tripartite infringement between YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym agreed to fix prices and exchanged confidential business information suggests an impact on the market, even if the actual effect is difficult to measure.

(508) The Commission does not possess sufficient evidence as to the final implementation of the agreement to harmonize prices. In this respect, it must be emphasised that irrespective of the Commission's finding that the infringement was likely to have a restrictive effect, the fact that it had a restrictive object which was intrinsically very serious must, in any event, be a more significant factor in the Commission's categorization of the infringement as very serious than factors relating to its effects. The effect which an agreement or concerted practice may have had on normal competition is not a conclusive criterion in assessing the proper amount of the fine. As confirmed by case law, factors relating to the intentional aspect, and thus to the object of a course of conduct, may be more significant than those relating to its effects, "particularly where they relate to infringements which are intrinsically serious, such as price-fixing and market-sharing".[95]

(509) The Commission's conclusion is that this arrangement, in so far as it pertained to the Community market, was likely to have had an impact on the market even where this impact was weaker or shorter than intended by the participants. Consequently, taking also into account that factors relating to the object of a course of conduct may be more significant for the purposes of setting the amount of the fine than those relating to its effects, the gravity of the infringement can still be considered a very serious one, and the fine be set at a level which is independent of the precise impact of the infringement.

Bilateral cooperation between Coats and William Prym/Prym Fashion

(510) The fact that the market sharing agreement between Coats and William Prym/Prym Fashion was implemented by the two cartel participants (as demonstrated by the fact that both parties adhered to the agreement not to enter into each others' core markets, and more specifically with Coats not entering the market for 'other fasteners') in itself suggests an impact on the market, even if the actual effect is difficult to measure.[96]

(511) Furthermore, the Commission considers that the impact of a cartel is not limited to prices, especially where the object of the anti-competitive behaviour concerns market sharing, and thus – stabilisation of market shares. The contemporaneous documentary evidence available and **[*]**testify to the sharing of markets (for

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95 Case T-241/01, *SAS v Commission,* judgment of 18 July 2005, paragraphs 84 and 85; T-49/02 to T-51/02, *Brasserie nationale and Others v Commission*, judgment of 27 July 2005, paragraphs 178 and 179; T-38/02, *Groupe Danone v Commission,* judgment of 25 October 2005, paragraphs 147, 148 and 152; Case T-141/94, *Thyssen Stahl v Commission,* [1999] ECR II-347, paragraphs 635-636.

96 *See* judgments of the Court of First instance, Case T-241/01, *SAS v. Commission,* [not yet reported], at paragraph 122 and in Case T-38/02, *Danone v. Commission,* [not yet reported], at paragraph 148.

example recitals **[*]**) and the implementation of this agreement was likely to have an impact on the market, even if its actual effect is difficult to measure.[97]

(512) In its reply to the Commission's Supplementary Statement of Objections, Coats brings defensive arguments with regard to the existence and implementation of the market sharing agreement. The implementation of this infringement is, however, shown by the Commission in section 4.5. Moreover, it is demonstrated that as an outcome of this agreement, Coats and Prym respected each others' core markets with Coats' not entering the market for 'other fasteners' allocated by the 1977 Agreement to Prym.

(513) It can therefore be concluded that this arrangement, in so far as it pertained to the Community market, was implemented and was likely to have had an impact on the market even where this impact was weaker or shorter than intended by the participants. Consequently, taking also into account that factors relating to the object of a course of conduct may be more significant for the purposes of setting the amount of the fine than those relating to its effects, the gravity of the infringement can still be considered a very serious one, and the fine be set at a level which is independent of the precise impact of the infringement.

9.1.3. The size of the relevant geographic market

(514) With regard to the Baseler-Wuppertaler and Amsterdamer co-operation, the tripartite co-operation between YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym, as well as the bilateral co-operation between Coats and William Prym/Prym Fashion the infringements were essentially Europe-wide. With regard to the bilateral co-operation between Prym Fashion and Stocko/YKK [Corporation] **[*]**. All four infringements covered, therefore, the whole of the common market.

9.1.4. Conclusion on the gravity of the infringement

(515) Taking into account the nature of the infringements committed and the fact that each of them covered the whole of the common market, the Commission considers that each addressee has committed one or several very serious infringements of Article 81 of the Treaty. In the Commission's view, those factors are such that the infringements must be regarded as very serious, even if their actual impact cannot be measured.

(516) Consequently, taking also into account that factors relating to the object of a course of conduct may be more significant for the purposes of setting the amount of the fine than those relating to its effects, the gravity of the infringement can still be considered a very serious one, and the fine be set at a level which is independent of the precise impact of the infringement.

9.2. Differential treatment

[97] *See* judgments of the Court of First instance, Case T-241/01, *SAS v Commission* [not yet reported], at paragraph 122 and in Case T-38/02 *Danone v Commission* [not yet reported], at paragraph 148.

(517) Within the category of very serious infringements, the scale of likely fines makes it possible to apply differential treatment to undertakings in order to take account of differences in their effective economic capacity to cause significant damage to competition. The Commission notes that that exercise seems particularly necessary where there is considerable disparity in the size of the undertakings participating in the infringement.[98]

(518) For this purpose, the undertakings concerned can be divided into different categories, established according to their relative importance in the relevant market. The fact that the Commission has the power to impose sanctions only within the Community does not preclude it from taking into consideration worldwide turnover derived from sales of the relevant products in order to evaluate the economic capacity of the members of the cartel to harm competition within theCommunity.

(519) In the circumstances of this case, which involves several undertakings, it will be necessary, in setting the basic amount of the fines, to take account of the specific weight and, therefore, the impact of the offending conduct of each undertaking on competition. In this context, the specific weight is distinguishable from the importance of the undertaking in question in terms of its size or economic power. The proportion of turnover derived from the goods in respect of which the infringement was committed is likely to give a fair indication of the scale of the infringement on the relevant market.[99] Whilst an undertaking's market shares (based on turnover or sales volume) cannot be a decisive factor in concluding that an undertaking belongs to a powerful economic entity, they are nevertheless relevant in determining the influence which it may exert on the market affected by the infringement.[100] Moreover, the market share of any given party to the cartel also gives an indication of its contribution to the effectiveness of the cartel as a whole or, conversely, of the instability which would have affected the cartel had it not participated.

(520) As it was established in sections 4.2, 4.4 and 4.5, the scope of the Baseler-Wuppertaler and Amsterdamer infringement, the tripartite infringement between YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym, as well as the bilateral infringement between Coats and William Prym/Prym Fashion was Europe-wide and with respect to the bilateral infringement between Prym Fashion and Stocko/YKK [Corporation], as shown in section 4.3, the scope was **[*]**. The contacts among the participants of the Baseler-Wuppertaler and Amsterdamer infringement, the bilateral infringement between Coats and William Prym/Prym Fashion and the tripartite infringement between YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym took place on the European level where they agreed on or exchanged prices, shared markets or exchanged other sensitive information for the European market. The objective of these infringements was therefore to participate in the collusion to control the European 'other fasteners', attaching machines or zip fasteners markets. As to the bilateral infringement

98 The Court of First Instance has accepted this approach where the categories are justified: *see* judgment in *Tokai Carbon Co. Ltd and others* v *Commission*, cited in footnote 461, at paragraph 217.

99 Case T-220/00, *Cheil Jedang Corp. v Commission*, [2003] ECR II-2473, paragraph 91.

100 Case C-185/95 P, *Baustahlgewebe v Commission*, [1998] ECR I-8417, paragraph 139.

between Prym Fashion and Stocko/YKK [Corporation], the companies agreed on fixing prices, allocating customers and exchanging price information for the markets of 'other fasteners' and attaching machines **[*]**.

(521) Therefore, considering the above, the undertakings' Community-wide product turnover concerned by the infringement (i.e. 'other fasteners' and attaching machines for the Baseler-Wuppertaler and Amsterdamer co-operation, zip fasteners for the tripartite co-operation between YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym) and world-wide product turnover (i.e. 'other fasteners' and attaching machines for the bilateral co-operation between Prym Fashion and Stocko/YKK [Corporation]) provide a precise estimation of each company's relative capacity and contribution to the overall damage caused to competition. The Europe-wide turnover and with respect to the bilateral cooperation between Prym Fashion and Stocko/YKK [Corporation] the world-wide turnover of the parties to the cartels also give an indication of their contribution to the effectiveness of the cartel as a whole or, conversely, the instability which would have affected the cartels had they not participated. With regard to the bilateral market sharing arrangement between Coats and William Prym/Prym Fashion by which Coats was prevented from entering the 'other fasteners' market, it is, however, not appropriate to apply any differential treatement due the nature of that infringement, i.e. the two undertakings were not active on the same market of 'other fasteners' as Coats was, by means of the agreement, prevented from entering the market for 'other fasteners'.

(522) The individual weight of the participants in the infringement will be compared on the basis of the product market shares held by the relevant undertakings during the last full year of each infringement, with the exception of the tripartite zip fasteners infringement between YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym for which the reference year will be the last year of the infringement since most of the infringement (covering only a part of 1998 and 1999) took place that year.

(523) With regard to the Baseler-Wuppertaler and Amsterdamer infringement and the tripartite zip fasteners infringement between YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym, the comparison is made on the basis of the undertakings' product market shares in the Community. With regard to the bilateral infringement between Prym Fashion and Stocko/YKK [Corporation], the comparison is made on the basis of the undertakings' product market shares worldwide:

– the year 2000 for the undertakings William Prym/Prym Fashion, Scovill/Scovill USA, YKK [Corporation]/YKK Holding/Stocko, the year 1999 for Berning and the year 1998 for A. Raymond for the Baseler-Wuppertaler and Amsterdamer infringement consisting of agreements and concerted practices in the European 'other fasteners' and attaching machines markets.

– the year 2002 for the undertakings William Prym/Prym Fashion and Stocko/YKK Holding/YKK [Corporation] for the bilateral infringement between the two groups in the **[*]** 'other fasteners' and attaching machines markets.

– the year 1999 for the undertakings William Prym/Prym Fashion/Éclair Prym, YKK [Corporation]/YKK Holding and Coats/Coats Germany for the tripartite infringement in the European zip fasteners market.

(524) Whilst the Commission measures the relative weight of the undertakings based on their Community or worldwide market shares, in setting the starting amounts it also takes into account the significance of the fasteners sector in the Community. The estimated value of the market for 'other fasteners' in the EU was EUR 191 million in 1997, 1998, 1999 and-2000, and EUR 160 million in 2002 (see recital (13)). The estimated value of the market for attaching machines was EUR 4 million in 1998, 1999 and 2000 and EUR 3 million in 2002 (see recital (14)). The estimated value of the relevant zip fastener market in the Community was EUR 424 million in 1999 (see recital (12))

9.2.1. Baseler-Wuppertaler and Amsterdamer co-operation

(525) Prym Group and YKK Group, with a Community market share in 2000 (last full year of infringement) in the markets for 'other fasteners' and attaching machines of approximately **[*]**% and **[*]**% respectively, are placed in the first category. Scovill Group, A. Raymond and Berning, with a Community market share in the markets for 'other fasteners' and attaching machines of approximately **[*]**% (year 2000[101]), **[*]**% (year 1998[102]) and **[*]**% (year 1999[103]) respectively, are placed in the second category.

(526) On this basis, the appropriate starting amounts of the fines for this infringement are therefore as follows:

Undertaking	**(EUR)**
William Prym GmbH & Co. KG, Prym Fashion GmbH & Co. KG	35 000 000
YKK Corporation [*], YKK Holding Europe BV, YKK Stocko Fasteners GmbH	35 000 000
Scovill Fasteners Inc., Scovill Fasteners Europe SA	4 500 000
A. Raymond Sarl	4 500 000
Berning & Söhne GmbH & Co. KG	4 500 000

9.2.2. Bilateral co-operation between Prym Fashion and Stocko/YKK [Corporation]

101 Last full year of infringement for Scovill Group.
102 Last full year of infringement for A. Raymond.
103 Last full year of infringement for Berning.

