

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 2 July 2002

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

(Case C.37.519 — Methionine)

*(notified under document number C(2002) 2276)***(Only the English and German texts are authentic)****(Text with EEA relevance)**

(2003/674/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty ⁽¹⁾, as last amended by Regulation (EC) No 1/2003 ⁽²⁾, and in particular Articles 3 and 15 thereof,

Having regard to the Commission decisions of 1 October 2001 and 17 December 2001 to open a proceeding in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 19(1) of Regulation No 17 and Commission Regulation (EC) No 2842/98 of 22 December 1998 on the hearing of parties in certain proceedings under Articles 85 and 86 of the EC Treaty ⁽³⁾,

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

Having regard to the report of the hearing officer in this case ⁽⁴⁾,

Whereas:

PART I — FACTS

A. SUMMARY OF THE INFRINGEMENT

(1) This Decision is addressed to the following undertakings:

— Aventis SA,

— Aventis Animal Nutrition SA,

— Nippon Soda Company Ltd,

— Degussa AG.

(2) The infringement consists of the participation of the abovementioned producers of methionine in a continuing agreement and/or concerted action contrary to Article 81(1) of the EC Treaty and Article 53 of the EEA Agreement covering the whole of the EEA, by which they agreed on price targets for the product, agreed on and implemented a mechanism for implementing price increases, exchanged information on sales volumes and market shares and monitored and enforced their agreements.

(3) The undertakings participated in the infringement from February 1986 until February 1999.

B. THE METHIONINE INDUSTRY

1. THE PRODUCT

(4) Methionine is one of the most important amino acids. Amino acids are organic molecules which form proteins, one of the basic components of food and feed. There are over 20 amino acids involved in building protein. Those amino acids which cannot be produced naturally

in the body have to be added to feed; they are known as 'essential amino acids', of which methionine, a sulphur-containing amino acid, is one type. Unless all the essential amino acids are present in the diet, the synthesis of protein by the living organism stops. The first amino acid, absence of which interrupts protein synthesis of the other amino acids, is called the 'first limiting amino acid'. Methionine is the first limiting amino acid for poultry. If the natural methionine content of poultry feed is low, it has to be augmented with supplements.

- (5) Methionine is added to compound animal feeds and premixes for all animal species. The principal application is in poultry feed but methionine is also increasingly being added to pig feed and speciality animal feeds.
- (6) Methionine is presented in two principal forms: DL-Methionine (DLM) and methionine hydroxy analogue (MHA).
- (7) DL-Methionine is a white crystallised form with virtually 100 % active content.
- (8) Methionine hydroxy analogue is produced in liquid form by Novus (the successor of the US producer Monsanto) with a nominal 88 % activity content. Liquid methionine was introduced by Monsanto in the 1980s, and now accounts for around 50 % of world methionine consumption.
- (9) The relative bio-efficiency of the two rival forms has been the subject of long-running debate between the producers. Though both forms are used for the same purpose and derived from the same raw materials, they are produced in different ways.

2. THE PRODUCERS

RHÔNE-POULENC (NOW AVENTIS SA)

- (10) Rhône-Poulenc, whose corporate headquarters were in Courbevoie, France, was at all material times an international company involved in the research, development, production and marketing of organic and inorganic intermediate chemicals, speciality chemicals, fibres, plastics, pharmaceuticals and agricultural chemicals.
- (11) Its three core businesses were pharmaceuticals, plant and animal health and speciality chemicals.
- (12) In 1998 the Rhône-Poulenc group's business totalled FRF 86,8 billion (ECU 13,15 billion).
- (13) On 1 December 1998 Rhône-Poulenc and Hoechst AG announced their decision to merge their life sciences activities in a new entity 'Aventis' (to be owned 50:50 by the two parent companies) and to shed their chemical operations over a three-year period. The next

step was to be the complete fusion of the two parent companies.

- (14) An accelerated programme for the merger project was announced in May 1999, subject to regulatory and other approvals.
- (15) On 9 August 1999 the Commission decided under Article 6(1)(b) of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings⁽⁵⁾ not to oppose the merger and to declare it compatible with the common market⁽⁶⁾.
- (16) On 15 December 1999 the completion of the merger was announced. Aventis is led by a four-member management board and an executive committee comprising the four board members and another five senior executives. The new group is divided into two business areas: Aventis Pharma and Aventis Agriculture. Aventis Agriculture comprises the crop science, plant biotechnology, animal nutrition and animal health businesses. The chief executive officer of Aventis Agriculture, who was formerly president of Rhône-Poulenc's plant and animal health business sector, is also a member of the executive committee of Aventis. Aventis has its company headquarters in Strasbourg.
- (17) The proforma group sales of the new entity for 2000 were EUR 22,30 billion.
- (18) The company of the Rhône-Poulenc group responsible for methionine at the material time was Rhône-Poulenc Animal Nutrition ('RPN'). RPN was a wholly-owned subsidiary of Rhône-Poulenc (100 %) which produced and marketed nutritional additives, including vitamins and aminoacids, for use in animal foodstuffs (poultry, pigs and ruminants). It is now known as Aventis Animal Nutrition SA ('AAN'). RPN was directly attached to the Plant and Animal Health Division of Rhône-Poulenc SA and answered to it accordingly (100 %). Both Aventis SA and AAN are addressees of this Decision.
- (19) AAN/RPN has its international headquarters in Antony, near Paris. It also has regional sales headquarters for Africa (based in France), North America, South America and the Asia-Pacific region.
- (20) Functionally, RPN was part of Rhône-Poulenc's Plant and Animal Health Business Sector.
- (21) AAN/RPN's main feed additive products are vitamins A and E (used in poultry and pig feed) and methionine.
- (22) Rhône-Poulenc makes both DL-methionine and MHA, although the bulk of its production is in powder form. It produces dry DL-methionine at two plants in France and a third in Brazil; its facilities in Spain and in the USA make the liquid form.

(23) Rhône-Poulenc's worldwide sales of nutritional feed additives in 1998 amounted to some ECU []* million, giving it a []* share of the global market. In the Community, sales of some ECU []* million gave it a []* share of the market.

(24) In 1998 Rhône-Poulenc reported worldwide sales of in methionine of some ECU []* million, down from ECU 311 million the previous year.

DEGUSSA AG

(25) Degussa AG of Düsseldorf came into being in 2000 when SKW Trostberg and Degussa-Hüls merged in follow-up to the merger between their respective parent companies VIAG and VEBA to form E.ON. Degussa-Hüls itself was formed in 1998 by the merger of two leading German chemical companies, Degussa AG of Frankfurt and Hüls AG of Marl.

(26) Proforma sales in 2000 of the two merging entities amounted to some EUR []* billion.

(27) The new group comprises six divisions corresponding to the speciality chemicals activities of the new Degussa: Health and Nutrition, Construction Chemicals, Fine and Industrial Chemicals, Coatings and Advanced Fillers, Speciality Polymers and Performance Chemicals.

(28) Prior to the merger, animal feedstuff business was conducted by Degussa-Hüls. Before the merger with Hüls AG of Marl in 1998, the animal feedstuff business was directly conducted by Degussa AG of Frankfurt.

(29) Degussa is the only single-source supplier of the three most important essential amino acids: methionine, lysine and threonine.

(30) Degussa produces (dry) DL-methionine only.

NIPPON SODA COMPANY LIMITED

(31) Nippon Soda of Tokyo is a large global business enterprise active in the manufacture of pesticides, agricultural chemicals, feed additives, pharmaceutical compounds and sodium and potassium compounds.

(32) Together with Mitsui it owns Novus International, the US producer of MHA (Nippon Soda is []*).

(33) Nippon Soda Company's turnover for the financial year ending March 2000 totalled []*.

(34) Nippon Soda does not manufacture methionine in Europe. It produces powdered methionine (DLM) in Japan; []* of its production is sold in Asia and []* in the EEA (via Mitsui).

(35) The DLM manufactured by Nippon Soda in Japan for sale in the EEA — and indeed the rest of the world —

is first sold in Japan to Mitsui, which is not itself a manufacturer of the product. Mitsui is responsible for distribution and marketing in Europe and supplies through its European subsidiary.

OTHER PRODUCERS

1. Sumitomo

(36) Sumitomo Chemical Company Ltd of Osaka and Tokyo is one of Japan's largest chemical manufacturers, with a product range including basic chemicals, petrochemicals, fine chemicals, agricultural chemicals and pharmaceuticals.

(37) Total group sales in the financial year ending 31 March 2001 were []*.

2. Novus

(38) Novus International Inc (St Louis Missouri) was formerly the feed additives division of Monsanto Company. It was set up as a new company in 1991 to operate the additive business acquired from Monsanto by Mitsui & Co Ltd and Nippon Soda Co Ltd. []* of the stock is owned by Mitsui & Co Tokyo, []* by Mitsui & Co (USA) Inc (New York, New York) and the remaining []* by Nippon Soda.

(39) Novus produces liquid methionine analogue form under the trademark *Alimet*. Its plant at Chocolate Bayou (Texas) has a production capacity of []* since it was expanded in 1999.

(40) Novus's total turnover in 2000 was []*.

3. THE MARKET FOR METHIONINE

SUPPLY

(41) The production of synthetic methionine is a complex process involving the hydrolysis of common proteins. The three most important raw materials used to produce methionine are acrolein, methyl mercaptan and hydrocyanic acid.

(42) The producers of methionine are mainly large chemical companies operating on a worldwide scale. Methionine is usually produced by their feed additives divisions.

(43) The world's three largest producers are Rhône-Poulenc, Degussa and Novus.

(44) Rhône-Poulenc has some []* of the world market, Degussa []* and Novus of the United States has []*. Japan's Nippon Soda []* and Sumitomo []* also operate on a global scale.