(527) YKK Group and Prym Group, with a worldwide market share in 2002 (last full year of infringement) in the markets for 'other fasteners' and attaching machines of **[*]** (Community market share **[*]**) and **[*]** (Community market share **[*])** respectively, are both placed in the same category.[104]

(528) In setting the starting amount for the undertakings liable for this infringement, the level of the starting amount imposed on the same undertakings in relation to the Baseler-Wuppertaler and Amsterdamer infringement is taken into consideration (see recitals (525)-(526)). The bilateral infringement between Prym Fashion and Stocko/YKK [Corporation] ran partly in parallel with the Baseler-Wuppertaler and Amsterdamer infringement on the same product markets ('other fasteners' and attaching machines) and constituted an arrangement by which the two leading manufacturers, i.e. Prym Fashion and Stocko/YKK [Corporation], reinforced their cooperation in Europe **[*]** to achieve incremental effects on the relevant markets. In light of these considerations, the appropriate starting amounts of the fines for this bilateral infringement are therefore as follows:

Undertaking	**(EUR)**
William Prym GmbH & Co. KG, Prym Fashion GmbH & Co. KG	20 000 000
YKK Corporation [*], YKK Holding Europe BV, YKK Stocko Fasteners GmbH	20 000 000

*9.2.3. Tripartite co-operation between YKK Holding/***[*]***, Coats/Coats Germany and Prym Fashion/Éclair Prym*

(529) YKK Group, with a Community market share in 1999 (last year of the infringement) in the market for zip fasteners of approximately **[*]**% is placed in the first category. Coats Group with an EU market share in 1999 in the market for zips of approximately **[*]**% is placed in the second category. Prym Group with an EU market share in 1999 in the market for zips of approximately **[*]**% is placed in the third category.

(530) On this basis, the appropriate starting amounts of the fines for this infringement are therefore as follows:

Undertaking	**(EUR)**
YKK Corporation [*], YKK Holding Europe BV	50 000 000

[104] *See* Case T-15/02, *BASF v Commission*, not yet reported, paragraphs 180-181.

Coats Holdings Ltd, Coats Deutschland GmbH	17 000 000
William Prym GmbH & Co. KG, Prym Fashion GmbH & Co. KG, Éclair Prym Group S.A.	9 000 000

9.2.4. Bilateral co-operation between Coats and William Prym/Prym Fashion

(531) In view of the nature of the infringement, which consisted in the sharing of the whole haberdashery market, notably by preventing Coats from entering the market for 'other fasteners', and the fact that as a consequence the companies were not present on the "reserved" markets (Prym Group did not enter the soft haberdashery market, whereas Coats Group did not enter the hard haberdashery market, with the exception of zip fasteners), it is not appropriate to apply any differential treatment to Prym Group and Coats Group for the purpose of calculating the fine. Therefore, Prym Group and Coats Group should be placed in the same category.

(532) On this basis, the appropriate starting amounts of the fines to be imposed for this infringement are as follows:

Undertaking	**(EUR)**
Coats Holdings Ltd	35 000 000
William Prym GmbH & Co. KG, Prym Fashion GmbH & Co. KG	35 000 000

9.3. Sufficient deterrence

(533) Within the category of very serious infringements, the scale of likely fines also makes it possible to set the fines at a level which ensures that they have sufficient deterrent effect, taking into account the size of each undertaking.

(534) Prym Group maintains that there is no need to impose a fine for the purpose of deterrence, as the penalty imposed on it by the Commission in the proceedings concerning the needles market (Case F-1/38.338 – PO/Needles) has already had a deterrent effect upon the undertaking. There is, however, no reason to grant a reduction of the fine to Prym Group justified by the size of the fine in the Needles case.

(535) Moreover, a number of addressees argue that they have taken measures to prevent future cartel violations, such as antitrust compliance programmes or termination of the employment of key individuals who were involved in the fasteners cartels. It is, however, impossible for the Commission to know how effective the

measures taken by the addressees will prove to be in preventing cartel infringements in the future.

(536) In general, the Commission considers that each separate infringement merits a separate fine, which should be proportionate to the size of the undertaking in order to be effective. Imposing a sufficiently high fine on large undertakings for each separate infringement they commit deters future violations.

(537) The Commission considers the usage of the turnover to ensure equal deterrence to all relevant undertakings. Turnover is applied as the Commission's proxy in this case against all undertakings equally,[105] as it serves as a sensible and useful *indication* of economic capacity and strength.[106] The multiplier should only be applied where there is considerable disparity in size of the undertakings participating in the infringement.

(538) The Commission notes that in 2006[107], the total turnovers of the undertakings were as follows: A. Raymond– EUR **[*]**, Berning – EUR **[*]**, Coats Group – EUR **[*]**, Prym Group – EUR **[*]**, Scovill Group – EUR **[*]** (USD **[*]**), and YKK Group – EUR **[*]** (Japanese Yen **[*]**). With a worldwide turnover of EUR **[*]** YKK Group is a much larger player than the other addressees. In this respect the Commission considers that the appropriate starting amount for a fine requires further upward adjustment to take account of the size and the overall resources of YKK Group. On this basis, the application of a multiplying factor of **1.25** in respect of the starting amount of the fine to be imposed on YKK Group is appropriate.

(539) As a result, the starting amounts of the fines to be imposed on each undertaking become as follows:

Baseler-Wuppertaler and Amsterdamer cooperation:

Undertaking	**(EUR)**
William Prym GmbH & Co. KG, Prym Fashion GmbH & Co. KG	35 000 000
YKK Corporation [*], YKK Holding Europe BV, YKK Stocko Fasteners GmbH	43 750 000
Scovill Fasteners Inc., Scovill Fasteners Europe SA	4 500 000
A. Raymond Sarl	4 500 000
Berning & Söhne GmbH & Co. KG	4 500 000

105 *See* Case T-15/02, *BASF v Commission*, not yet reported, paragraph 244.

106 Case *Danone v Commission*, cited above at footnote 562, paragraph 171.

107 The most recent full financial year before the investigation was finalised that the undertakings were able to provide the date for.

Bilateral cooperation between Prym Fashion and Stocko/YKK [Corporation]**:**

Undertaking	(EUR)
William Prym GmbH & Co. KG, Prym Fashion GmbH & Co. KG	20 000 000
YKK Corporation [*], YKK Holding Europe BV, YKK Stocko Fasteners GmbH	25 000 000

Tripartite cooperation between YKK Holding/[*], Coats/Coats Germany and Prym Fashion/Éclair Prym:

Undertaking	(EUR)
YKK Corporation [*], YKK Holding Europe BV	62 500 000
Coats Holdings Ltd, Coats Deutschland GmbH	17 000 000
William Prym GmbH & Co. KG, Prym Fashion GmbH & Co. KG, Éclair Prym Group S.A.	9 000 000

Bilateral cooperation between Coats and William Prym/Prym Fashion:

Undertaking	(EUR)
Coats Holdings Ltd	35 000 000
William Prym GmbH & Co. KG, Prym Fashion GmbH & Co. KG	35 000 000

9.4. Increase for duration

9.4.1. Baseler-Wuppertaler and Amsterdamer co-operation

(540) As regards duration, William Prym, Scovill and Stocko committed an infringement of nine years and nine months, that is to say from 24 May 1991 to 15 March 2001. Berning committed an infringement of nine years and three months, that is to say from 24 May 1991 to 19 August 2000. A. Raymond committed an infringement of eight years and six months, that is to say from 24 May 1991 to 1 December 1999. Prym Fashion committed an infringement of six

years and seven months, that is to say from 1 August 1994 until 15 March 2001. YKK [Corporation] and YKK Holding committed an infringement of four years, that is to say from 1 March 1997 to 15 March 2001. Finally, Scovill USA committed an infringement of four years and two months, that is to say from (31 December) 1996 to 15 March 2001.

(541) William Prym, Prym Fashion, Scovill, Stocko, A. Raymond, and Berning committed an infringement of long duration. YKK [Corporation], YKK Holding and Scovill USA committed an infringement of medium duration. Taking into account that impact of duration must be sufficiently important, a 10% increase per year (and a further increase of 5% for any remaining period of 6 months or more but less than a year) in each infringement appears justified.[108] This leads to a percentage increase of the starting amount for each undertaking as follows:

Undertaking	**Increase**
William Prym GmbH & Co. KG	90%[109] [110]
Prym Fashion GmbH & Co. KG	60%[111]
YKK Corporation [*]	40%
YKK Holding Europe BV	40%
YKK Stocko Fasteners GmbH	95%[112]
Scovill Fasteners Inc.	40%
Scovill Fasteners Europe SA	95%[113]

108 Joined cases T-259/02 – T-264/02 and T-271/02, *Austrian Banks (Lombard Club)*, paragraph 465-468.

109 As Prym Group's evidence enabled the Commission to find an infringement of longer duration than prior to the submission of the evidence, that is to say until 15 March 2001, in accordance with point 23 of the 2002 Leniency Notice, these elements will not be taken into account when setting the fine, resulting in an increase of 90% instead of 95% for William Prym and 60% instead of 65% for Prym Fashion. *See* recitals (655)-(656).

110 The starting amount increased by 60% relates to the period for which William Prym GmbH & Co. KG and Prym Fashion GmbH & Co. KG are held jointly and severally liable. The remainder of the percentage increase relates to the period for which William Prym GmbH & Co. KG is held exclusively liable.

111 As Prym Group's evidence enabled the Commission to find an infringement of longer duration than prior to the submission of the evidence, that is to say until 15 March 2001, in accordance with point 23 of the 2002 Leniency Notice, these elements will not be taken into account when setting the fine, resulting in an increase of 90% instead of 95% for William Prym and 60% instead of 65% for Prym Fashion. *See* recitals (655)-(656).

112 The starting amount increased by 40% relates to the period for which YKK Stocko Fasteners GmbH, YKK Holding Europe BV and YKK Corporation [*] are held jointly and severally liable. The remainder of the percentage increase relates to the period for which YKK Stocko Fasteners GmbH is held exclusively liable.

A. Raymond Sarl	85%
Berning & Söhne GmbH & Co. KG	90%

9.4.2. Bilateral co-operation between Prym Fashion and Stocko/YKK [Corporation]

(542) William Prym, Prym Fashion, YKK [Corporation], YKK Holding and Stocko committed an infringement of three years and five months, that is to say from 13 August 1999 to 13 January 2003. This is an infringement of medium duration. The starting amount for the fines of medium duration could be increased by 10% for each full year of the infringement. It should further be increased by 5% for any remaining period of 6 months or more but less than a year. This leads to a percentage increase of the starting amount for each undertaking as follows:

Undertaking	**Increase**
William Prym GmbH & Co. KG, Prym Fashion GmbH & Co. KG	30%
YKK Corporation [*], YKK Holding Europe BV, YKK Stocko Fasteners GmbH	30%

*9.4.3. Tripartite co-operation between YKK Holding/***[*]***, Coats/Coats Germany and Prym Fashion/Éclair Prym*

(543) YKK [Corporation], YKK Holding, Coats, Coats Germany, William Prym and Prym Fashion committed an infringement of one year and six months, that is to say from 28 April 1998 to 12 November 1999. This is an infringement of medium duration. Éclair Prym committed an infringement of ten months, that is to say from 13 January 1999 (first meeting where it was present) to 12 November 1999. This is an infringement of short duration for which there is no increase. The starting amount of the fines should therefore be increased by 10% for each full year of the infringement and by 5% for any remaining period of 6 months or more but less than a year. This leads to a percentage increase of the starting amount for each undertaking as follows:

Undertaking	**Increase**

[113] The starting amount increased by 40% relates to the period for which Scovill Fasteners Europe SA and Scovill Fasteners Inc. are held jointly and severally liable. The remainder of the percentage increase relates to the period for which Scovill Fasteners Europe SA is held exclusively liable.