- (45) In order to evaluate the size of the market for methionine over the relevant period, the Commission has taken into consideration various estimates, in particular those provided by the main producers of methionine in their replies to the requests for information sent on 27 July 1999 and 7 December 1999.
- (46) []*. The Community market was worth some EUR 260 million.

DEMAND

- (47) The main customers for methionine are animal feed producers (compounders) and pre-mixers, with poultry feed production accounting for the majority of consumption, followed by swine feed.
- (48) Pre-mixers put together a concentrated vitamins-mineral package including trace elements, amino acids and therapeutic drugs for inclusion in animal feeds. Compounders are the next stage in the feed production process, but many buy methionine direct from the manufacturers rather than in a concentrate from the pre-mixers.
- (49) As demand for food has increased, commercial livestock producers have increasingly been integrated into large industrial organisations producing feed, raising and slaughtering livestock and manufacturing prepared or processed foods (these are known as 'integrators').
- (54) On 16 June 1999 Commission officials and officials of Germany's Bundeskartellamt, acting on a Commission decision under Article 14(3) of Regulation No 17, carried out an investigation at the premises of Degussa-Hüls in Frankfurt.
- (55) Following the on-the-spot investigation, the Commission on 27 July 1999 addressed a request for information to Degussa-Hüls under Article 11 of Regulation No 17 concerning the documents which it had obtained from that undertaking. Degussa-Hüls replied to the request on 9 September 1999.
- (56) The Commission addressed requests for information to Nippon Soda, Novus and Sumitomo Chemical on 7 December 1999 and to Mitsui on 10 December of that year. The replies were received during February 2000. Nippon Soda submitted a supplementary statement on 16 May 2000.
- (57) On 1 October 2001, the Commission initiated proceedings in this case and adopted a statement of objections against five producers of methionine. On 17 December 2001, the Commission sent the same statement of objections to Aventis Animal Nutrition SA (AAN), a 100 % subsidiary of Aventis SA. All parties submitted written observations in response to the Commission's objections. On 21 December 2001 the legal counsel of Aventis SA and Aventis Animal Nutrition SA informed the Commission that they would submit only one response to the Commission's statements of objections on behalf of both companies.

INTRA-COMMUNITY TRADE

- (50) Methionine is produced in three Member States (Germany, France and Spain) and marketed throughout the Community. All but one of the addressees of this Decision had production facilities in the Community (in certain cases via subsidiaries). Additional sales of methionine in the Community came from third countries (such as Japan and the USA).
- (51) The methionine produced by Aventis SA/AAN in France and Spain and by Degussa in Germany is sold throughout the Community, involving a substantial amount of trade between Member States. In addition, Nippon Soda's methionine sales through Mitsui subsidiaries established in certain Member States generate trade flows to other Member States.
- (58) Replies to the statements of objections were received between 10 January and 18 January 2002. Aventis SA/AAN and Nippon Soda admitted the infringement and did not substantially contest the facts. Degussa also admitted the infringement, but only for the period 1992 to 1997. On 25 January 2002 there was an oral hearing, at which all parties had the opportunity to be heard.
- (59) It was decided, taking into account the evidence, not to pursue the procedure against two other parties.

D. DESCRIPTION OF EVENTS

1. PARTICIPANTS AND ORGANISATION

- (60) The structure, organisation and operation of the cartel were based upon a shared assessment of the market.
- (61) The usual representatives of the companies in meetings were:
- for Rhône-Poulenc (Aventis SA/AAN): []*,
 - for Degussa: []*,
 - for Nippon Soda: []*.
- (52) On 26 May 1999 Rhône-Poulenc submitted to the Commission a statement admitting its involvement in a []* cartel to fix prices and allocate quotas for methionine and invoking the Notice on the non-imposition or reduction of fines in cartel cases (the 'Leniency Notice').
- (53) Rhône-Poulenc was unable to supply any documentary evidence of the infringement; it said that RPAN employees either did not create or did not keep any relevant documents.

C. PROCEDURE

- (62) Cartel meetings were set up at different levels:
- especially during the early years of the cartel, there were periodic top-level or ‘summit’ meetings of presidents, chief executive officers, general managers, etc.,
 - at a later stage, from 1989 onwards, more technical meetings were held at ‘managerial’ or ‘staff’ level rather than at top level (Nippon Soda Submission of 23 February 2000, p. 5),
 - there were also bilateral contacts between companies.

2. THE ESSENTIAL FEATURES OF THE CARTEL

(a) OBJECTIVES

- (63) On the basis of the statements made by the participants and the documents in the Commission’s dossier, the Commission has been able to identify certain essential features of the cartel agreed and implemented by its members throughout the cartel’s lifetime and to draw a clear picture of the way the cartel functioned.

- (64) The cartel’s three main objectives were to fix target prices, agree concerted price increases and share information on sales volumes and market shares.

1. Target prices and ‘rock bottom’ prices

- (65) The cartel members agreed on target prices to be implemented. They agreed on price ranges and discussed the ‘announcement’ of new list prices by the members of the cartel (see recitals 82 to 88, 136, 106, 112, 131, 136, 143 to 145, 152 and 153, 156 and 157, 167, 176, 182 and 183).

- (66) The participants agreed that they needed to increase their prices. They would discuss what the market would accept and agree a price increase based on the outcome of these discussions (see recitals 98, 103, 106, 112, 128, 136 and 137).

- (67) In general, these target prices would be set in []*. Target prices would however also be set for each national market (in national currencies and deutschmarks). Prices would be reviewed for each national market to see whether the target prices had been attained, sometimes in reference to individual customers (see recitals 128, 132, 144, 152, 155, 156 to 159 and 161).

- (68) In addition to target prices, the participants also agreed on minimum prices for each national market (so-called ‘floor’ or ‘rock bottom’ prices) (see paragraphs 152 to 155).

2. Concerting price increases

- (69) The price increases would be organised in different ‘campaigns’ and their implementation would be

reviewed during following cartel meetings. Various price increase campaigns have been individualised (see recitals 106 and 116 to 118).

3. Sharing of information on market shares/sales volumes

- (70) The participants exchanged information on sales volume and production capacity and exchanged and compared their respective estimates of the total volume of the []* market (see paragraphs 82, 134, 149, 169 to 171 and 183).

- (71) Nippon Soda, when describing the way in which the trilateral meetings usually worked, states that (*inter alia*) information was exchanged concerning supplies of the main materials for methionine, capacities, rates of operation of plants and demand for the product (see recital 170).

- (72) During the early years of the cartel, they even expressed their opinions on future incremental market growth and ways of allocating quotas between producers in proportion to their production capacity (see recital 82).

- (73) Although this was not necessarily the case throughout the entire period of the cartel, the Commission has evidence that the participants on certain occasions agreed to limit imports from outside the EEA in order to maintain price levels (see recital 82) or support price increases (see recitals 141 and 145).

(b) IMPLEMENTATION

1. Sales monitoring

- (74) In order successfully to implement the cartel agreements, the participants exchanged their sales volumes. The figures exchanged would be compiled and discussed at regular meetings. The participants would use this information as a basis for discussions to determine the target prices to be fixed (see recitals 88, 128, 130, 139, 150 and 154).

- (75) At some point during the cooperation Degussa even proposed establishing an actual volume control scheme supported by a compensation scheme, but Degussa submits that it never came to be implemented (see recitals 134, 148, 149 and 164 to 168). Given that there is no evidence to the contrary, the Commission will accept that it never came to the implementation of such a volume control scheme.

2. Regular multilateral meetings

- (76) The holding of regular multi- and bilateral meetings was a key feature of the cartel organisation. From 1986 to 1999, more than 25 multilateral meetings have been identified.

(77) There were periodic top-level or 'summit' meetings as well as more technically oriented meetings at 'managerial' or 'staff' level. Multilateral meetings were often preceded or followed by bilateral meetings at which specific issues were discussed and information relevant to the implementation of the cartel arrangements exchanged.

(78) The initial top-level meetings were organised once or twice a year. Allowing for variations over the lifetime of the cartel, operational meetings would generally take place three or four times a year, the participants taking it in turns to organise the meetings. (See recitals 82 and 120.)

3. OPERATION OF THE CARTEL AGREEMENT

(79) The cartel went through three distinct periods. The first period extended from February 1986 until 1989. During that time the participants accounted for virtually all methionine production and the overall agreement was implemented quite smoothly, with prices following an upward trend.

(80) The end of the first period was marked by Sumitomo leaving the arrangements and the entry into the market of Monsanto with a liquid analogue methionine. Following these events, prices started to fall dramatically (Rhône-Poulenc — statement, p. 4 — even speaks of 30 % by the summer and autumn of 1989). It appears that at first the remaining participants (Degussa, Rhône-Poulenc and Nippon Soda) were in doubt about the best way to react to the new situation: would they need to focus on regaining market share or would it be more effective to focus on prices? It is apparent from the evidence in the Commission's file that after having held various meetings in 1989 and 1990, the cartel members agreed unanimously (at least by November 1990) to focus their efforts on increasing prices. In the interests of clarity, the Commission will consider the 1989 to 1990 'transition period' a second period.

(81) The third period of the cartel runs from 1991 until the end of the cartel in February 1999. During that period the participating companies were forced to focus on sustaining the price levels by the dramatic increase in Monsanto's (Novus since 1991) sales of its liquid product.

1986 TO 1989

(82) The cartel originated in the mid-1980s. In early 1986 Rhône-Poulenc and Degussa contacted Nippon Soda and Sumitomo because they felt that the Japanese producers' were encroaching on 'their' home markets (Nippon Soda's submission of 23 February 2000, p. 4 (7) and attachments (8)).