YKK Corporation [*], YKK Holding Europe BV	15%
Coats Holdings Ltd, Coats Deutschland GmbH	15%
William Prym GmbH & Co. KG, Prym Fashion GmbH & Co. KG[114]	15%

9.4.4. Bilateral co-operation between Coats and William Prym/Prym Fashion

(544) Coats and William Prym committed an infringement of twenty one years and six months, that is to say from 15 January 1977 to 15 July 1998. This is an infringement of long duration. Prym Fashion committed an infringement of three years and eleven months, that is to say from 1 August 1994 until 15 July 1998. This is an infringement of medium duration. The starting amounts of the fines should consequently be increased by 10 % for each full year of infringement with long or medium duration and by 5% for any remaining period of 6 months or more but less than a year. This leads to a percentage increase of the starting amount for each undertaking as follows:

Undertaking	**Increase**
Coats Holdings Ltd	215%
William Prym GmbH & Co. KG	215%[115]
Prym Fashion GmbH & Co. KG	35%

9.5. Conclusion on the basic amounts

(545) The basic amounts of the fines to be imposed on each undertaking are therefore as follows:

Baseler-Wuppertaler and Amsterdamer cooperation:

Legal entities	**(EUR)**

[114] Éclair Prym is held liable for an infringement of less than one year, namely from 13 January 1999 to 12 November 1999, for which there is no increase for duration.

[115] The starting amount increased by 35% relates to the period for which William Prym GmbH & Co. KG and Prym Fashion GmbH & Co. KG are held jointly and severally liable. The remainder of the percentage increase relates to the period for which William Prym GmbH & Co. KG is held exclusively liable.

William Prym GmbH & Co. KG Of which Jointly and severally with Prym Fashion GmbH & Co. KG	66 500 000 56 000 000
YKK Stocko Fasteners GmbH Of which Jointly and severally with YKK Corporation [*] and YKK Holding Europe BV	85 312 500 61 250 000
Scovill Fasteners Europe SA Of which Jointly and severally with Scovill Fasteners Inc.	8 775 000 6 300 000
A. Raymond Sarl	8 325 000
Berning & Söhne GmbH & Co. KG	8 550 000

Bilateral cooperation between Prym Fashion and Stocko/YKK [Corporation]**:**

Legal entities	**(EUR)**
William Prym GmbH & Co. KG jointly and severally with Prym Fashion GmbH & Co. KG	26 000 000
YKK Corporation [*] jointly and severally with YKK Holding Europe BV and YKK Stocko Fasteners GmbH	32 500 000

Tripartite cooperation between YKK Holding/[*], Coats/Coats Germany and Prym Fashion/Éclair Prym:

Legal entities	**(EUR)**
YKK Corporation [*] jointly and severally with YKK Holding Europe BV	71 875 000
Coats Holdings Ltd jointly and severally with Coats Deutschland GmbH	19 550 000
William Prym GmbH & Co. KG jointly and severally with	10 350 000

Prym Fashion GmbH & Co. KG Of which Jointly and severally with Éclair Prym Group S.A.	9 000 000

Bilateral cooperation between Coats and William Prym/Prym Fashion:

Legal entities	(EUR)
William Prym GmbH & Co. KG Of which Jointly and severally with Prym Fashion GmbH & Co. KG	110 250 000 47 250 000
Coats Holdings Ltd	110 250 000

9.6. Aggravating and attenuating circumstances

9.6.1. Aggravating circumstances

9.6.1.1. Leadership of a cartel:

(546) According to YKK Group and A. Raymond, Prym Group had a major role in the running and organization of the Baseler-Wuppertaler and Amsterdamer cooperation. YKK Group also claims that Prym acted as the ringleader for the bilateral cooperation between Prym Fashion and Stocko/YKK [Corporation].

Baseler-Wuppertaler and Amsterdamer cooperation

(547) In its response to the first Statement of Objections, Prym Group contests that **[*]** had a major role in the construction of the Baseler and Wuppertaler circles. Indeed, it is true that **[*]** was not the person who originally created the Baseler and Wuppertaler circles. The Baseler circle had already been established in 1953, while the Wuppertaler circle was established in 1991. As for the Amsterdamer circle, Prym has submitted that **[*]** had proposed the reactivation of the price measures within a smaller group of companies, and as a consequence the decision was taken at the Baseler circle meeting of 19 August 2000, together with the other participants, to establish the new circle.

Bilateral cooperation between Prym Fashion and Stocko/YKK [Corporation]

(548) With regard to the bilateral cooperation with Stocko/YKK [Corporation], Prym Group submits that YKK Group is incorrect in its claims that Prym was the initiator of that cooperation and argues that the initiative for the co-operation came, in fact, rather from YKK Group who was attracted by the long experience Prym had in the snap fastener sector. According to Prym Group, Stocko/YKK [Corporation] was an equal partner and "*collaboration was actually developed*

equally and jointly by the undertakings involved". According to Prym Group, such claims are also contradicted by documents **[*]**, showing the active role of YKK Group in the development of the price fixing scheme between the two parties (see recitals **[*]**).

(549) However, and in light of the evidence presented in sections 4.2 and 4.3, the indications as to the existence of the leadership role of Prym Group are too contradictory and the allegations presented by the parties arguing this aggravating circumstance are not supported by documentary evidence. Therefore, the Commission concludes that there is no aggravating circumstance as to the alleged leadership and initiator role of Prym Group in either the Baseler-Wuppertaler and Amsterdamer infringement or in the bilateral infringement between Prym Fashion and Stocko/YKK [Corporation].

9.6.1.2. Co-ordination of replies

(550) Prym Group and YKK Group submit in their leniency applications that they met during the spring and summer of 2003 to discuss the Commission's request for information to the undertakings involved. According to the statement of Prym Group, three meetings took place, that is to say on 14 March 2003, 26 June 2003 and 10 July 2003. At the last meeting, according to Prym, a general defence strategy was discussed and the participants agreed to deny everything. This claim is, however, denied by YKK Group that argues that there was no co-ordination of the companies' replies. The purpose of these meetings was primarily to *"assist* **[*]**, *the new Director-General of the VBT, who was not involved in any of the activities of the Wuppertaler, Baseler, or Amsterdamer Kreise, to answer the Commission's Request for Information to VBT"*. According to the leniency applicants, VBT and Berning were also present at some of those meetings. According to Berning and VBT, the undertakings discussed only general issues and did not co-ordinate their replies to the Commission's request for information.

(551) All undertakings confirm the fact that there were a number of meetings between YKK Group, Prym Group, Berning and VBT during the spring and summer of 2003. They disagree, however, on the exact number of meetings and on their contents, that is to say on whether the meetings were of an anti-competitive nature.

(552) Furthermore, YKK Group argued in its leniency application of 18 February 2005, in its reply to the supplementary Statement of Objections, in the Oral Hearing of 11 July 2006, and in its submission of 18 July 2006 to the Commission, that Prym had discussed with the VBT the latter's reply to the Statement of Objections and had tried, without success, to persuade Stocko to coordinate replies to the Statement of Objections.

(553) Regardless of whether or not the Commission could actually apply an increase for the coordination of replies, suffice it to say that the Commission does not have sufficient corroborating evidence on this point.

9.6.2. Attenuating circumstances

9.6.2.1. Passive role

(554) Berning, Scovill, A. Raymond have invoked attenuating circumstances for their minor/or passive role in the Baseler-Wuppertaler and Amsterdamer cooperation whereas YKK Group (on behalf of Stocko) has invoked its passive role in both the Baseler-Wuppertaler and Amsterdamer cooperation as well as the bilateral cooperation with Prym Fashion.

(555) The Guidelines on fines provides for the possible reduction of the basic amount where the role of an undertaking is *exclusively passive*. In general, the Commission admits that an exclusively passive or 'follow-my-leader' role played by an undertaking in the infringement may, if established, constitute an attenuating circumstance. A passive role implies that the undertaking will adopt a 'low profile'.[116] The factors capable of revealing such a role within a cartel include the significantly more sporadic nature of the undertaking's participation in the meetings by comparison with the ordinary members of the cartel,[117] and also the existence of express declarations to that effect made by representatives of other undertakings which participated in the infringement.[118]

(556) However, the fact that a participant to a cartel does not actively take part in all aspects of the cartel discussions (for example does not participate in certain meetings/discussions which relate to markets in which the undertaking has no or only limited business activity) does not constitue evidence of an exclusively passive role, it rather shows the cartelist adapting its behaviour to its own specific interests.

(557) In any event, it is necessary to take account of all relevant circumstances in each particular case.

A. Raymond

Baseler-Wuppertaler and Amsterdamer cooperation

(558) A. Raymond argues that the Commission should impose only a symbolic fine as it does not have any economic capacity to impose any harm on other market operators or consumers, and the company only played a minor and passive role in the alleged infringement and took part only in the meetings of the Baseler circle.

(559) A. Raymond's attempt to portray itself as a minor player and a mere follower in the cartel is, however, not convincing. Rather, the evidence in the Commission file points to it having consistently been one of the ordinary, regular and active participants in the arrangements described in section 4.2 of this Decision.

(560) Indeed, A. Raymond's participation in the collusive contacts with the other producers cannot be considered significantly more sporadic compared to that of the other ordinary members of the cartel. As a France based company, A. Raymond did not participate in the Wuppertaler circle meetings. The frequency of A. Raymond's participation in the meetings of the Baseler circle throughout the period from 24 May 1991 until 1 December 1999, as shown in Table 1 (see

116 Case T-220/00, *Cheil Jedang v Commission*, ECR 2003, II-02473, paragraph 167.
117 Case T-311/94, *BPB de Eendracht v Commission*, [1998], ECR II-1129, paragraph 343.
118 Case T-317/94, *Weig v Commission*, [1998], ECR II-1235, paragraph 264.

recitals (59), (60)), is nevertheless incompatible with any notion of an exclusively passive or minor role. In fact, A. Raymond was responsible for indicating the annual price increase for the French market and reporting on the implementation of such price increases as can be seen in the chronology of the circle meetings presented in section 4.2.5 of this Decision (for direct reference to A. Raymond see recitals (91), (101), (103), (105), (110), (112), (115), (120), (121), (124), (126), (129) ,(133)). Therefore, it is beyond doubt that A. Raymond was a full member of the cartel, attending most of the Baseler circle meetings, participating in the preparation and follow-up of the price agreements. Its participation had no particular distinguishing features in this respect.

(561) **[*]**

(562) The Commission therefore concludes that A. Raymond's role in the infringement was not exclusively passive or minor, and rejects A. Raymond's arguments to the contrary.

Berning

Baseler-Wuppertaler and Amsterdamer cooperation

(563) Berning puts forward the argument of it being a 'subordinated outsider' as it was a passive participant to the Baseler-Wuppertaler and Amsterdamer cooperation.

(564) Berning's attempt to portray itself as a passive player in the cartel is, however, not convincing in view of the documentary evidence presented in section 4.2 of this Decision. As it was explained above, an exclusively passive role of an undertaking implies a participation in the cartel of a more sporadic nature compared to other ordinary participants, as well as declarations made by other participants to that effect.

(565) With regard to the Baseler and Wuppertaler circles, Berning was present in 10 out of a total of 18 Baseler circle meetings and 12 out of a total of 15 Wuppertaler circle meetings between the period of 24 May 1991 and 19 August 2000. With the exception of 1998 (when Berning was invited to both two meetings organised but decided not to attend, see recital (59)), Berning attended the circle meetings regularly, at least once a year. As to the Wuppertaler circle, Berning was excused from 3 meetings out of a total of 15 meetings. Furthermore, the Commission has presented evidence of Berning being informed and/or agreeing with price agreements entered into in certain meetings in which the company itself was not present (see recitals (120), (125), (126)). The active participation of Berning in the infringing conduct is further shown by the documentary evidence presented in section 4.2.5, for example direct references of Berning taking part in price discussions and actively working towards the development of a harmonised European price list (see recitals (98), (100), (104), (109), (111), (120), (127)).

(566) The contemporaneous evidence presented in section 4.2.5 also shows that Berning had practised a deviationist pricing policy in 1998, which gave rise to discussions among the other circle participants in the meeting of 19 June 1998 (to which Berning had been invited but did not attend) as referenced in recital (134).

(567) Despite the absence of Berning from certain meetings of the Baseler and Wuppertaler circles and the fact that the company had pursued a deviationist pricing policy at times, Berning's regular participation in the infringement cannot, in light of the considerations in recital (565), be considered significantly sporadic compared to other ordinary participants of the meetings. The frequency of Berning's participation in the meetings of Baseler and Wuppertaler circle meetings throughout the period of 24 May 1991 until 19 August 2000 is incompatible with any notion of an exclusively passive or minor role. The Commission therefore concludes that Berning's arguments as to it being a passive participant of the Baseler and Wuppertaler meetings cannot be accepted, and that no reduction of a fine can be granted on the basis of Berning's arguments.

Scovill

Baseler-Wuppertaler and Amsterdamer cooperation

(568) Scovill claims that its role in relation to the Baseler-Wuppertaler and Amsterdamer cooperation was that of a passive follower and argues that it never presided at or organised any meetings and furthermore that it did not assist to all of the circle meetings.

(569) As it has been established in recitals (58) to (65), Scovill participated in 14 Baseler circle meetings out of a total of 18 meetings between the period from 24 May 1991 until 19 August 2000 as well as in the Amsterdamer circle meeting of 15 March 2001 together with its parent company Scovill USA. As a Belgium based company, Scovill did not participate in the Wuppertaler circle meetings. Scovill, nevertheless, attended the Baseler and Amsterdamer circle meetings on a regular basis, that is to say at least once each year,1998 being the only exception (when Scovill was invited to both meetings organised but decided not to attend, see recital (59)). The active participation of Scovill in the infringing conduct is shown by the documentary evidence presented in section 4.2.5, for example direct references of Scovill taking part in the discussions concerning the price increases and their implementation (see recitals (96), (106), (108), (112), (115), (121), (124), (129), **[*]**, **[*]**). The evidence shows Scovill being responsible for indicating the annual price increase for the Belgian market and reporting on the implementation of such price increases as can be seen in the chronology of the circle meetings (see section 4.2.5). Furthermore, as indicated in recitals (143)-(144), Scovill was one of the initiators of the Amsterdamer circle. All these elements prove that Scovill's participation in the infringement was consistent, regular and active.

(570) As to Scovill's argument that its role was passive because it never presided or organised the meetings, it must be noted that the absence of leadership cannot be equated to an exclusively passive or minor role in the infringement. Although proof of a leadership role may in certain circumstances give rise to an increase of the fine for an aggravating factor, the absence of such a factor does not constitute an attenuating circumstance.

(571) Therefore, the Commission finds that, as to the participation of Scovill in the infringement, it is beyond dispute that it was a full member of the cartel, and its participation had no particular distinguishing features in this respect. Scovill's

arguments as to the reduction of the fine on the basis of this attenuating circumstance must therefore be rejected as unfounded.

YKK Group

(572) In its submissions to the Commission, YKK Group has argued that Stocko together with all other players, except for Prym, were only "*minor and insignificant players in the proceedings*" and that Stocko, in relation to the Baseler-Wuppertaler and Amsterdamer cooperation **[*]**. It is further stated that Stocko was a **[*]**.

Baseler-Wuppertaler and Amsterdamer cooperation

(573) With regard to the Baseler-Wuppertaler and Amsterdamer cooperation, it has been established in recitals (58) to (65) that Stocko was an active participant in the three circles, participating in each and every meeting organised during the period from 24 May 1991 until 15 March 2001. It took therefore part in agreeing on price increases and exchanging confidential information on prices and the implementation of price increases throughout the period of the infringement, as shown in section 4.2.5 (for direct references to Stocko see for example recitals (93), (95), (98), (102), (104), (111), (116), (119), (126), (127), (128), (134), (139)). Stocko took part also in the setting up of the Amsterdamer circle at the last Baseler circle meeting of 19 August 2000 and participated in the infringing conduct taking place at the Amsterdamer circle meeting of 15 March 2001 (see recitals (143), (144), **[*]**, **[*]**).

(574) As for YKK Group's argument that the various circle members, including Stocko, were dominated by the "*clear and undisputed ringleader*", that is to say Prym, it must again be noted that the absence of leadership cannot be equated to an exclusively passive or minor role in the infringement. Although proof of a leadership role may in certain circumstances give rise to an increase of the fine for an aggravating factor, the absence of such a factor does not constitute an attenuating circumstance.

Bilateral cooperation between Prym Fashion and Stocko/YKK [Corporation]

(575) With regard to the bilateral co-operation between Prym Fashion and Stocko/YKK [Corporation], it has been established in section 4.3 that both parties took actively part in the cooperation by fixing prices, exchanging price information and allocating customers between themselves. As to the alleged ring-leader role of Prym, the matter has already been discussed in recitals (546) to (549).

(576) In light of the considerations above, the Commission finds that it is beyond dispute that Stocko (Baseler-Wuppertaler and Amsterdamer cooperation) and Stocko/YKK [Corporation] (bilateral cooperation between Prym Fashion and Stocko/YKK [Corporation]) were full members of the infringements, and their participation had no particular distinguishing features in this respect. YKK Group's arguments as to the reduction of the fine on the basis of this attenuating circumstance must therefore be rejected as unfounded.

9.6.2.2. Non-implementation

Baseler-Wuppertaler and Amsterdamer cooperation

(577) It has been argued by the parties to the Baseler-Wuppertaler and Amsterdamer cooperation, that price increases agreed at the meetings were either not implemented or were only partially implemented and/or that price increases merely corresponded to increases in costs. In particular A. Raymond, Scovill Group, Prym Group and YKK Group submit that the basic amount of the fine to be imposed on the undertakings should hence be reduced.

(578) In general, the Commission is not required to recognise non-implementation of a cartel as an attenuating circumstance unless the undertaking relying on that circumstance is able to show that it clearly and substantially opposed the implementation of the cartel, to the point of disrupting the very functioning of it, and that it did not give the appearance of adhering to the agreement and thereby incite other undertakings to implement the cartel in question. The fact that an undertaking did not behave on the market in the manner agreed with its competitors is not necessarily a matter which must be taken into account as an attenuating circumstance when determining the amount of the fine to be imposed.[119] Indeed, the fact that a cartel agreement is not honoured does not mean that it does not exist.[120]

(579) The Commission's conclusion on this point is set out in recitals (497) to (502) where it is stated that the arrangements were implemented. This conclusion is not altered by the fact that such implementation may have been less than fully successful in achieving the intended impact on the market because of buyer resistance and/or remaining competition. Scovill Group, A. Raymond, Prym Group or YKK Group have not provided any indication that they demonstrated any desire, or undertook any action, to deliberately abstain from implementing the agreements they concluded during the period in which they adhered to them.[121] In fact, the meeting notes of the various circle meetings show that all parties, including A. Raymond and Scovill, reported on various occasions on the implementation of the agreed price increases (see recitals (91), (101), (105), (124), (129), (133)). As to YKK Group, **[*]**. Prym Group has for its part argued that the price agreements were sometimes not implemented because of market situations. A difference in the degree to which agreements were implemented by the parties cannot be regarded as a real failure to implement them.[122]

(580) It follows that Scovill Group, A. Raymond, Prym Group and YKK Group have failed to show that they would qualify for an attenuating factor based on non-implementation of the agreements in practice.

9.6.2.3. Disciplinary measures and compliance programme

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119 Case T-44/2000, *Mannesmannröhren-Werke AG v Commission*, ECR 2004, p. 0000, paragraph 277; Case T-327/94, *SCA Holding v Commission.* [1998] ECR II-1373, paragraph 142.

120 Case T-141/94, *Thyssen Stahl* v *Commission.* [1999] ECR II-347, paragraphs 233, 255, 256 and 341.

121 Joined Cases T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95, *Cimenteries CBR and Others* v *Commission* [2000] ECR II-491, paragraphs 4872-4874.

122 Case T-220/00, *Cheil Jedang v Commission*, ECR 2003, p. II-02473, paragraphs 194-199.

(581) Prym Group argues that it should receive a reduction for having taken disciplinary measures against employees involved in the infringements. Similarly, Prym Group, Coats and YKK Group argue that the fine should be reduced for them having instituted antitrust compliance programmes.

(582) While the Commission welcomes measures taken by undertakings to avoid cartel infringements in the future, such measures cannot change the reality of the infringement and the need to sanction it in this Decision.[123] The mere fact that in certain of its previous decisions, which all predate the adoption of the Guidelines on fines, the Commission took such measures into consideration as attenuating circumstances does not mean that it is obliged to act in the same manner in every case[124]. That is *a fortiori* so where, as here, the infringement constitutes a manifest breach of Article 81 of the Treaty.

(583) In those circumstances, the Commission does not accept any claim that adoption of compliance action should be taken into account as an attenuating factor.

9.6.2.4. Cooperation outside the scope of the 1996 Leniency Notice

(584) Prym Group and Coats Group submitted their leniency applications in relation to the infringements on the zip fasteners market on 26 November 2001. On 12 November 2004, William Prym complemented its 2001 leniency application as to the sector of zip fasteners. YKK Group's leniency application, submitted on 18 February 2005, in addition to submitting evidence relating to 'other fasteners', also contained information concerning zip fasteners. These applications are being dealt with under the 1996 Leniency Notice, as Prym and Coats approached the Commission with their leniency application as to the infringements in the zip fasteners sector before 14 February 2002, that is to say the date on which the 1996 Leniency Notice was replaced by the 2002 Leniency Notice. Pursuant to point 28 of the 2002 Leniency Notice, the tripartite cooperation between YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym and the bilateral cooperation between William Prym/Prym Fashion and Coats are assessed under the 1996 Leniency Notice (see also recitals (597)-(599)).

(585) The Commission notes that unlike point 23 of the 2002 Leniency Notice, the 1996 Leniency Notice does not provide for any specific reward to a leniency applicant that discloses facts previously unknown to the Commission and affecting the gravity or duration of the cartel. It is therefore appropriate to consider any such cooperation under the attenuating factors.

Tripartite cooperation between YKK Holding/[*], Coats/Coats Germany and Prym Fashion/Éclair Prym

Coats Group

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123 *See* Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-242/01, *Tokai Carbon Co. Ltd and Others v Commission*, at paragraph 343.

124 Case T-7/89, *Hercules Chemicals* v *Commission.* [1991] ECR II-1711, paragraph 357, and Case T-352/94, *Mo och Domsjö* v *Commission.* [1998] ECR II-1989, paragraphs 417 and 419.

(586) Coats' cooperation qualifies for an attenuating factor with regard to this infringement. Coats and Prym submitted simultaneously their leniency applications with regard to the tripartite cooperation. Coats, however, was the first undertaking to provide the Commission with facts previously unknown to the Commission (in the form of documentary evidence), which permitted the Commission to establish the entire duration of the tripartite cooperation from 2 June 1999 until 12 November 1999.[125] Prior to Coats' leniency application the Commission could not have established the duration of the infringement from 29 September 1999 until 12 November 1999.

(587) Coats Group should not be penalised for its cooperation by imposing on it a higher fine than the one that it would have had to pay without its cooperation. Therefore, the period from 29 September 1999 until 12 November 1999 will not be taken into account for the purpose of the fine to be imposed on Coats Group for this infringement. In light of the above, the basic amount of the fine to be imposed on Coats Group should be reduced by **EUR 850 000** so that it is the same as the hypothetical amount that Coats Group would have to pay for a one-year infringement.

YKK Group

(588) YKK Group's cooperation qualifies for an attenuating factor with regard to this infringement. YKK was the first undertaking to disclose the facts as to the existence of the infringement before 2 June 1999. YKK Group provided the Commission with facts previously unknown to it (new information and documentary evidence) as to the duration of the infringement starting already on 28 April 1998. Prior to YKK Group's leniency submission, the Commission could not have established the duration of the infringement from 28 April 1998 until 2 June 1999.

(589) YKK Group should not be penalised for its cooperation by imposing on it a higher fine than the one that it would have had to pay without its cooperation. Therefore, the Commission will not take the period 28 April 1998 until 2 June 1999 into account for the purpose of the fine to be imposed on YKK Group for this infringement. In light of the above, the basic amount of the fine to be imposed on YKK Group should be reduced by **EUR 9 375 000** so that it would be the same as the hypothetical amount that YKK Group would have had to pay for an infringement of less than one year.

9.7. Application of the 10% turnover limit

(590) The amount of the fine, for each infringement, calculated by taking account of any attenuating or aggravating circumstances may not exceed 10% of the worldwide turnover of the undertaking concerned. [126]

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125 The infringement was subsequently shown to be of longer duration by YKK Group's leniency submission and documentary evidence contained therein, as a result of which 28 April 1998 was established as the starting date of the tripartite cooperation.