(83) In fact, according to Nippon Soda, Rhône-Poulenc, Degussa, Nippon Soda and Sumitomo met at divisional level in February 1986 and agreed a scheme to limit Japanese imports. At this meeting, []*, divisional

manager at Nippon Soda, agreed to limit his company's sales to the levels of the previous year (1985), namely 14 500 tonnes or 21,3 % of world markets outside the USA and Japan. At that time a similar agreement existed with Sumitomo, so limiting the sales of 'Japanese' methionine into the EEA market. Price ranges were also agreed.

(84) In its supplemental submission of 2 February 2000 (at pages 3, 15 and 16), Rhône-Poulenc confirms that it entered into an agreement with Sumitomo whereby Sumitomo would limit its sales into the EEA market. This corroborates Nippon Soda's version of events. Though unable to recollect the exact date of the agreement, Rhône-Poulenc situates it 'at some time during the 1980s'. It further admits that contacts existed among producers from 1985 to 1988.

(85) Sumitomo too confirms that meetings took place among the abovementioned producers during the 1980s. It recalls having met with Nippon Soda, Rhône-Poulenc and Degussa in 1987 and 1988 but states that its representatives were under the impression that the others already knew each other (9).

(86) Whereas all three undertakings confirm that Degussa, Rhône-Poulenc and Nippon Soda first contacted each other in the mid-1980s, Nippon Soda's statements and documentation are the most detailed on both dates and content. The cartel will therefore be considered to have come into being in February 1986 (although Rhône-Poulenc speaks of 1985 as the year of initial contacts and Sumitomo of 1987).

(87) As to the subject matter of these meetings, Nippon Soda submits (page 4 of its submission of 23 February 2000) that, at their February 1986 meeting, the methionine producers discussed and agreed price ranges and limits on Japanese imports into the EEA. Cooperation was to be continued, and the participants agreed to hold further high level 'summit meetings' once or twice a year, interspersed with more frequent 'staff-level meetings in order to continue their cooperation on prices. The arrangements in question covered the whole world market outside the US and Japan, including the European Community.

(88) Although Sumitomo states that it only accepted the invitation out of curiosity, it confirms that, at a meeting held in Frankfurt in the autumn of 1987 (10), Nippon Soda, Rhône-Poulenc, Degussa (who chaired the meeting) and Sumitomo exchanged and compared their respective estimates of the total volume of the world market, gave their opinions as to future incremental market growth and how to allocate quotas between producers (the talk was of sharing in proportion to production capacity), disclosed the volume of their sales and production capacity for the previous year and discussed the 'announcement' of new list prices (Sumitomo Article 11 reply, page 8 (11)).

- (89) Sumitomo also states that during a meeting at Rhône-Poulenc's Animal Health facility in France in the autumn of 1988, the same participants discussed estimates and allocation of future market growth.
- (90) Rhône-Poulenc, however, states that the cartel members' meetings in the period 1985 to 1988 did not constitute an 'organised effort' to reach agreements to fix prices or rig the market.
- (91) However, in the light of the abovementioned evidence submitted by Nippon Soda and Sumitomo, the Commission must dismiss this version of events. Moreover, Rhône-Poulenc admits in its supplemental submission of 2 February 2000 that 'at some time during the 1980's' it entered into a 'gentlemen's agreement' with Sumitomo whereby Sumitomo would not sell methionine in Europe and Rhône-Poulenc would stay out of Japan⁽¹²⁾. The contacts between competitors in the 1980s were therefore not as innocent as Rhône-Poulenc initially claimed.
- (92) In this respect, Aventis has stated in its reply to the Commission's statement of objections that the fact that it has put the emphasis on the meetings held during the 1990s should not be interpreted as an effort to conceal contacts in the 1980s: it is to be expected that the recollections and records were more complete in the 1990s.
- (93) Finally, as far as Sumitomo is concerned, it claims that the only reason why it attended the meeting at Rhône-Poulenc's Animal Health facility in France in the autumn of 1988 was to announce to the others its intention not to attend any further meetings⁽¹³⁾.
- (94) This is confirmed by the other cartel members. In its supplemental submission of 2 February 2000 (pages 3, 15 and 16), Rhône-Poulenc states that the contacts were broken off by Sumitomo in 1988 'because it believed that they were too risky'. Nippon Soda has stated⁽¹⁴⁾ that the summit meetings in their original form ended at or about the end of 1988 when Sumitomo announced its intention to withdraw from the cooperation because the market had expanded and it was no longer prepared to accept a limitation on its sales.

THE DEVELOPMENTS DURING 1989 AND 1990

- (95) Rhône-Poulenc states that the earlier arrangements ended in 1988 and stand entirely separate from the 1990 arrangements. In its reply to the Commission's statement of objections, Degussa points out that the earlier cartel arrangements ended in 1989. Degussa further argues that the evidence in the Commission's file does not support any allegations that the '1986 cartel' would have continued in 1989 and 1990.
- (96) The Commission must however reject these arguments. Whereas the participants (including Rhône-Poulenc) have

submitted evidence in support of their claim that Sumitomo broke off the cooperation at the end of 1988, no evidence was submitted in support of the claim that the remaining parties to the cartel would have announced to each other any intention to terminate the arrangement or end the contacts. On the contrary, the Commission has evidence that the operations of the cartel went on throughout 1989 and 1990:

— Nippon Soda makes it clear that there was no such break in continuity: if the high-level annual 'summit' meetings had indeed ended, the regular staff-level meetings continued uninterrupted through 1989 and 1990⁽¹⁵⁾,

— in August 1989 a meeting took place between Nippon Soda, Degussa and Rhône-Poulenc (see recitals 98 and 99),

— in or around May 1990 the cartel members contacted each other on the issue of raising the methionine prices as from July 1990 (see recitals 100 to 106),

— Rhône-Poulenc admits meeting Degussa on 10 June 1990 to discuss falling prices (see recitals 107 and 108),

— in November 1990 the participants met again and agreed to increase their prices (see recitals 112 and 115 to 120).

(97) Thus, not only did the remaining parties never manifest any intention of terminating the arrangements, but — contrary to Degussa and Aventis's submissions — the operation of the cartel continued unabated.

(98) In support of its statement that regular meetings had gone on in 1989 and 1990, Nippon Soda has submitted a background paper dated 5 May 1990⁽¹⁶⁾ prepared by Nippon Soda for its discussions with Degussa, showing that a meeting was in fact organised among Nippon Soda, Degussa and Rhône-Poulenc in August 1989. In addition, the note shows that the cartel members discussed price increases in 1990 (see recitals 100 to 106).

(99) At this meeting Nippon Soda and Rhône-Poulenc tried to persuade Degussa not to match the low prices then being offered by Monsanto and Sumitomo. []* (of Degussa) visited Japan in the autumn of 1989; in discussions with Nippon Soda on pricing he justified Degussa's 'discount' sales as being necessary to maintain sales volumes and so reduce fixed costs.

(100) The note of 5 May 1990 further confirms that the cartel was still operating, even though the participants may have been confused as to how they should react to the new market situation following Monsanto's entry into the market in 1988 to 1989.

- (101) Indeed, the note goes on to explain that Degussa's policy in early 1990 was to win back methionine customers from Monsanto by offering even small customers low prices, which Nippon Soda saw as 'disregarding the effects of their conduct on the entire methionine market'.
- (102) To Nippon Soda's indignation, Degussa ([]*) gave the clear impression that it believed that prices were unstable because there were too many competitors and that the Japanese should therefore get out of the market.
- (103) Despite evident difficulties in coordinating their actions, the note shows that the participants continued to meet and shared the view that the price decline had to be reversed. Nippon Soda recorded that Degussa, having secured the desired shipment volume and plant loading through its discount action, was now trying to increase the profitability of its operations by proposing a price increase. Monsanto had announced an increase to take place that month: 'Obviously considering that July was a good time to announce a price increase, Degussa was trying to sound Nisso and Rhône-Poulenc out about the possibility of having another tri-party meeting in the near future'.
- (104) Rhône-Poulenc had a somewhat different agenda from Degussa on prices and aimed at maintaining price levels: 'Rhône-Poulenc did not seem like very much interested in the proposed joint efforts to increase the prices. Rhône-Poulenc seemed more interested in how to cope with the possibility of further decline of the price than in the proposed concerted action to increase the price'.
- (105) The crucial question for Nippon Soda in May 1990 was how to get Rhône-Poulenc to back the proposed price initiative: 'no joint price increasing efforts could be successful without Rhône-Poulenc's participation'. With the recent change in personnel at RPAN and []* replacement by []*, Nippon Soda believed it should continue to make efforts to maintain close contacts with his superiors in Rhône-Poulenc.
- (106) Whatever the perceptions of the different participants about the new market situation (following the entry of Monsanto) and their attitudes towards it, Degussa, Rhône-Poulenc and Nippon Soda met several times in 1989 and 1990 to discuss prices and market data and to plan their joint reaction to the new market situation. As a result, they were by mid-1990 in complete agreement on the scheme to organise the market by focusing on prices. Although the note (dating from May 1990) clearly shows that the parties were discussing increasing their prices for July 1990, it does not show whether the parties actually implemented the discussed price increase. However, the minutes of a cartel meeting on 7 November 1990 suggest a 'first' price increase campaign prior to 1991 (see recitals 116 to 118). In any event, it is at least established that the parties were, contrary to Aventis and Degussa's submissions, in contact with each other, exchanged information on prices and sales and discussed price increases during 1989 and 1990.
- (107) Rhône-Poulenc states⁽¹⁷⁾ that it met representatives of Degussa again on 10 June 1990 at the latter's Frankfurt offices in order to discuss falling prices.
- (108) The meeting was attended by []* and []* from Rhône-Poulenc and []*, []* and []* from Degussa. (In its supplemental submission, Rhône-Poulenc corrects its earlier statement that Nippon Soda was also present at this meeting). []* was managing director of Degussa's industrial and fine chemicals division, while []* was []* of Rhône-Poulenc's animal nutrition division RPAN.
- (109) Rhône-Poulenc adds in its supplemental submission (page 3)⁽¹⁸⁾ that []*, when he joined the company in April 1990, had been 'encouraged' by []* and []* (his predecessor) to contact []* at Degussa with a view to 're-initiating' regular contacts.
- (110) Rhône-Poulenc says that at this meeting of 10 June 1990 Rhône-Poulenc and Degussa decided to contact Nippon Soda to bring it into the scheme. (In fact, as shown above and as Nippon Soda admits⁽¹⁹⁾, the 1986 cartel had never stopped and Nippon Soda was already a party to the arrangements.) []* set up a meeting with Nippon Soda, which took place in Hong Kong on or about 19 November 1990. Nippon Soda has provided (attachment b to its submission of 23 February 2000⁽²⁰⁾) a minute of a Managers' meeting held in Seoul on 7 November 1990 (it may well be that this is in fact the same meeting as the one which Rhône-Poulenc places in Hong Kong).
- (111) Prior to the tripartite meeting []* and []* had met again in Versailles (to exchange market information, says Rhône-Poulenc), but also presumably to prepare their position vis-à-vis Nippon Soda). []* provided []* with Rhône-Poulenc's sales figures, and the two attempted to determine the size of the world market.
- (112) Rhône-Poulenc says that in the November meeting the three companies agreed that they needed to increase their prices. After discussing what the market would bear, they agreed to raise prices from 2,50 USD/kg to 2,80 USD/kg.
- (113) Rhône-Poulenc was represented by []* and []*, Degussa by []* and Nippon Soda by []*.