126 Case T-15/02, *BASF AG v. Commission*, paragraph 70.

(591) According to settled case law, the Commission does not have to limit the maximum amount of the fine to 10% of the turnover in the relevant product and geographical market, but turnover is to be understood as meaning the total turnover of the undertaking concerned.[127]

Baseler-Wuppertaler and Amsterdamer co-operation:

(592) In this case, the basic amount of the fine to be imposed on Prym Group, Scovill Group and Berning prior to the application of the Leniency Notice exceeds the 10% limit of their total turnover. The basic amount of the fine to be imposed on these undertakings should therefore be reduced as follows:

Legal entities	**(EUR)**
William Prym GmbH & Co. KG	35 590 000
Of which	
Jointly and severally with Prym Fashion GmbH & Co. KG	35 590 000
Scovill Fasteners Europe SA	6 002 000
Of which	
Jointly and severally with Scovill Fasteners Inc.	6 002 000
Berning & Söhne GmbH & Co. KG	1 123 000

Bilateral cooperation between Prym Fashion and Stocko/YKK [Corporation]**:**

(593) In this case, the basic amount of the fine to be imposed on Prym Group and YKK Group prior to the application of the Leniency Notice does not exceed the 10% limit of their total turnover.

Tripartite cooperation between YKK Holding/[*], Coats/Coats Germany and Prym Fashion/Éclair Prym:

(594) In this case, the basic amount of the fine to be imposed on Prym Group, YKK Group and Coats Group prior to the application of the Leniency Notice does not exceed the 10% limit of their total turnover.

Bilateral cooperation between Coats and William Prym/Prym Fashion:

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127 Case T-220/00, *Cheil Jedang Corp., v. Commission,* paragraph 60; Joined Cases 100 to 103/80 *Musique diffusion française and Others v Commission*,[1983] ECR 1825, paragraph 119, Case T-43/92, *Dunlop Slazenger v Commission* [1994] ECR II-441, paragraph 160, and Case T-144/89, *Cockerill Sambre v Commission* [1995] ECR II-947, paragraph 98.

(595) In this case, the basic amount of the fine to be imposed on Prym Group prior to the application of the Leniency Notice exceeds the 10% limit of its total turnover. The basic amount of the fine to be imposed on this undertaking should therefore be reduced as follows:

Legal entities	(EUR)
William Prym GmbH & Co. KG	35 590 000
Of which	
Jointly and severally with Prym Fashion GmbH & Co. KG	35 590 000

10. APPLICATION OF THE 1996 LENIENCY NOTICE

(596) The addressees of this Decision have co-operated with the Commission, at different stages of the investigation into the infringements for the purpose of receiving the favourable treatment set out in the 1996 Leniency Notice. The Commission therefore examines in this section whether the parties concerned satisfied the conditions set out in the Notice.

(597) Both Prym Group and Coats Group applied for leniency on 26 November 2001 in relation to zip fasteners. These applications are dealt with under the 1996 Leniency Notice as William Prym/Éclair Prym and Coats approached the Commission before 14 February 2002, namely the date on which the 1996 Leniency Notice was replaced by the 2002 Leniency Notice.

(598) On 12 November 2004, William Prym on behalf of all its subsidiaries submitted a leniency application concerning the sector of 'other fasteners' and completed the group's initial leniency application concerning the sector of zip fasteners. Whereas the application concerning 'other fasteners' will be addressed in section 11 relating to leniency applications dealt with under the 2002 Leniency Notice, Prym Group's completion of its leniency application relating to the zip fasteners sector should be assessed under the 1996 Leniency Notice. According to point 28 of the 2002 Leniency Notice, the new Notice replaces the 1996 Notice as of 14 February 2002 for all cases in which no undertaking has contacted the Commission in order to take advantage of the favourable treatment set in that Notice. Therefore, the Commission will assess the parts of Prym's leniency application submitted on 12 November 2004 relating to zip fasteners under the 1996 Leniency Notice.

(599) YKK's leniency application, submitted on 18 February 2005, in addition to submitting evidence relating to 'other fasteners', also contained information concerning zip fasteners. In accordance with point 28 of the 2002 Leniency Notice, the parts of YKK's leniency application that relate to zip fasteners will be assessed under the 1996 Leniency Notice.

10.1. Tripartite co-operation between YKK Holding/[*], Coats/Coats Germany and Prym Fashion/Éclair Prym on the European zip fasteners market

10.1.1. Coats Group

(600) Coats Group submitted its leniency application together with the supporting documentary evidence on 26 November 2001, simultaneously with Prym Group, after the unannounced inspections carried out by the Commission on 7 and 8 November 2001 at the premises of several Community producers of soft and hard haberdashery, including Coats' premises.

(601) After the inspections the Commission had evidence that Prym Fashion/Éclair Prym, Coats/Coats Germany and YKK Holding/**[*]** met on 2 June 1999 where they agreed to work towards establishing minimum price levels for standard zip fastener products in Europe. The Commission discovered an email sent from **[*]** to **[*]** on 4 June 1999, with a subject line "Meeting with Prym and YKK". In the email message, **[*]** explains the key points agreed between the three companies during the meeting on 2 June 1999. The companies, according to the email, agreed *"in principle to work towards establishing minimum price levels for standard products"* across Europe by the end of 2000. It was further evident that the companies agreed on a methodology to establish minimum prices: on the basis of the list of standard products the companies would set a benchmark price equal to 85% of the then German price for these products, as was described in recital **[*]** above. It was further evident from the email that the companies agreed to have another meeting on 29 September 1999 in order to work out the key elements of the methodology and to take action.

(602) **[*]**

(603) **[*]**

(604) Coats Group's co-operation with the Commission began shortly after the inspections were undertaken in these proceedings. The Commission accepts that Coats' early assistance allowed the Commission to better understand the infringement and interpret the documents obtained in the inspections. The information submitted by Coats **[*]** was extensively used by the Commission in the pursuance of its investigation. Coats Group thus assisted the Commission significantly in establishing the facts of this infringement on which this Decision is based. In particular, Coats Group **[*]**

(605) Coats Group does not qualify for non-imposition of a fine or a very substantial reduction of at least 75% in its amount under Section B of the 1996 Leniency Notice. More specifically, it does not meet the condition set forth in point (a) of Section B. Coats Group did not inform the Commission of the cartel before the Commission undertook an investigation, ordered by decision, in this case.

(606) Furthermore, Coats Group does not qualify for a substantial reduction from 50% to 75% under Section C of the 1996 Leniency Notice, as it does not meet the conditions set out therein. The Commission investigations ordered by decision provided sufficient grounds for initiating the procedure leading to a decision in this case. The inspections produced evidence of the meeting between Coats, YKK

and Prym on 2 June 1999, where the parties agreed on the methodology to establish minimum prices on standard zip fastener products. The Commission also had evidence that the follow-up meeting on 29 September 1999 between the companies was scheduled. The Commission considers that it could have opened proceedings in this case.

(607) Under Section D of the 1996 Leniency Notice, an undertaking which does not comply with all the conditions set out in Sections B or C of that Notice can still benefit from a significant reduction of 10% to 50% of the fine that would otherwise have been imposed. The Commission notes that before the Statement of Objections was sent, as explained in recitals (602)-(604) above, Coats Group materially contributed to establishing the existence of the infringement, in particular by **[*]**.

(608) Coats Group therefore fulfils the conditions set out in Section D of the 1996 Leniency Notice, qualifying for a significant reduction in a fine of 10%-50%.

(609) **[*]**. Therefore, the Commission concludes that Coats did not contest the facts on which the Commission has based its allegations with regard to this infringement and will take it into account when assessing the amount of the reduction.

(610) Finally, the Commission also notes that Coats Group, together with Prym Group, provided evidence earlier than the other leniency applicant, namely YKK, and cooperated more actively.

(611) Therefore, in accordance with Section D of the 1996 Leniency Notice and in view of Coats Group's level of cooperation as outlined in recitals (602) to (604) and (609) Coats Group should accordingly be granted a **35%** reduction of the fine that would otherwise be imposed for this infringement if it had not co-operated with the Commission.

10.1.2. Prym Group

(612) Prym Group submitted its leniency application together with the supporting documentary evidence on 26 November 2001 after the unannounced inspections carried out by the Commission on 7 and 8 November 2001 at the premises of several Community producers of soft and hard haberdashery, including William Prym's premises.

(613) As explained in recital (601), after the inspections the Commission had evidence that Prym Fashion/Éclair Prym, Coats/Coats Germany and YKK Holding/**[*]** met on 2 June 1999 where they agreed to work towards establishing minimum price levels for standard zip fastener products in Europe. It was further evident that the companies agreed to have another meeting on 29 September 1999 in order to work out the key elements of the methodology and to take action.

(614) **[*]**

(615) **[*]**

(616) On 12 November 2004, after the Commission had issued the Statement of Objections, Prym Group complemented its 2001 leniency application as to zip fasteners. According to the submission, **[*]**.

(617) Prym Group's co-operation with the Commission began shortly after the inspections undertaken in these proceedings. The information submitted by Prym in the form of statements and documentary evidence allowed the Commission to better understand the nature and events of the infringement. Prym Group thus assisted the Commission significantly in establishing the facts of this infringement on which this Decision is based. In particular, Prym Group **[*]**.

(618) Prym Group does not qualify for non-imposition of a fine or a very substantial reduction of at least 75% in its amount under Section B of the 1996 Leniency Notice. More specifically, it does not meet the condition set forth in point (a) of Section B. Prym Group did not inform the Commission of the cartel before the Commission undertook an investigation, ordered by decision, in this case.

(619) Furthermore, Prym Group does not qualify for a substantial reduction from 50% to 75% under Section C of the 1996 Leniency Notice, as it does not meet the conditions set out therein. The Commission investigations ordered by decision provided sufficient grounds for initiating the procedure leading to a decision in this case. The inspections produced evidence of the meeting between Coats/Coats Germany, YKK Holding/**[*]** and Prym Fashion/Éclair Prym on 2 June 1999, where they agreed on the methodology to establish minimum prices for their standard zip fastener products. The Commission also had evidence that the follow-up meeting of 29 September 1999 between the companies was scheduled. The Commission considers that it could have opened proceedings in this case.

(620) Under Section D of the 1996 Leniency Notice, an undertaking that does not comply with all the conditions set out in Sections B or C of that Notice can still benefit from a significant reduction of 10% to 50% of the fine that would otherwise have been imposed. The Commission notes that before the Statement of Objections was sent, as was explained in recital (617), Prym Group materially contributed to establishing the existence of the infringement, in particular by **[*]**.

(621) Prym Group therefore fulfils the conditions set out in Section D of the 1996 Leniency Notice, qualifying for a significant reduction in a fine of 10%-50%.

(622) **[*]** Therefore, the Commission notes that Prym did not contest the facts on which the Commission has based its allegations with regard to this infringement and will take it into account when assessing the amount of the reduction.

(623) The Commission also notes that Prym Group, together with Coats Group, provided evidence earlier than the other leniency applicant, namely YKK, and cooperated more actively.

(624) Therefore, in accordance with Section D of the 1996 Leniency Notice and in view of Prym Group's level of cooperation as outlined in recitals (614) to (617) and (622), Prym Group should accordingly be granted a **35%** reduction of the fine that would otherwise be imposed for this infringement if it had not co-operated with the Commission.

10.1.3. YKK Group

(625) Part of the leniency application submitted by YKK Group on 18 and 25 February 2005, after the Commission had issued the Statement of Objections, concerns zip fasteners. As was explained in recital (599), the part of YKK's leniency application relating to zips will be assessed under the 1996 Leniency Notice.

(626) As was explained in recital (601), after the inspections the Commission had evidence that Prym Fashion/Éclair Prym, Coats/Coats Germany and YKK Holding/**[*]** met on 2 June 1999 where they agreed to work towards establishing minimum price levels for standard zip fastener products in Europe. It was further evident that the companies agreed to have another meeting on 29 September 1999 in order to work out the key elements of the methodology and to take action.

(627) **[*]** This allowed the Commission to extend the duration of the infringement, establishing its starting date of 28 April 1998 instead of 2 June 1999.

(628) **[*]** According to YKK, during all four meetings in 1999, no anti-competitive agreements were discussed and YKK was not part of any price agreement. This argument, however, was rejected as being incorrect by the Commission **[*].**

(629) According to YKK Group, during the 1999 meetings the companies discussed general issues **[*]**. However, as was demonstrated in section 4.4, the companies were in fact discussing the harmonization of minimum prices for their standard products and exchanging their prices.

(630) YKK Group does not qualify for a non-imposition of a fine or a very substantial reduction of at least 75% in its amount under Section B of the 1996 Leniency Notice. More specifically, it does not meet the conditions set forth in points (a), (b) and (d) of Section B as YKK Group did not inform the Commission of the cartel before the Commission undertook an investigation, ordered by decision, it was not first to adduce decisive evidence of the infringement and it did not provide the Commission with all relevant information and all the evidence available to it.

(631) Furthermore, YKK Group does not qualify for a substantial reduction from 50% to 75% under Section C of the 1996 Leniency Notice, as it does not meet the conditions set out therein. The Commission investigations ordered by decision and the following leniency applications of Prym and Coats Groups, submitted before the adoption of the Statement of Objections, provided sufficient grounds for initiating the procedure leading to a decision in this case. The inspections produced evidence of the meeting between Coats, YKK and Prym on 2 June 1999, where they agreed on the methodology to establish minimum prices on their standard products. The Commission also had evidence that the follow-up meeting on 29 September 1999 between the companies was scheduled. Moreover, Prym Group and Coats Group's leniency applications **[*]**. The Commission therefore considers that it could have opened proceedings in this case.

(632) Although YKK Group submitted **[*]**, YKK contests the anti-competitive objective and contents of these meetings. According to YKK, during the 1999 meetings the companies discussed general issues **[*]**. Therefore, YKK Group

does not qualify for a reduction of a fine under Section D of the 1996 Leniency Notice, pursuant to which an undertaking which does not comply with all the conditions set out in Sections B or C of that Notice can still benefit from a significant reduction of 10% to 50% of the fine that would otherwise have been imposed.

(633) Therefore, after due consideration of all these circumstances, the Commission sees no reason for YKK Group to be granted a reduction of the fine and considers that YKK Group is not entitled to any reduction under Section D of the 1996 Leniency Notice.

*10.1.4. Conclusion on the application of the 1996 Leniency Notice to the tripartite co-operation between YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym:*

(634) In conclusion, with regard to the nature of their cooperation under the conditions set out in the 1996 Leniency Notice, the following fines should be imposed on the following undertakings with regard to the tripartite co-operation between YKK Holding/**[*]**, Coats/Coats Germany and Prym Fashion/Éclair Prym on the European zip fasteners market:

Legal entities	**(EUR)**
Coats Holdings Ltd jointly and severally with Coats Deutschland GmbH	12 155 000
William Prym GmbH & Co. KG jointly and severally with Prym Fashion GmbH & Co. KG Of which Jointly and severally with Éclair Prym Group S.A.	6 727 500 5 850 000

10.2. Bilateral co-operation between Coats and William Prym/Prym Fashion

10.2.1. Prym Group

(635) During the inspections on 7 and 8 November 2001, the Commission discovered documents with regard to the bilateral co-operation between William Prym/Prym Fashion and Coats. The co-operation between the companies appears to have been initiated in the mid-1970's: according to the minutes of the meeting of 16/17 November 1975, Coats Group and Prym Group discussed a framework for cooperation and distribution of each other's products.

(636) Furthermore, several documents reaching up to July 1998 discovered during the inspections alluded to the relationship between Coats and Prym, in particular to a general market sharing, pursuant to which Coats Group was responsible for soft

haberdashery, and Prym Group for hard haberdashery. Such documents included a letter sent from Coats to NIL on 12 April 1977 referring to Coats/Prym agreement, the minutes of the meeting of 11 February 1993, the minutes of the meeting in Stolberg on 11 June 1996, the Umbrella Agreement of 3 September 1997, a memorandum by **[*]** of a meeting between Coats and Prym on 15 July 1998 in Stolberg and the minutes of the same meeting drafted by **[*]** (of Prym Fashion). The Commission, however, did not have the copy of the 1977 Agreement itself.

(637) Following the adoption of the Statement of Objections, on 18 November 2004 Prym Group submitted a leniency application together with supporting documentary evidence with regard to the bilateral co-operation between William Prym/Prym Fashion and Coats. According to Prym Group's leniency statement [*].

(638) In addition to **[*]**, Prym provided the Commission with **[*]**.

(639) **[*]**. The Commission accepts that Prym's assistance allowed the Commission to establish the duration of the infringement and to better understand it and to interpret the documents obtained in the inspections. The information submitted by Prym Group in the form of statements and documentary evidence was extensively used by the Commission in the pursuance of its investigation. Prym thus assisted the Commission significantly in establishing the facts of this infringement on which this Decision is based. Prym Group, therefore, was the only undertaking to adduce decisive evidence of the cartel's existence.

(640) Prym Group does not qualify for non-imposition of a fine or a very substantial reduction of at least 75% in its amount under Section B of the 1996 Leniency Notice. More specifically, it does not meet the condition set forth in point (a) of Section B. Prym Group did not inform the Commission of the cartel before the Commission undertook an investigation, ordered by decision, in this case.

(641) To the Commission's knowledge, Prym Group terminated its involvement in this infringement no later than the time at which it submitted the evidence and its involvement has remained terminated. It continuously provided the Commission with all the relevant information, documents and all the evidence available, and maintained full cooperation throughout the investigation. There is furthermore no evidence that Prym Group took steps to coerce Coats Group to participate in the infringement.

(642) Prym Group, therefore, under Section C of the 1996 Leniency Notice, qualifies for a reduction of 50-75% from a fine that would have been otherwise imposed on it.

(643) The Commission notes that the leniency submission of Prym Group provided decisive documentary evidence, **[*]**. Moreover, Prym's leniency statements and documents submitted therein permitted the Commission to establish the duration of this infringement and the exact dates of its existence. Prym Group was the only company to provide all relevant information on this infringement. The Commission therefore concludes that in accordance with Section C of the 1996 Leniency Notice and in view of Prym Group's extensive and substantial

cooperation, it should be granted a reduction of **75%** of the fine that would otherwise be imposed for the infringement if it had not co-operated with the Commission.

10.2.2. Conclusion on the application of 1996 Leniency Notice to the bilateral co-operation between William Prym/Prym Fashion and Coats

(644) In conclusion, with regard to the nature of its cooperation under the conditions set out in the 1996 Leniency Notice, the following fines should be imposed on William Prym/Prym Fashion with regard to the bilateral co-operation between William Prym/Prym Fashion and Coats on the European zip fasteners and 'other fasteners' market:

Legal entities	**(EUR)**
William Prym GmbH & Co. KG	8 897 500
Of which	
Jointly and severally with Prym Fashion GmbH & Co. KG	8 897 500

11. APPLICATION OF THE 2002 LENIENCY NOTICE

(645) As explained in recitals (597)-(599)), the leniency applications of Prym Group and YKK Group with regard to the infringements in the sector of 'other fasteners' and attaching machines will be analysed under the 2002 Leniency Notice.

(646) Prym Group and YKK Group co-operated with the Commission at different stages of the investigation with a view to receiving the favourable treatment provided for in the 2002 Leniency Notice. Under point 23 (a) of the Notice, the Commission determines whether the evidence submitted by each undertaking represented significant added value with respect to the evidence in the Commission's possession at the time of the submission. In the assessment of the level of reduction within each of the reduction bands provided for in point 23 (b), the Commission takes into account the time at which the evidence of significant added value was submitted and the extent to which it represents such value. It may also take into account the extent and continuity of any co-operation following the date of the submission.

11.1. The Baseler-Wuppertaler and Amsterdamer co-operation:

11.1.1. Prym Group

(647) Following unannounced inspections of 7 and 8 November 2001, the Commission had evidence that the main producers of 'other fasteners' in the European Community took part in regular meetings within the framework of the Baseler and Wuppertaler circles. The Commission had documentary evidence (meeting notes, meeting agendas) of the Baseler circle meetings held between 24 May

1991 and 19 August 2000, and the Wuppertaler circle meetings between 9 September 1991 and November 1997. During the meetings, pursuant to the evidence available, the participants coordinated price increases and exchanged confidential information on prices and the implementation of price increases. In addition, in the course of pursuing these objectives, the participants also exchanged views on the creation of a uniform European price list, discussed the fixing of minimum prices for 'other fasteners' and their attaching machines, and discussed fixing of the discount rates for 'other fasteners'.

(648) Finally, the Commission file contained indications that Prym Fashion, Stocko and Scovill continued meeting within the framework of the Amsterdamer circle until early 2001. According to the documentary evidence collected during the inspections, during the Baseler circle meeting on 19 August 2000, Prym Fashion, Scovill and Stocko agreed to continue the collaboration that until that moment in time had taken place within the Baseler (and Wuppertaler) circle. The Commission had evidence that at least two Amsterdamer circle meetings were scheduled: on 9 January and 15 March 2001 respectively, and that Scovill, Prym Fashion and Stocko were invited to attend at least the first of these two meetings. The Commission had only a copy of the agenda of the meeting scheduled for 9 January 2001, but no actual notes of the meeting discussions.

(649) Prym Group applied for leniency with regard to the infringement of Baseler-Wuppertaler and Amsterdamer co-operation on 12 November 2004 and was found to meet the requirements of point 21 of the 2002 Leniency Notice on 14 December 2005.

(650) The elements in relation to ‘other fasteners’ and attaching machines that were provided by Prym Group in its 2004 leniency application confirmed the Commission’s initial conclusions with regard to the existence of the infringements within the Baseler and Wuppertaler circles **[*]**. Prym's leniency application **[*]**, allowed the Commission to extend the duration of the infringement by 6 months (Amsterdamer circle).

(651) Prym Group was the first undertaking to provide the Commission with a detailed description of the cartel events, thus confirming the Commission’s initial conclusions presented in the first Statement of Objections. Prym's leniency submission allowed the Commission to better understand the documents discovered during the inspections of 7 and 8 November 2001 and to connect them to the specific elements of the cartel behaviour. Moreover, Prym's leniency application allowed the Commission to extend the duration of the infringement by 6 months (Amsterdamer circle). Information submitted by Prym Group, **[*]**, strengthened the Commission’s ability to prove the facts of the anti-competitive practices. This was all the more so considering that four other parties contested the validity of evidence on which the first Statement of Objections was based. Prym's submission allowed the Commission to issue a separate Statement of Objections, namely the Supplementary Statement of Objections.

(652) Prym Group was the first undertaking to meet the requirements of point 21 of the 2002 Leniency Notice as it provided the Commission with evidence which represented significant added value with respect to the evidence already in the Commission’s possession at the time of its submission. To the Commission’s

knowledge, Prym Group terminated its involvement in the infringement no later than the time at which it submitted the evidence and its involvement has remained terminated. Moreover, Prym Group confirmed the Commission's initial conclusions and did not contest them as to the existence and contents of the Baseler and Wuppertaler circle meetings. It qualifies, therefore, under point 23 (b), first indent, of the Leniency Notice, for a reduction of 30-50% of the fine that would otherwise have been imposed.

(653) Even though Prym Group applied for leniency only after the Statement of Objections, the Commission considers that specific circumstances of this case justify the reduction of the fine under the 2002 Leniency Notice.

(654) Prym Group provided the Commission with a detailed description of the cartel events confirming the Commission's initial conclusions. The evidence submitted by Prym Group strengthened the Commission's ability to prove the facts of the anti-competitive practices. However, considering that the Commission already had solid evidence in the file, which had allowed it to issue a Statement of Objection, the Commission grants Prym Group a **30%** reduction of the fine that would otherwise have been imposed upon it for the infringement within the framework of the Baseler-Wuppertaler and Amsterdamer cooperation.

Immunity under point 23 of the 2002 Leniency Notice

(655) As noted at recital (650) above, although the Commission had evidence from the inspection of the infringement lasting until 19 August 2000, Prym Group's leniency application **[*]** allowed the Commission to establish that the infringement lasted a further 6 months (**[*]**), that is to say at least until 15 March 2001.