- (114) The participants agreed to continue their regular meetings in various locations throughout Europe and Asia, eventually including Taipei, Singapore, Bangkok, Tokyo, Paris, Vienna, London, Nice, Brussels, Rome, Copenhagen, Düsseldorf, Hamburg and Strasbourg.
- (115) Nippon Soda's note⁽²¹⁾ on the Seoul meeting (if it is indeed the same one which Rhône-Poulenc identified as having been held in Hong Kong) on 7 November 1990 gives a somewhat fuller picture of the discussions.
- (116) Although Rhône-Poulenc and Degussa are said to have been 'nervous about the proposed second price increase' because of the weak dollar and Monsanto's apparent silence about the planned increase, it is clear from the context of the note that the three parties agreed on a 'second price increase' (it is possible that this second 'campaign' involved two stages, with one increase on 1 January and another on 1 April 1991).
- (117) Besides providing clear evidence of the agreement between the cartel members to implement a price increase in the course of 1991, Nippon Soda's minutes of the meeting of 7 November 1990 also show that there had been an earlier 'first' price increase. This was most probably the price increase discussed for July 1990, which confirms that, contrary to the impression given by Rhône-Poulenc that the cartel was first set up in late 1990, the July 1990 price increase had already been concerted in a 'first campaign' (see recital 106).
- (118) The dollar prices referred to in this note are higher than those mentioned by Rhône-Poulenc in its statement (2,80 USD/kg): the first increase in January was supposed to push the dollar price up to 3,30-3,50 USD/kg, the second to get it up to a level of 3,60-3,70 USD/kg in April. These price quotes show that the July 1990 price increase had, by the time of the tripartite meeting in the Far East in November 1990, restored prices, which had fallen in the first half of the year, to the levels of the start of the year.
- (119) Indeed, as far as the price in Europe is concerned, the memorandum is explicit:
- 'In consideration of the foregoing, the three parties agreed ... in the German mark area where the price was at the level of 5,10 DEM/kg, which was equivalent to 3,40-3,50 USD/kg, it would be practically difficult to increase the price any further. Therefore, the current price level there should remain unchanged during the first quarter of 1991. But for defensive purposes, a price increase of some 10 % should be announced effective from April 1991.
- Each of Rhône-Poulenc and Degussa should independently contact Monsanto and try to persuade Monsanto to join a second price increase campaign. To be ready for the proposed price increase scheduled in and after January 1991, meetings with Monsanto should take place within November 1998 [sic] ⁽²²⁾ ⁽²³⁾.
- (...)
- Another meeting should be held in late February (on February 26), 1991 in Europe to further discuss the products [sic] prices for April 1991 and thereafter.'
- (120) As agreed in the Far East meeting in November 1990, from 1991 on the representatives of Degussa, Rhône-Poulenc and Nippon Soda met three or four times a year in different cities in Europe and Asia, the participants taking it in turns to organise the meetings (Rhône-Poulenc supplemental submission, p. 4; Nippon Soda reply, p. 9 ⁽²⁴⁾).
- (121) Documentation relating to several of these meetings was found at Degussa marked 'summit', despite Nippon Soda situating these regular meetings from 1989 at 'managerial' or 'staff' rather than at top level (Nippon Soda reply, p. 5 ⁽²⁵⁾).
- (122) Nippon Soda has provided (submission of 23 February 2000, pp. 9-10 ⁽²⁶⁾) a list of nine trilateral meetings for which details were available, but as it points out, meetings took place three times a year (Rhône-Poulenc says four); further meetings, for which only incomplete information was available at Nippon Soda, are set out on page 10 of its submission of 23 February 2000 ⁽²⁷⁾.
- (123) Rhône-Poulenc has supplied a more complete list of meetings from 1990 onwards, although the dates are said to be approximations and are not necessarily accurate (appendix to supplemental submission ⁽²⁸⁾).
- (124) Degussa has provided a list of regular meetings (see page 5 of its Article 11 reply dated 9 September 1999 ⁽²⁹⁾) beginning with the Lisbon meeting in March 1992.
- (125) It admits to just two earlier meetings (it says they were in 1991) with Rhône-Poulenc (in Paris and Frankfurt) but claims that they were unconnected with the 'summit' meetings; the two producers (it says) conducted a general exchange on market development and production capacities in methionine. These meetings may actually have been the three identified by Rhône-Poulenc as taking place in Frankfurt in June and August 1990 and in Paris in late 1990 before the Far East meeting with Nippon Soda. It is also clear from Rhône-Poulenc's

account that they were not of the relatively innocent nature claimed by Degussa. In its reply to the Commission's statement of objections, Degussa states that it simply has no recollection of meetings organised prior to the two meetings in 1991, given that no current employees of Degussa have any recollection of the arrangements prior to 1992. It also submits that the Commission has no exact dates for meetings in 1990 or 1991. However, in the light of the evidence contained in the preceding paragraphs, the Commission can dismiss this argument.

1991 TO 1998

(126) During its investigations at Degussa, the Commission obtained comprehensive hand-written notes taken by []* at a series of regular meetings ([]* was head of marketing at Degussa's feed additives sector from October 1991 to the end of 1994).

(127) The first of these notes concern a meeting that was held in Lisbon on 15 to 17 March 1992⁽³⁰⁾. The abbreviations used by []* for the different speakers show that the participants included []*, []* and []* from Rhône-Poulenc, []* and []* from Degussa and []* and []* from Nippon Soda (another document⁽³¹⁾ appears to relate to a bilateral meeting between Degussa and Rhône-Poulenc shortly before this meeting).

(128) After exchanging forecasts of the price level for the current year, the meeting reviewed for each region and country the current price level, prospects for increasing the price and individual customer business.

(129) For Europe, the comments begin⁽³²⁾:

'Why not 6.20.

1. Russian materials (400-500 t Oct-Feb)

2. Stock effects

3. Stepwise price increase by Novus

4. - 1 500 t Deg. // - 1 500 t RP + MHA (5 months).'

(130) The clear implication is that the participants had been hoping to set DEM 6,20 as a target price (according to Degussa, Article 11 reply, p. 14⁽³³⁾), there was 'general disappointment' among the producers that the price for methionine had not stabilised at above DEM 6,00).

(131) An internal price list found at Degussa⁽³⁴⁾ would suggest that at the end of February 1992 the 'target' price for the first quarter of 1992 was DEM 5,90 and the limit price DEM 5,80. Given the focus of the regular quarterly meetings upon pricing, and the fact that for several of the meetings recorded by []* a list in this format is attached to his notes, it is reasonable to

assume that the connection between Degussa's internal 'list' and the meetings was a close one.

(132) There follows a review of each national market in Europe. A new price of DEM 6,05 was to be announced in Germany by Degussa. It was reported that one customer (Bela-Mühle) had received offers of between DEM 5,90 and DEM 5,95 for the second quarter of 1992. Rhône-Poulenc had increased its prices to between DEM 6,00 and DEM 6,05. (The discussion continued along these lines for Belgium, France, Greece, UK, Ireland, the Netherlands, Italy, Norway, Finland, Sweden, Austria, Portugal, Spain and Switzerland.)

(133) The next summit meeting recorded by []* was in Taipei in July 1992⁽³⁵⁾.

(134) After discussions on how to counter imports from Russia via dealers, the participants examined the volume situation in Europe. Degussa, having 'lost' 2 500 tonnes in the first six months, was judged the main 'loser' and Rhône-Poulenc and Nippon Soda were also slightly down. The big winners were Novus and the Russians. A balance sheet was drawn up showing a shortfall of 700 tonnes, which could be offset by fewer exports and by re-imports.

(135) At the Tokyo meeting of 22 and 23 November 1992⁽³⁶⁾ the subject of Russian imports came up again. A review of the world market compared with the previous year concluded that there had been an increase in demand of 4 % to 5 %.

(136) A note made by []*⁽³⁷⁾ (the authorship is not disputed) in late 1992/early 1993 provides further insight. Whether it relates to the November 1992 meeting or the one held in Singapore on 2 February 1993 is uncertain. It would appear that at around this time the price had begun to fall again. The note begins 'Europa Preise: Q4/92 = avg 5.60 Q1 93 = avg 5.20'.

The producers discussed a price increase announced by Rhône-Poulenc, apparently only for its MHA. The note reads:

'RP Price Increase announcement only for NP 99. 15 % increase → DEM 6,40 (= FRF 21,80) last week published in F (last week Jan)'.

(137) Indeed, a Degussa Price list⁽³⁸⁾ in the same format as the internal note found at Degussa⁽³⁹⁾ (and made using the exchange rate of 26 February 1993) shows a target ('Ziel') for the second quarter of 1993 of DEM 6,40 and a 'limit' of DEM 6,20, although a handwritten annotation indicates that this lower figure was subsequently adopted as the 'target'.

- (138) Notes were made by []* of the meeting in Nice on 1 (or 2) June 1993 ⁽⁴⁰⁾. The participants discussed the raw materials situation. The Russian problem was also examined in some detail before a review of individual national markets and regions. It was observed that Novus was selling Alimet in Germany at DEM 4,50 (equivalent to DEM 5,62 for the crystalline form).
- (139) Nippon Soda has supplied to the Commission a note of a bilateral meeting with []* of Degussa a few weeks earlier that included preparations for the 'club' meeting in Nice ⁽⁴¹⁾. In fact, the subjects of 'common interest' discussed with Degussa related to China, Taiwan, the Philippines and Australia. A separate preparatory meeting between Nippon Soda and Rhône-Poulenc the day before the 'club' met in Nice was also concerned with the European market. Topics covered were the introduction of a price rise (it had been delayed by product still being offered at old prices but was becoming accepted during May), activities by 'trouble-makers' (customers reselling at cheap prices) in the Netherlands and elsewhere and Nippon Soda's price proposals to BP in the United Kingdom ⁽⁴²⁾.
- (140) Nippon Soda also submitted its own detailed note of the June 1993 'club meeting' in Nice ⁽⁴³⁾.
- (141) It sets out the agreement between Rhône-Poulenc and the Russians: Russian exports were to be limited to 6 000 tonnes committed to Rhône-Poulenc and a further 1 000 tonnes to be sold to Welding, a trader in Germany. Rhône-Poulenc were going to contact Welding asking it to 'hold any sales while we were making our current efforts to increase the market price of methionine' (p. 3).
- (142) The Nippon Soda note of the June 1993 club meeting is far more detailed on the European market than Degussa's.
- (143) The second half of the meeting was spent 'discuss(ing) the recent developments in the regional markets and setting the target price for the third calendar quarter'.
- (144) Long discussions are reported on the target price for Europe which had previously been agreed at 6,20 to 6,40 DEM/kg (see recitals 136 and 137). Nippon Soda had during its executives' travels through Europe in May noted that the typical market price was NLG 6,00 in the Netherlands, GBP 2,30 in the UK and BEF 125 in Belgium. The market was considered to be very sluggish. Rhône-Poulenc was aggrieved that Degussa was selling below the target price in []*, with the result that product was returning to Europe and reselling at only 5,32 to 5,33 DEM/kg. Despite the difficulties with pricing in Europe 'it was basically agreed that the current target price of 6,20 DEM/kg would remain unchanged during the third calendar quarter except that the target prices applicable to Portugal and Spain, where the currencies had been devalued again by 6 %, and the UK, where the target price was, we had all agreed previously, to be increased in two phases, would be fixed later' ⁽⁴⁴⁾.
- (145) The wide gap between the European target price of 6,20 DEM/kg (USD 3,80) and the Far East target of only USD 3,30 to 3,40 (= DEM 5,25 to 5,40) was a cause of concern. Was the differential to be maintained, there was strong risk of product exported from Europe flowing back and destabilising the price.
- (146) The next meeting of the cartel members was held in Hamburg on 6 September 1993 ([]* notes ⁽⁴⁵⁾). This meeting dealt with the proposed acquisition by ADM (Archer Daniels Midland) of a 25 % interest in Rhône-Poulenc's plant in Institute, Virginia. There was also a long examination of Novus's profitability, its position in the market and its objectives. The participants engaged in speculation as to what Novus could achieve by increasing prices as well as asking cryptically whether 'they need another lesson?'.
- (147) The proposal from Degussa was that []* (European Director for Novus) should be allowed to prove his mettle by putting up Novus's prices by 15 % in return for a guarantee on volumes and customers ⁽⁴⁶⁾ ⁽⁴⁷⁾.
- (148) As can be seen from the concluding notes in []* minute, a volume allocation scheme had been mooted: 'Figures 8 Regions (not countries/customers) only once Novus takes part; only when the market share targets are known'.
- (149) The basis foreseen for the scheme — which would include a compensation mechanism — was to be the achieved sales in the past three years (1990 to 1992). In its reply to the statement of objections, Degussa submits that the above statement should be understood as meaning that []* did not believe that a volume allocation system could be implemented without Novus's cooperation. Degussa submits in its reply to the statement of objections that the regular exchange of volume figures (see table on page 198 of the file) served as a basis for agreeing changes in the target price and never resulted in the allocation of volumes or clients between the participants.
- (150) During the following meeting in Tokyo on 2 December 1993 (the hand-written date '2.12.92' is a mistake), the usual themes of controlling Russian sales and Novus were examined ⁽⁴⁸⁾. Clearly the participants were worried about the challenge from Novus which was gaining the highest share of the methionine market with its liquid analogue. It had gained 500 tonnes of sales in Europe while Rhône-Poulenc, Degussa and Nippon Soda had seen their relative market shares decline (see the table at the bottom of page 3 of the note).

- (151) The relative bio-efficiency of DLM and MHA in tonnage terms was also discussed. In its reply to the Commission's statement of objections, Degussa explains that this concerned a proposal by Degussa to set the target price for MHA at 80 % of the target price for DLM (for Europe).
- (152) The producers' consistent efforts to maintain prices (identified by Rhône-Poulenc as their main preoccupation, statement p. 5) is again apparent from the list attached to []* note and bearing the same date. It is clear that the downward pressure on pricing identified at the Nice meeting had obliged the participants to lower their targets. The 6,20 DEM/kg target was no longer considered realistic. For each national market ([]* all the then Member States) the note states (i) the 'target' price ('Ziel Q3/93') in national currency and DEM or equivalent; (ii) the 'limit' price in the same currencies for the same period; (iii) some 'actual' prices (UK, D, NL, F, E, I) and the equivalent price for *Alimet* and Rhône-Poulenc liquid (AT 88).
- (153) The 'target' price (fixed at the beginning of the year at DEM 6,20) was now to be DEM 5,65, and the 'limit' price DEM 5,50. It seems that these prices were, however, later revised even further downwards, to DEM 5,40 and DEM 5,20 respectively⁽⁴⁹⁾.
- (154) The next regular meeting, for which []* kept his usual detailed notes⁽⁵⁰⁾, was held in Berlin on 1 to 3 March 1994. The price had continued to slide and it was proposed to initiate an increase in May/June. A review was made of prices in the different European national markets with reference being made to individual customers, new prices and limit prices.
- (155) In connection with this meeting a price schedule (in the same format as that attached to earlier reports) was prepared and updated as at the end of January 1994 retaining the target of DEM 5,40 and the equivalent in other currencies but with new 'rock bottom' prices in each national market; the last column headed 'remarks' ('Bemerkungen') shows a number of handwritten minimum prices with the annotation 'until 15.5. Degussa to announce 5,50'⁽⁵¹⁾.
- (156) Another quarterly meeting took place in Königstein on or about 7 June 1994⁽⁵²⁾ ([]* notes include comments on prices in Denmark, Italy, Spain and Belgium). For Denmark the brief note is made 'Alle informiert, mündlich' (all informed, orally), presumably a reference to customers being warned of the coming price increase.
- (157) Degussa duly made the announcement of a Europe-wide price rise to DEM 5,50 in the trade press ('Ernährungsdienst') on 4 June 1994. Rhône-Poulenc was also reported (Les Marchés on 16 June 1994) as having increased its prices for both powder and liquid (Rhodimet AT 88) methionine by 10 %⁽⁵³⁾.
- (158) []* again made comprehensive notes in preparation for the trilateral meeting in November 1994⁽⁵⁴⁾. The price situation in each country is summarised with comments on individual customers.
- (159) In Germany (for example) the market prices were between DEM 5,05 and DEM 5,15. At one customer (Bela) the price was even below DEM 5,00; Rhône-Poulenc was suspected of selling it Russian material. Prices in France were considered satisfactory but the quantities a 'catastrophe'.
- (160) []* referred to a price increase (presumably that of summer 1994) and noted that the 'target' had not been achieved: bulk deliveries were selling at under 5,0 DEM/kg. The succinct comment 'update price list' is made.
- (161) []* seems also to have met or contacted Nippon Soda on 24 November 1994, just before the main meeting, and discussed prices in Germany, Belgium, the Netherlands and the United Kingdom⁽⁵⁵⁾.
- (162) In the last meeting for which []* kept notes⁽⁵⁶⁾ — it was held in the Hotel Juan Carlos I in Barcelona on 27 to 29 November 1994 — after the usual discussions on Russia, China and Novus, the participants reflected on their past failure to take a strategic view of market development.
- (163) There had been a 'steady improvement' in the profitability of methionine between 1991 and 1993, but 1994 had seen profit margins shrink.
- (164) []* observations — and the position of the others — are recorded as follows:
- 'In the past: compensation after a problem was solved; ??
- We do not act strategic, but only by tactics in individual cases;
- Sales people determine the business.
- "I am willing to compensate for business others have lost": []*
- Proposal: Always compensate for volume losses in 1995, good situation as Novus stocks are low.'