(656) Prym Group's evidence for the period of the infringement after 19 August 2000 related to facts previously unknown to the Commission which had a direct bearing on the duration of the suspected infringement. In accordance with point 23 of the 2002 Leniency Notice, the Commission will not take the period 19 August 2000 to 15 March 2001 into account for the purpose of the fine (see recital (541) above)

11.1.2. YKK Group

(657) As already explained in recital (647), following unannounced inspections of 7 and 8 November 2001, the Commission had evidence that the main producers of 'other fasteners' in the Community took part in regular meetings within the framework of the Baseler and Wuppertaler circles. Moreover, as stated in recital (648), there were indications that Prym Fashion, Stocko and Scovill continued meeting within the framework of the Amsterdamer circle.

(658) Stocko first applied for leniency on 8 August 2003. The Commission however informed Stocko that it could not be granted the non-imposition or reduction of fines due to the absence of evidence or even of an admission of an infringement.

(659) On 18 February 2005 YKK Group applied for leniency with regard to the Baseler-Wuppertaler and Amsterdamer cooperation and was found to meet the requirement of point 21 of the 2002 Leniency Notice on 14 December 2005.

(660) The elements in relation to 'other fasteners' and attaching machines that were provided by YKK Group in its 2005 leniency application confirmed the Commission's initial conclusions with regard to the existence and objectives of the Baseler and Wuppertaler circles. **[*]**.

(661) **[*]**

(662) YKK Group was therefore the second undertaking to meet the requirements of point 21 of the 2002 Leniency Notice, as it provided the Commission with evidence which represented significant added value with respect to the evidence already in the Commission's possession at the time of its submission. To the Commission's knowledge, YKK Group terminated its involvement in the infringement no later than the time at which it submitted the evidence and its involvement has remained terminated. Moreover, YKK Group confirmed the initial conclusions of the Commmission and did not contest them as to the existence and contents of the Baseler and Wuppertaler circles. It qualifies, therefore, under point 23 (b), second indent, of the 2002 Leniency Notice, for a reduction of 20%-30% of the fine that would otherwise have been imposed.

(663) Even though YKK Group applied for leniency only after the Statement of Objections, the Commission considers that the specific circumstances of this case justify the reduction of the fine under the 2002 Leniency Notice.

(664) YKK Group provided the Commission with a detailed description of the cartel events confirming the Commission's initial conclusions **[*]**. The evidence submitted by YKK Group strengthened the Commission's ability to prove the facts of the anti-competitive practices. However, considering that the Commission already had solid evidence in the file as well as the information provided to it by Prym Group in its leniency application, the extent of the significant added value of the information provided for by YKK Group was more limited that that of Prym Group's. In light of this, the Commission grants YKK Group a **20%** reduction of the fine that would otherwise have been imposed upon it for the infringement within the framework of the Baseler-Wuppertaler and Amsterdamer cooperation.

11.1.3. Conclusion on the application of the 2002 Leniency Notice to the Baseler-Wuppertaler and Amsterdamer co-operation on the market for 'other fasteners' and attaching machines:

(665) In conclusion, with regard to the nature of their cooperation under the conditions set out in the 2002 Leniency Notice, the following fines should be imposed on the following undertakings with regard to the Baseler-Wuppertaler and Amsterdamer cooperation on the 'other fasteners' and attaching machines markets:

Legal entities	**(EUR)**

William Prym GmbH & Co. KG jointly and severally with Prym Fashion GmbH & Co. KG	24 913 000
YKK Stocko Fasteners GmbH Of which Jointly and severally with YKK Corporation [*] and YKK Holding Europe BV	68 250 000 49 000 000

11.2. The bilateral co-operation between Prym Fashion and Stocko/YKK [Corporation]

11.2.1. Prym Group

(666) After the surprise inspections of 7 and 8 November 2001, the Commission file contained one document concerning the year 1999, entitled "*Agenda: Konditionenpflege*" from which it emerged that Prym Fashion and YKK Group were discussing price fixing for their products. However, the Commission did not have enough factual evidence to uncover the full picture, namely the nature and scope of the bilateral price fixing scheme.

(667) Prym Group applied for leniency with regard to the bilateral scheme between Prym Fashion and Stocko/YKK [Corporation] on 12 November 2004. It was the first undertaking to apply for leniency with regard to this infringement, and was the first undertaking to provide the Commission with a detailed description of the cartel and to submit corroborating documentary evidence.

(668) According to its leniency application **[*].** The **[*]** evidence in relation to 'other fasteners' and their attaching machines submitted by Prym Group in its 2004 leniency application allowed the Commission to prove the existence of the bilateral co-operation scheme between on the one hand Prym Fashion and on the other hand Stocko and YKK [Corporation], to establish its objectives, to establish the contents of various meetings and explain the methodology followed by the parties in the fixing of prices. Moreover, information submitted by Prym Group allowed the Commission to establish the **[*]** scope of the agreement and to establish the direct involvement of YKK [Corporation]. Based on Prym's leniency application the Commission could establish the duration of the infringement, from 13 August 1999 to 13 January 2003. The information provided by Prym Group's leniency application therefore enabled the Commission to find an infringement under Article 81 (1) of the Treaty.

(669) To the Commission's knowledge, Prym Group terminated its involvement in this infringement no later than the time at which it submitted the evidence and its involvement has remained terminated. It continuously provided the Commission with all relevant information, documents and evidence available, and maintained full cooperation throughout the investigation. There is furthermore no evidence that Prym Group took steps to coerce YKK Group to participate in the infringement.

(670) Prym Group, therefore, under point 8 (b) of the 2002 Leniency Notice, qualifies for a **full immunity** from the fine that would have been otherwise imposed on it for this infringement.

11.2.2. YKK Group

(671) After the surprise inspections of 7 and 8 November 2001, the Commission file contained one document concerning the year 1999, entitled "*Agenda: Konditionenpflege*" from which it emerged that Prym Fashion and YKK Group were discussing price fixing for their products. However, the Commission did not have enough factual evidence to uncover the full picture, namely the nature and the scope of the bilateral price fixing scheme.

(672) YKK Group applied for leniency with regard to the bilateral co-operation between itself and Prym Fashion on 18 February 2005 and was found to meet the requirement of point 21 of the 2002 Leniency Notice on 14 December 2005.

(673) YKK Groups' leniency application, with the exception of YKK [Corporation]'s involvement in the infringement, **[*]**.

(674) **[*]**

(675) YKK Group was the first undertaking to meet the requirements of point 21 of the 2002 Leniency Notice, as it provided the Commission with evidence which represented significant added value with respect to the evidence already in the Commission's possession at the time of its submission.

(676) YKK Group was the second undertaking, after the immunity applicant, to provide the Commission with a detailed description of the cartel events, allowing the Commission to strengthen its ability to prove the facts of the anti-competitive practices. [*].

(677) To the Commission's knowledge, YKK Group terminated its involvement in the infringement no later than the time at which it submitted the evidence and its involvement has remained terminated. It qualifies, therefore, under point 23 (b), first indent, of the 2002 Leniency Notice, for a reduction of 30%-50% of the fine that would otherwise have been imposed.

(678) The Commission takes into account the value and nature of the evidence submitted by YKK Group **[*]**. In the light of this, the Commission grants YKK Group a **40%** reduction of the fine that would otherwise have been imposed upon it for the infringement within the bilateral co-operation between Prym Fashion and Stocko/YKK [Corporation].

11.2.3. Conclusion on the application of the 2002 Leniency Notice to the bilateral co-operation between Prym Fashion and Stocko/YKK [Corporation] *on the market for 'other fasteners' and attaching machines*

(679) In conclusion, with regard to the nature of their cooperation under the conditions set out in the 2002 Leniency Notice, the following fines should be imposed on the following undertakings with regard to the bilateral co-operation between Prym

Fashion and Stocko/YKK [Corporation] on the 'other fasteners' and attaching machines markets:

Legal entities	(EUR)
William Prym GmbH & Co. KG jointly and severally with Prym Fashion GmbH & Co. KG	0
YKK Corporation [*] jointly and severally with YKK Holding Europe BV and YKK Stocko Fasteners GmbH	19 500 000

12. ABILITY TO PAY

(680) Prym Group and Scovill Fasteners Europe SA (wholly owned subsidiary of Scovill Fasteners Inc since 1996) have presented arguments relating to their ability to pay.

12.1. Scovill Group

(681) In its reply to the first Statement of Objections, Scovill Fasteners Europe SA requested the Commission, with reference to the Commission's guidelines on fines, to take into consideration its financial situation when setting a possible fine. Scovill Fasteners Europe SA explained that the company found itself in a serious financial situation with a high level of debt and argued that a fine, other than symbolic, would have as the probable consequence the exit of Scovill Fasteners Europe SA from the market. On 16 December 2005, the Commission received evidence that Scovill Fasteners Europe SA has been declared bankrupt by court ruling on 13 June 2005, and is in liquidation.

(682) Scovill Fasteners Inc., 100% parent of Scovill Fasteners Europe SA, has not presented arguments relating to its ability to pay.

(683) In view of the arguments presented by Scovill Fasteners Europe SA, the Commission asked Scovill Group for detailed information on its financial situation in order to be able to take account of the undertaking's real ability to pay in accordance with point 5(b) of the Guidelines on fines.

(684) Neither Scovill Fasteners Europe SA nor Scovill Fasteners Inc responded to the Commission's letter requesting detailed information on their financial situation.

(685) With respect to the part of the fine arising from the infringing conduct during the period 24 May 1991 to 31 December 1996 (that is to say the period before Scovill Fasteners Europe SA was acquired by Scovill Fasteners Inc), for which Scovill Fasteners Europe SA alone is liable, the Commission has been unable to assess Scovill Fasteners Europe SA's real ability to pay in accordance with point 5(b) of the Guidelines on the method of setting fines due to the absence of the requested financial data.

(686) With respect to the part of the fine arising from the infringing conduct during the period 31 December 1996-15 March 2001 (after the acquisition of Scovill Fasteners Europe SA by Scovill Fasteners Inc) for which Scovill Fasteners Inc and Scovill Fasteners Europe SA are held jointly and severally liable, the argument presented by Scovill Fasteners Europe SA concerning its inability to pay is irrelevant given the absence of evidence that either Scovill Fasteners Europe SA or its 100% parent Scovill Fasteners Inc would be unable to pay the fine.

(687) The Commission accordingly takes the view that the arguments relating to Scovill Fasteners Europe SA's ability to pay should be dismissed.

12.2. Prym Group

(688) In its reply to the Statement of Objections and in three meetings with the Commission services on 13 September 2006, 6 November 2006 and 18 September 2007, Prym Group requested the Commission to take into account its financial situation when setting the fine. Prym Group highlighted the difficult financial situation of the undertaking as a consequence of the fine imposed by the Commission in Case F-1/38.338 – PO/Needles. According to Prym Group, the fine in the latter case as well as the risk of an additional fine in the present proceedings **[*]**.

(689) In view of these arguments, the Commission asked Prym Group for detailed information on its financial situation in order to be able to take account of the undertaking's real ability to pay in accordance with point 5 (b) of the Guidelines on fines.

(690) After examination of the information presented by Prym Group, the Commission concludes that the undertaking is not confronted by financial difficulties making it unable to pay the fine in a specific social context.

(691) The Commission accordingly takes the view that the arguments relating to Prym Group's ability to pay should be dismissed.