- (165) It was in this meeting that the volume control scheme was again examined:
- ‘ “1995 Targets”
- []* proposal: Indexation based on 1994 sales volume (= 100 %).
- After 1st quarter sit together and compare figures after 2nd Q...’
- (166) The producers also considered the prices in each market, possibly in a separate session ⁽⁵⁷⁾. []* again recorded the discussions in some detail. []* of Rhône-Poulenc looked back with nostalgia on earlier years:
- ‘It never was a problem between []* ⁽⁵⁸⁾ and myself; so many things were regulated afterwards’.
- (167) In Europe the going rate was now DEM 5,20. A new target of DEM 5,80 was agreed, and the new price was to be announced in the trade press to take effect on 1 January 1995 (in Italy and the United Kingdom the targets and limit prices were to be effective ‘immediately, no exceptions!’).
- (168) The reactions of the participants to Degussa’s proposal on quotas are not recorded. In its reply of 9 September 1999 to the Commission’s request for information (p. 21), Degussa claims that []* suggestion was not taken up. It argues that it was not worth conducting such an exercise: since the three participants together had only 65 % of the market, exchanging their figures would not give an accurate picture of the market. Degussa confirms its position in its reply to the Commission’s statement of objections.
- (169) Though the participants may never have implemented a volume allocation system, they did regularly exchange sales figures. Indeed, Rhône-Poulenc mentions in its Statement (p. 5) that during the meetings the three competitors ‘often exchanged sales figures calculated on a regional or country-by-country basis’. It subsequently retracted that declaration in its supplemental submission, p. 5.
- (170) Nippon Soda, however, confirms that the trilateral meetings usually involved, *inter alia*, the exchange of information concerning supplies of the main materials for methionine, capacities, rates of operation of plants and demand for the product (supplemental submission, p. 12).
- (171) A handwritten table was also found at Degussa ⁽⁵⁹⁾ comparing the percentage market shares of Novus, Rhône-Poulenc, Degussa, Nippon Soda and Sumitomo worldwide and for each region ([]*) in 1993, 1994 and 1995.
- (172) The table, which was compiled from a computerised data base by Degussa and regularly updated, shows the tonnages sold by each producer on each national market. Although Degussa claims that the data for its competitors was obtained from Degussa’s own ‘internal’ sources, the accuracy of many of the figures would indicate otherwise as would the fact that sales data was regularly exchanged during meetings. The spreadsheets were distributed inside Degussa by []* to []*, []* and []*, all of whom were regular participants in the cartel meetings.
- (173) According to Rhône-Poulenc (statement, p. 5), the quarterly cartel meetings continued until July 1998.
- (174) []* ceased to be head of marketing for feed additives in October 1994 (when he became responsible for Business Development) and apparently no longer attended meetings. As a result no detailed notes have been found for the period after the Barcelona meeting.
- (175) It is reasonable to presume, in the absence of any other detailed record of the meetings, that they continued to have broadly the same purpose and subject matter as before (Nippon Soda claims on page 13 of its reply under Article 11 of 23 February 2000 ⁽⁶⁰⁾ that they became ‘increasingly ceremonial’ and the pricing arrangements functioned more through the mutual exchange of information than the setting of fixed prices, but there is no documentary evidence to confirm this).
- (176) Rhône-Poulenc for its part has supplied (supplemental submission, p. 18 and attachment ⁽⁶¹⁾) management instructions on prices for 1997 which it says reflect target prices for individual regions ‘which were within the target range of prices agreed to at the meetings described’. Even if they were now ‘Friendship meetings’, the ceremonial included the fixing of targets, as before.
- (177) Degussa does not list any meetings after the one held on 13 to 14 October 1997 in Copenhagen. Nippon Soda identifies one more meeting in Düsseldorf on 13 May 1998 (p. 10 of its reply ⁽⁶²⁾).
- (178) Rhône-Poulenc, however, describes (supplemental submission, pp. 8 to 9 ⁽⁶³⁾) three more meetings held during the last year of the cartel’s operation from the Copenhagen meeting in October 1997 until the final meeting in Nancy on 4 February 1999.

(179) In May 1998 Rhône-Poulenc []*, Degussa []* and Nippon Soda []* met in Frankfurt (Nippon Soda says that it was in fact in Düsseldorf on 13 May). The two European companies explained for the benefit of the new Nippon Soda people how the meetings had gone in the past and informed them that prices had to be increased; Nippon Soda agreed to follow any price initiative (Rhône-Poulenc supplemental submission, p. 8⁽⁶⁴⁾).

5. THE END OF THE CARTEL

(180) After []* departure from Rhône-Poulenc in the autumn of 1997, his replacement as []* ([]*) instructed management (says Rhône-Poulenc) to end all contact with competitors. []* called []* (Degussa), []* (Novus), []* (Nippon Soda) and []* (Sumitomo) to inform them of this instruction (supplemental statement, p. 9⁽⁶⁵⁾).

(181) []* career at RPAN was short-lived. On becoming []* in March 1998, []* authorised the company's executives to resume/continue communications with their competitors; the quarterly meetings were, however, to be discontinued, presumably because of their high visibility and the associated risk of discovery (by this time the investigations of the US antitrust authorities in the vitamins sector were already well advanced).

(182) The next meeting identified by Rhône-Poulenc took place in Heidelberg in late summer/early autumn of 1998 after prices had begun to decline in mid-1998. []* and []* attended from Rhône-Poulenc; []* and []* represented Degussa. They agreed to increase prices. Nippon Soda did not attend these meetings.

(183) The last known meeting, at the Mercure Hotel in Nancy on 4 February 1999, was again attended only by Degussa []* and Rhône-Poulenc []*. However, according to Nippon Soda, []* and []* discussed conditions on the market over dinner in Paris that evening (Article 11 reply, p. 12⁽⁶⁶⁾). According to Rhône-Poulenc, the participants in the Nancy meeting assessed the total size of the []* market and the producers' respective positions; Degussa's market intelligence is said by Rhône-Poulenc to have been 'very good'. A target price of USD 3,20/DEM 5,30 was agreed.

(184) It was presumably on the occasion of the meeting in May 1998 that arrangements were made to cease 'club' meetings and to maintain bilateral contacts. Besides the two meetings in Heidelberg and Copenhagen between Degussa and Rhône-Poulenc, []* and []* of Rhône-Poulenc continued their telephone contacts with their counterparts at Nippon Soda.

(185) These contacts were only ended in February 1999 when senior management at Rhône-Poulenc gave renewed instructions to terminate the practice (Rhône-Poulenc supplemental submission, p. 10⁽⁶⁷⁾).

PART II — LEGAL ASSESSMENT

A. JURISDICTION

(186) The arrangements set out above applied to all consumers of methionine established in the countries of the EEA.

(187) The EEA Agreement, which contains provisions on competition modelled on the EC Treaty, came into force on 1 January 1994. This Decision therefore includes the application as from that date of the rules on competition of the EEA Agreement (in particular Article 53(1)) to the arrangements to which objection is taken⁽⁶⁸⁾.

(188) In so far as the arrangements affected competition in the common market and trade between Community Member States, Article 81 of the Treaty is applicable. In so far as the cartel operations had an effect on trade between the Community and EFTA countries or between EFTA countries which were part of the EEA, Article 53 of the EEA Agreement is applicable.

(189) If an agreement or practice affects only trade between Member States of the Community, the Commission retains competence and applies Article 81 of the Treaty. If, however, an agreement affects only trade between EFTA States, then the EFTA Surveillance Authority (ESA) has sole competence and will apply the EEA competition rules in Article 53 of the EEA Agreement⁽⁶⁹⁾.

(190) In this case, the Commission is competent under Article 56 of the EEA Agreement to apply both Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement because the cartel had an appreciable effect on trade between Community Member States⁽⁷⁰⁾.

B. APPLICATION OF ARTICLE 81 OF THE EC TREATY AND ARTICLE 53 OF THE EEA AGREEMENT

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

(191) Article 81(1) of the EC 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.

- (192) Article 53(1) of the EEA Agreement (which is modelled on Article 81(1) of the EC Treaty) contains a similar prohibition. However the reference in Article 81(1) to trade 'between Member States' is replaced by a reference to trade 'between contracting parties' and the reference to competition 'within the common market' is replaced by a reference to competition 'within the territory covered by... (the EEA) Agreement'.

2. AGREEMENTS AND CONCERTED PRACTICES

- (193) Article 81(1) of the Treaty and Article 53 of the EEA Agreement prohibit agreements, decisions of associations and concerted practices.
- (194) An agreement can be said to exist when the parties adhere to a common plan, which limits or is likely to limit their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. It does not have to be made in writing; no formalities are necessary, and no contractual sanctions or enforcement measures are required. The fact of agreement may be explicit or implicit in the behaviour of the parties.
- (195) In its judgment in *Joined Cases T-305/94, etc. Limburgse Vinyl Maatschappij NV and others v Commission (PVC II)* ⁽⁷¹⁾, 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'.
- (196) Article 81 of the Treaty ⁽⁷²⁾ 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 which, without having reached the stage where an agreement properly so called has been concluded, knowingly substitutes practical cooperation between them for the risks of competition ⁽⁷³⁾.
- (197) The criteria of coordination and cooperation laid down by the case law of the Court, far from requiring the elaboration of an actual plan, must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition, according to which each economic operator must determine independently the commercial policy which he intends to adopt in the common market. Although that requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it strictly precludes any direct or indirect contact between such operators, the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market ⁽⁷⁴⁾.
- (198) Thus conduct may fall under Article 81(1) as a 'concerted practice' even where the parties have not explicitly subscribed to a common plan defining their action in the market but knowingly adopt or adhere to collusive devices which facilitate the coordination of their commercial behaviour ⁽⁷⁵⁾.
- (199) Although in terms of Article 81(1) the concept of a concerted practice requires not only concertation but also conduct on the market resulting from the concertation and having a causal connection with it, it may be presumed, subject to proof to the contrary, that undertakings taking part in such a concertation and remaining active in the market will take account of the information exchanged with competitors in determining their own conduct on the market, all the more so when the concertation occurs on a regular basis and over a long period ⁽⁷⁶⁾.
- (200) It is not necessary, particularly in the case of a complex infringement of long duration, that the Commission characterise it as exclusively one or other of these forms of illegal behaviour. The concepts of agreement and concerted practice are fluid and may overlap. Indeed, it may not even be possible realistically to make any such distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while considered in isolation some of its manifestations could accurately be described as one rather than the other. It would however be artificial analytically to subdivide what is clearly a continuing common enterprise having one and the same overall objective into several discrete forms of infringement. A cartel may therefore be an agreement and a concerted practice at the same time. Article 81 lays down no specific category for a complex infringement of this type ⁽⁷⁷⁾.
- (201) In its *PVC II* judgment, the Court of First Instance stated that '[i]n the context of a complex infringement which involves many producers seeking over a number of years to regulate the market between them, the Commission cannot be expected to classify the infringement precisely, for each undertaking and for any given moment, as in any event both those forms of infringement are covered by Article [81] of the Treaty' ⁽⁷⁸⁾.

- (202) An 'agreement' for the purposes of Article 81(1) 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.
- (203) Although a cartel is a joint enterprise, each participant in the agreement may play its own particular role. One or more may exercise a dominant role as ringleader(s). Internal conflicts and rivalries, or even cheating may occur, but will not however prevent the arrangement from constituting an agreement/concerted practice for the purposes of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement where there is a single common and continuing objective. A complex cartel may properly be viewed as a single continuing infringement for the time frame in which it existed. The agreement may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments.
- (204) Indeed, in a complex cartel of long duration, where the various concerted practices followed and agreements concluded form part of a series of efforts made by the undertakings in pursuit of a common objective of preventing or distorting competition, the Commission is entitled to find that they constitute a single continuous infringement. As the Court of First Instance observed on this point in Case T-7/89 *Hercules v Commission* ⁽⁷⁹⁾, it would be artificial to split up such continuous conduct, characterised by a single purpose, by treating it as a number of separate infringements: 'the fact is that the [undertakings] took part — over a period of years — in an integrated set of schemes constituting a single infringement, which progressively manifested itself in both unlawful agreements and unlawful concerted practices.'
- (205) The mere fact that each participant in a cartel may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants but which share the same unlawful purpose and the same anti-competitive effect. An undertaking which takes part in the common unlawful enterprise by actions which contribute to the realisation of the shared objective is equally responsible, for the whole period of its adherence to the common scheme, for the acts of the other participants pursuant to the same infringement. This is certainly the case where it is established that the undertaking in question was aware of the unlawful behaviour of the other participants or could have reasonably foreseen or been aware of them and was prepared to take the risk ⁽⁸⁰⁾.
- ### 3. SINGLE, CONTINUOUS INFRINGEMENT
- (206) From February 1986 to February 1999, there is ample evidence to show the existence of a single and continuous collusion in the EEA market for methionine between Aventis, Nippon Soda and Degussa which together account for around 60 % of this market. Indeed, the parties expressed to each other their joint intention to behave on the market in a certain way and adhered to a common plan to limit their individual commercial conduct. The agreement to enter into this plan with a view to restricting competition can therefore be dated back at least to February 1986. This collusion was in pursuit of a single anti-competitive economic aim: preventing price competition by agreeing on target prices and price increases.
- (207) This plan, which was subscribed to by Rhône-Poulenc, Nippon Soda and Degussa, was developed and implemented over a period of almost 13 years, through a complex of collusive arrangements, specific agreements and/or concerted practices, pursuing the same common purpose of eliminating competition between them. The participants in these unlawful conducts knew, or ought to have known, that it was part of an overall plan in pursuit of that common unlawful object ⁽⁸¹⁾.
- (208) Given the common design and common objective which the producers steadily pursued of eliminating competition in the methionine industry, the Commission considers that the conduct in question constituted a single continuing infringement of Article 81(1) EC and Article 53(1) EEA. These arrangements are described in detail in the factual part of this Decision. This description is supported by widespread and clear evidence, systematically referred to throughout the text. The conduct in question constituted therefore a single continuing infringement of Article 81(1) EC and Article 53(1) EEA.
- (209) Although the arrangements between the producers could rightly be considered as presenting all the characteristics of a full 'agreement', some factual elements of the illicit conduct could aptly be described as a concerted practice were it appropriate to do so.

- (210) In its reply to the statement of objections, Degussa contests the Commission's assertion that, though the 'summit' meetings (i.e. senior level meetings between divisional managers) may have ended in 1988, there was nevertheless a continuous infringement since 1986 because the more frequent 'staff' meetings were not interrupted and continued. Degussa claims that it is impossible that decisions would have been taken or agreements entered into at 'staff level after meetings at senior level were ended. Furthermore, Degussa avers that the Commission fails to establish a link of continuity between the two categories of meetings, nor who would have participated in the alleged 'staff' level meetings.
- (211) According to Degussa, the meetings ceased at the end of 1988 and Degussa first participated in the infringement at the meeting held in mid-1992 ⁽⁸²⁾.
- (212) In the light of recitals 95 to 125, the argument according to which there was no continuation of the illegal scheme between 1988 and 1992 must be dismissed. As stated in recital 97, not only did the participants never manifest any intention to terminate the arrangements, but the operation of the cartel was never interrupted. Indeed, it is demonstrated in recitals 95 to 125 that the participants continued to take part in meetings throughout 1989, 1990 and 1991 without publicly distancing themselves from what occurred at them. Given the manifestly anti-competitive nature of the earlier meetings, the lack of evidence that the participation in the meetings was without any anti-competitive intention establishes that the illegal scheme was in fact continued ⁽⁸³⁾. The question of whether the agreements and/or concerted practices were actually implemented is addressed in recitals 278 to 281.
- the exchange of information on sales figures in order to monitor the market shares achieved,
 - the concerted pricing to individual customers,
 - the concerted limitation, prevention or 'holding' of imports from outside the Community so as to ensure the success of price increases,
 - the participation in regular meetings and other contacts in order to agree the above restrictions and to implement and/or modify them as required.
- (215) These kinds of arrangements have as their object the restriction of competition within the meaning of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement. 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 and above the level which would be determined by conditions of free competition.
- (216) In order to conclude that Articles 81(1) of the EC Treaty and 53(1) of the EEA Agreement apply, there is no need to consider the actual effects on competition of an agreement once it is established that the agreements had the object of restricting competition ⁽⁸⁴⁾.
- (217) However, the cartel also had a restrictive effect on competition. Indeed, the target prices and price rises which were the primary objective of the cartel, were agreed, announced to customers and implemented throughout the EEA.

4. RESTRICTION OF COMPETITION

- (213) Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement expressly mention as restrictive of competition agreements which
- directly or indirectly fix selling prices or any other trading conditions,
 - limit or control production,
 - share markets or sources of supply.
- (214) In the complex of agreements and arrangements considered in this case, the following elements can be identified as relevant in order to find a breach of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement:
- the agreement of target and minimum prices,
 - the agreement of concerted price increases,
 - the concerted implementation of those price increases in the different markets,
- (218) In their replies to the statement of objections, Degussa and Nippon Soda claim that the Commission has failed to demonstrate that there was an actual restrictive impact on competition. The restrictive effect of the arrangements in question is established in more detail in recitals 271 to 291.

5. EFFECT ON TRADE BETWEEN COMMUNITY MEMBER STATES AND BETWEEN EEA CONTRACTING PARTIES

- (219) The continuing agreement between the producers had an appreciable effect on trade between Member States of the Community and between contracting parties to the EEA Agreement.
- (220) Article 81(1) of the EC Treaty is aimed at agreements which might harm the attainment of a single market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the common market. Similarly, Article 53(1) of the EEA Agreement is directed at agreements which undermine the realisation of a homogeneous European Economic Area.

(221) As demonstrated in the section 'intra-Community trade' (recital 50), the methionine market is characterised by a substantial volume of trade between Member States. There was also a considerable volume of trade between the Community and EFTA members of the EEA. Norway imports 100 % of its methionine requirements, primarily from the Community, as did Austria, Finland and Sweden prior to accession.

(222) The application of Articles 81(1) of the Treaty and 53(1) of the EEA Agreement to a cartel is not, however, limited to that part of the members' sales which actually involve the transfer of goods from one State to another. Nor is it necessary, in order for these provisions to apply, to show that the individual contact of each participant, as opposed to the cartel as a whole, affected trade between Member States ⁽⁸⁵⁾.

(223) In this case, the cartel arrangements covered over two thirds of all trade throughout the EC and EEA in this important industrial sector. The existence of price-fixing and a quota mechanism must have resulted, or was likely to result, in the automatic diversion of trade patterns from the course they would otherwise have followed ⁽⁸⁶⁾.

6. PROVISIONS OF COMPETITION RULES APPLICABLE TO AUSTRIA, FINLAND, NORWAY AND SWEDEN

(224) The EEA Agreement entered into force on 1 January 1994. For the period prior to that date during which the cartel operated, the only provision applicable to these proceedings is Article 81 of the EC Treaty. Article 81 does not cover any restriction of competition by the cartel arrangements in Austria, Finland, Iceland, Liechtenstein, Norway and Sweden (then EFTA Member States prior to 1 January 1994).