13. THE AMOUNTS OF THE FINES IMPOSED IN THIS PROCEEDING

(692) The fines to be imposed pursuant to Article 15 (2) of Regulation No 17 and Article 23 (2) of Regulation (EC) No 1/2003 should therefore be as follows:

13.1. Baseler-Wuppertaler and Amsterdamer cooperation

Legal entities	(EUR)
William Prym GmbH & Co. KG	24 913 000
Of which	
Jointly and severally with Prym Fashion GmbH & Co. KG	24 913 000

YKK Stocko Fasteners GmbH Of which Jointly and severally with YKK Corporation [*] and YKK Holding Europe BV	68 250 000 49 000 000
Scovill Fasteners Europe SA Of which Jointly and severally with Scovill Fasteners Inc.	6 002 000 6 002 000
A. Raymond Sarl	8 325 000
Berning & Söhne GmbH & Co. KG	1 123 000
Fachverband Verbindungs- und Befestigungstechnik (VBT)	1 000

13.2. Bilateral cooperation between Prym Fashion and Stocko/YKK [Corporation]

Legal entities	**(EUR)**
William Prym GmbH & Co. KG jointly and severally with Prym Fashion GmbH & Co. KG	0
YKK Corporation [*] jointly and severally with YKK Holding Europe BV and YKK Stocko Fasteners GmbH	19 500 000

13.3. Tripartite cooperation between YKK Holding/[*], Coats/Coats Germany and Prym Fashion/Éclair Prym

Legal entities	**(EUR)**
YKK Corporation [*] jointly and severally with YKK Holding Europe BV	62 500 000
Coats Holdings Ltd jointly and severally with Coats Deutschland GmbH	12 155 000
William Prym GmbH & Co. KG jointly and severally with Prym Fashion GmbH & Co. KG Of which	6 727 500

Jointly and severally with Éclair Prym Group S.A.	5 850 000

13.4. Bilateral cooperation between Coats and William Prym/Prym Fashion

Legal entities	(EUR)
Coats Holdings Ltd	110 250 000
William Prym GmbH & Co. KG Of which Jointly and severally with Prym Fashion GmbH & Co. KG	8 897 500 8 897 500

HAS ADOPTED THIS DECISION:

Article 1

1. In respect of the Baseler-Wuppertaler and Amsterdamer cooperation on the markets for 'other fasteners' and attaching machines, the following undertakings have infringed Article 81 of the Treaty by agreeing, for the periods indicated, within the framework of the so-called "Baseler circle" (at the European level), "Wuppertaler Circle" (at the German level) and "Amsterdamer Circle" (at the European level), on coordinated price increases and by exchanging confidential information on prices and the implementation of price increases:

   – A. Raymond Sarl, from 24 May 1991 to 1 December 1999;

   – Berning & Söhne GmbH & Co. KG, from 24 May 1991 to 19 August 2000;

   – Scovill Fasteners Europe S.A., from 24 May 1991 to 15 March 2001;

   – Scovill Fasteners Inc., from 31 December 1996 to 15 March 2001;

   – William Prym GmbH & Co. KG, from 24 May 1991 to 15 March 2001;

   – Prym Inovan GmbH & Co. KG, from 1 August 1994 to 15 March 2001;

   – YKK Corporation [*], from 1 March 1997 to 15 March 2001;

   – YKK Holding Europe B.V., from 1 March 1997 to 15 March 2001;

   – YKK Stocko Fasteners GmbH, from 24 May 1991 to 15 March 2001;

   – Fachverband Verbindungs- und Befestigungstechnik , from 24 May 1991 to 19 August 2000.

2. In respect of the bilateral cooperation between Prym Fashion GmbH & Co. KG and YKK Stocko Fasteners GmbH/YKK Corporation [*] on the markets for 'other fasteners' and attaching machines, the following undertakings have infringed Article 81 of the Treaty by agreeing, for the periods indicated, in Europe **[*]** to fix prices, notably minimum, average and target prices, to monitor price increases through the regular exchanges of price lists and frequent bilateral contacts, and to allocate customers by not undercutting each other's offers to clients:

   – William Prym GmbH & Co. KG, from 13 August 1999 to 13 January 2003;

   – Prym Inovan GmbH & Co. KG, from 13 August 1999 to 13 January 2003;

   – YKK Corporation [*], from 13 August 1999 to 13 January 2003;

   – YKK Holding Europe B.V., from 13 August 1999 to 13 January 2003;

   – YKK Stocko Fasteners GmbH, from 13 August 1999 to 13 January 2003.

3. In respect of the tripartite cooperation between YKK Holding Europe B.V./**[*]**, Coats Holdings Ltd./Coats Deutschland GmbH and Prym Fashion GmbH & Co. KG/Éclair Prym Group S.A. on the zip fasteners market, the following undertakings have infringed Article 81 of the Treaty, for the periods indicated, by exchanging price information, by discussing prices and price increases between themselves, and by agreeing on a methodology to fix minimum prices for standard products on the European market:

– YKK Corporation [*], from 28 April 1998 to 12 November 1999;

– YKK Holding Europe B.V., from 28 April 1998 to 12 November 1999;

– Coats Holdings Ltd., from 28 April 1998 to 12 November 1999;

– Coats Deutschland GmbH, from 28 April 1998 to 12 November 1999;

– William Prym GmbH & Co. KG, from 28 April 1998 to 12 November 1999;

– Prym Inovan GmbH & Co. KG, from 28 April 1998 to 12 November 1999;

– Éclair Prym Group S.A., from 13 January 1999 to 12 November 1999.

4. In respect of the bilateral cooperation between Coats Holdings Ltd. and William Prym GmbH & Co. KG/Prym Fashion GmbH & Co. KG on the 'other fasteners' and zip fasteners markets, the following undertakings have infringed Article 81 of the Treaty, for the periods indicated, by agreeing to share the haberdashery market by preventing Coats Group from entering the European market for 'other fasteners':

– William Prym GmbH & Co. KG, from 15 January 1977 to 15 July 1998;

– Prym Inovan GmbH & Co. KG, from 1 August 1994 to 15 July 1998;

– Coats Holdings Ltd., from 15 January 1977 to 15 July 1998.

Article 2

1. For the infringements within the framework of the Baseler-Wuppertaler and Amsterdamer cooperation referred to in Article 1 (1), the following fines are imposed:

– A. Raymond Sarl: EUR 8 325 000;

– Berning & Söhne GmbH & Co. KG: EUR 1 123 000;

– Scovill Fasteners Europe S.A. and Scovill Fasteners Inc., jointly and severally liable: EUR 6 002 000;

– William Prym GmbH & Co. KG and Prym Inovan GmbH & Co. KG, jointly and severally liable: EUR 24 913 000;

– YKK Stocko Fasteners GmbH: EUR 68 250 000, of which YKK Corporation [*]and YKK Holding Europe B.V. are jointly and severally liable for EUR 49 000 000;

– Fachverband Verbindungs- und Befestigungstechnik: EUR 1 000.

2. For the infringements within the framework of the bilateral cooperation between Prym Fashion GmbH & Co. KG and YKK Stocko Fasteners GmbH/YKK Corporation [*] referred to in Article 1 (2), the following fines are imposed:

– YKK Corporation [*], YKK Holding Europe B.V. and YKK Stocko Fasteners GmbH, jointly and severally liable: EUR 19 500 000.

3. For the infringements within the framework of the tripartite cooperation between YKK Holding Europe B.V./**[*]**, Coats Holdings Ltd./Coats Deutschland GmbH and Prym Fashion GmbH & Co. KG/Éclair Prym Group S.A. referred to in Article 1 (3), the following fines are imposed:

– YKK Corporation [*] and YKK Holding Europe B.V., jointly and severally liable: EUR 62 500 000;

– Coats Holdings Ltd. and Coats Deutschland GmbH, jointly and severally liable: EUR 12 155 000 ;

– William Prym GmbH & Co. KG and Prym Inovan GmbH & Co. KG, jointly and severally liable: EUR 6 727 500, of which Éclair Prym Group S.A. is jointly and severally liable for: EUR 5 850 000.

4. For the infringements within the framework of the bilateral cooperation between Coats Holdings Ltd. and William Prym GmbH & Co. KG/Prym Fashion GmbH & Co. KG referred to in Article 1 (4), the following fines are imposed:

– William Prym GmbH & Co. KG and Prym Inovan GmbH & Co. KG, jointly and severally liable: EUR 8 897 500;

– Coats Holdings Ltd.: EUR 110 250 000.

Article 3

The fines laid down in Article 2 shall be paid in euros, within three months of the date of the notification of this Decision to the following account:

Account No 0050915991 of the European Commission with:

ING BANK N.V.

Financial Plaza

Bijlmerdreef, 109

NL-1102 BW AMSTERDAM

(Code SWIFT INGBNL2AXXX – Code IBAN NL22INGB0050915991

After the expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, that is 4.08% as published in the Official Journal of the European Union No C-205 of 4.9.2007, plus 3.50 percentage points, namely 7.58%.

Article 4

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

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

Article 5

The Decision is addressed to:

A. RAYMOND SARL
111/113, Cours Berriat
F-38019 Grenoble
Cedex 1
France

BERNING & SÖHNE GmbH & Co. KG
Otto-Hahn-Str. 57
D-42369 Wuppertal
Germany

COATS HOLDINGS LTD
1 The Square
Stockley Park
Uxbridge
Middlesex UB11 1TD
United Kingdom

COATS DEUTSCHLAND GmbH
Kaiserstraße 1
D-79341 Kenzingen
Germany

SCOVILL FASTENERS Inc.
1802 Scovill Drive
Clarkesville
Georgia 30523
United States of America

SCOVILL FASTENERS EUROPE S.A.
Rue des Bas Fossés 1

B-7090 Braine-le-Comte
Belgium
Via
Curateur:
Maître Monique Blondiau
Chemin de la Procession 164
7000 Mons
Belgium

WILLIAM PRYM GmbH & Co. KG
Zweifaller Str.130
D-52224 Stolberg
Germany

PRYM INOVAN GmbH & Co. KG
Zweifaller Str.130
D-52224 Stolberg
Germany

ÉCLAIR PRYM GROUP S.A.
Avenue de la Sideho 3-5
BP 41
B-7780 Comines
Belgium

YKK CORPORATION [*]
1, Kanda Izumi-Cho, Chiyoda-ku
Tokyo 101-8642
Japan

YKK HOLDING EUROPE B.V.
Einsteinstraat 5
NL-8606 JR Sneek
The Netherlands

YKK STOCKO FASTENERS GmbH
Kirchhofstraße 52
D-42327 Wuppertal
Germany

FACHVERBAND VERBINDUNGS- UND BEFESTIGUNGSTECHNIK
An der Pönt 48
D-40885 Ratingen
Germany

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

Done at Brussels, 19.09.2007

For the Commission
Neelie Kroes
Member of the Commission

Annex

Market shares of the undertakings subject to this Decision

Estimated market size and market shares in 1998 and 1999 for zip fasteners in the European Union (EU-15) [*]

Undertaking	Year 1998 Size of EU market for zip fasteners: approximately EUR 413 million	Year 1999 Size of EU market for zip fasteners: approximately 424 million
	Zip Fasteners	Zip fasteners
YKK Group	[*] %	[*] %
Coats Group	[*] %	[*] %
Prym Group	[*] %	[*] %

Estimated market size and market shares in 1998, 1999, 2000 and 2002 for 'other fasteners' in the European Union (EU-15) and worldwide [*]

Undertaking	Years 1998-2000 Size of EU market for 'other fasteners': approximately EUR 191 million	Year 2002 Size of EU market for 'other fasteners' approximately EUR 160 million	Year 2002 Size of worldwide market for 'other fasteners' at least EUR 620 million
	'Other Fasteners'	'Other Fasteners'	'Other Fasteners'
Prym Group	**[*]** % (year 2000)	**[*]** %	**[*]** %
YKK Group	**[*]** % (year 2000)	**[*]** %	**[*]** %
Scovill Group	**[*]** % (year 2000)	-	-
A. Raymond	**[*]** % (year 1998)	-	-
Berning	**[*]** % (year 1999)	-	-

Estimated market size and market shares in 1998, 1999, 2000 and 2002 for attaching machines in the European Union (EU-15) and worldwide [*]

Undertaking	Years 1998-2000 Size of EU market for attaching machines: approximately EUR 4 million	Year 2002 Size of EU market for attaching machines approximately EUR 3 million	Year 2002 Size of worldwide market for attaching machines at least EUR 20 million
	Attaching machines	**Attaching machines**	**Attaching machines**
Prym Group	**[*]** % (year 2000)	**[*]** %	**[*]** %
YKK Group	**[*]** % (year 2000)	**[*]** %	**[*]** %
Scovill Group	**[*]** % (year 2000)	-	-
A. Raymond	**[*]** % (year 1998)	-	-
Berning	**[*]** % (year 1999)	-	-