(225) In the period 1 January to 31 December 1994, the provisions of the EEA Agreement applied to the six EFTA Member States. The cartel therefore breached both Article 53(1) of the EEA Agreement and Article 81(1) of the EC Treaty, and the Commission is competent to apply both provisions. The restriction of competition in these six EFTA states during this one-year period falls under Article 53(1) of the EEA Agreement.

(226) After the accession of Austria, Finland and Sweden to the Community on 1 January 1995, Article 81(1) of the Treaty became applicable to the cartel in so far as it affected competition on those markets. The operation of the cartel in Norway remained in breach of Article 53(1) EEA.

(227) In practice, the result is that the cartel's operation in Austria, Finland, Norway and Sweden breached EEA and/or Community competition rules as from 1 January 1994.

C. ADDRESSEES

1. PRINCIPLES APPLICABLE

(228) In order to identify the addressees of this Decision, it is necessary to determine the legal entities responsible for the infringement.

(229) The subject of Community and EEA competition rules is the 'undertaking', a concept that is not identical with the notion of corporate legal personality in national commercial company or fiscal law. The term 'undertaking' is not defined in the Treaty. It may however refer to any entity engaged in a commercial activity.

(230) According to the circumstances, it might be possible to treat as the relevant 'undertaking' for the purposes of Article 81 of the Treaty and Article 53 of the EEA Agreement the whole group or individual subgroups or subsidiary companies. In this regard, in order to determine whether a parent company should be held responsible for the unlawful conduct of a subsidiary, it is necessary to establish that the subsidiary 'does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company' ⁽⁸⁷⁾. In the AEG-Telefunken ⁽⁸⁸⁾ and BPB Industries ⁽⁸⁹⁾ cases, the Court ruled that when a subsidiary is wholly owned, it necessarily follows in principle the policy laid down by its parent company.

(231) In the *Stora Kopparbergs Bergslags AB* ⁽⁹⁰⁾ case, the Court upheld the Court of First Instance finding that a parent company was liable for its subsidiary's conduct, stating that 'as [the] subsidiary was wholly owned, the CFI could legitimately assume (...) that the parent company in fact exercised decisive influence over its subsidiary's conduct, particularly since it had found (...) that during the administrative procedure, [the parent company] had presented itself as being (...) the Commission's sole interlocutor concerning the infringement in question'. This confirms a presumption that the parent company of a wholly owned subsidiary exercises decisive influence over its subsidiary's conduct. In the cited case, the validity of this presumption was confirmed by an additional indication, i.e. the conduct of the parent company.

(232) When an infringement of Article 81(1)EC and/or Article 53(1)EEA is found to have been committed over a given period of time, it is necessary to identify the natural or legal person who was responsible for the operation of the undertaking at the time of the infringement.

(233) When an undertaking commits an infringement of Article 81(1)EC and/or Article 53(1)EEA and later disposes of the assets that served as the vehicle of the infringement and thereby withdraws from the market concerned, the undertaking in question will continue to be held responsible for the infringement over the period considered, if it is still in existence ⁽⁹¹⁾.

2. ADDRESSEES OF THE DECISION

- (234) In this case, Rhône-Poulenc has changed its legal form since the ending or presumed ending of its involvement in the infringement.
- (235) A change in legal form or corporate identity does not, however, relieve an undertaking of liability to penalties for the anti-competitive behaviour. Liability for a fine may thus pass to a successor where the corporate identity which committed the violation has ceased to exist in law.
- (236) This is because the subject of the competition rules in the EC Treaty (and the EEA Agreement) is the undertaking, a concept not necessarily identical to the notion of corporate legal personality in national commercial, company or fiscal law.
- (237) The 'undertaking' is not defined in the EC Treaty. It may refer to any entity engaged in commercial activity. In the case of a large multinational corporation the myriad subsidiaries, the complex network of ownership and shareholdings and the organisation for management purposes of the group's activities into separate operational or functional divisions and/or geographical areas not necessarily corresponding to its corporate structure, may give rise to complications. The Court of First Instance has found that 'Article 81(1) of the Treaty is aimed at economic units which consist of a unitary organisation 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' ⁽⁹²⁾.
- (238) Furthermore, while the subject of the competition rules are undertakings, enforcement of the rules and the imposition and collection of any penalty require the identification of a specific legal person responsible for the conduct of that undertaking and to which the proceedings can be addressed.
- (239) As the Court of First Instance observed in Case T-6/89 *Enichem Anic v Commission* ⁽⁹³⁾, where between the commission of the infringement and the time the person responsible for the operation of that undertaking has ceased to exist in law, it is necessary first to find the combination of physical and human elements which contributed to the commission of the infringement, and then to identify the person now responsible for their operation.
- (240) The legal or corporate person on which the fine is imposed may therefore be different from that which existed at the time of the commission of the infringement.
- (241) In the case of Rhône-Poulenc, as indicated under recitals 10 to 17, its full merger with Hoechst to form Aventis means that responsibility passes to the new entity. There is an obvious continuity between Rhône-Poulenc and the new entity into which it has been subsumed. Rhône-Poulenc ceased to exist in law and its legal personality as well as all its physical and human elements were transferred to Aventis SA.
- (242) Apart from the succession of liability between Rhône-Poulenc and Aventis (discussed above), the issue of attribution of liability to the subsidiary or to its parent company must also be discussed. The Commission addressed its statement of objections to both Aventis SA and AAN.
- (243) In this respect, Aventis SA is of the opinion that the final decision should exclusively be addressed to its subsidiary AAN, formerly RPAN. In support thereof, Aventis argues ⁽⁹⁴⁾ that AAN and its subsidiaries form a self-sustained subgroup of the Rhône-Poulenc (now Aventis) group, in which the involvement of the ultimate parent company Aventis SA is confined to exercising the supervisory functions customary for majority shareholders; that addressing the Decision to AAN would avoid unnecessarily jeopardising the reputation of Hoechst AG (with which Rhône-Poulenc merged in December 1999) and Aventis SA (the ultimate parent company of the merged entity); that where within a group of companies the business responsibility for a certain business is so clearly allocated to, and taken care of by, one defined subgroup, there can be no right to choose whether the decision of the Commission is addressed to the parent company or to the affiliated companies responsible within a group; and, finally, that Aventis SA informed the Commission that the addressee should have been AAN soon after receiving the statement of objections, and thus, Aventis SA claims that it did not present itself as the correct addressee during the entire proceedings.
- (244) RPAN (now AAN) was the entity within Rhône-Poulenc responsible for the methionine business during the entire period of the infringement. Its direct participation in the cartel is established by the facts and is not contested. The Commission considers however that both RPAN (now AAN) and Rhône-Poulenc (now Aventis) may be held responsible for the conduct throughout the infringement period. Besides being RPAN's sole shareholder throughout the whole of the infringement period (see recitals 230 and 231), Rhône-Poulenc SA (and later Aventis SA) was the Commission's sole interlocutor during the administrative proceedings (submitting two statements), having itself spontaneously approached the Commission on a voluntary basis before receiving the statement of objections. At no point did the undertaking deny its awareness of the cartels in which RPAN was directly involved, and at no point prior to receiving the statement of objections did it contest the imputation of the infringement.

- (245) Moreover, Aventis' legal representatives represented both Aventis SA and AAN throughout the entire proceedings. Indeed, on 21 December 2001 the legal counsel of Aventis SA and Aventis Animal Nutrition SA informed the Commission that they would submit a single response to the Commission's statements of objections on behalf of both companies
- (246) It should also be noted that RPAN was directly attached to the Plant and Animal Health Division of Rhône-Poulenc (now Aventis Agriculture), a wholly-owned subsidiary, directly reporting to it. In its turn, the Plant and Animal Health Division of Rhône-Poulenc followed instructions from Rhône-Poulenc, the ultimate parent company responsible for the management of the group: its []*, []* (who later moved to Aventis Agriculture) is also a member of the Executive Committee of Rhône-Poulenc (now Aventis).
- (247) On the basis of the above, the Commission finds that Aventis SA (formerly Rhône-Poulenc) can likewise be held responsible for the conduct of its subsidiary throughout the infringement period. Under the circumstances of this case, it appears appropriate to address the decision both to AAN and Aventis SA. They should be held jointly and severally liable for any fine.
- (248) In the case of Degussa, the only issue is the succession of liability. Until its merger with Hüls AG in 1998 to form Degussa-Hüls AG, the company directly involved in the cartel arrangements was Degussa AG (Frankfurt am Main). Through a full merger with Hüls, Degussa AG (Frankfurt am Main) ceased to exist in law and its responsibilities and activities were transferred to the new entity Degussa-Hüls AG. The subsequent merger between Degussa-Hüls and SKW Trostberg AG to form Degussa AG (Düsseldorf) in 2001 meant that responsibility passed to the new entity into which it has been subsumed. The decision will therefore be addressed to Degussa AG.
- (249) In this respect, Degussa submits that the Commission, when calculating the fine, should only take into account the economic size of the 'old' Degussa AG (Frankfurt am Main) given that the subsequent mergers did not change its position on the methionine market. The actual impact on the relevant market of the undertakings concerned in consideration of their economic size is dealt with under recital 297 et seq.
- (250) It is an established fact that Nippon Soda directly and autonomously participated in the cartel. Consequently the group as a whole bears responsibility for the infringement and is therefore an addressee of this Decision.
- (251) Although bilateral contacts between methionine producers did take place before the initial multilateral meeting, the Commission will in this case limit its assessment under Article 81 of the EC Treaty and Article 53 of the EEA Agreement as well as the application of any fines to the period from February 1986 onward when the first known multilateral cartel meeting was held. (see recitals 82 to 85).
- (252) As the documentation and information provided by Nippon Soda demonstrates, it was at this first multilateral cartel meeting that the participants agreed at divisional level to fix quotas, set prices and hold regular meetings at both 'summit' and 'staff' level.
- (253) Rhône-Poulenc, Degussa and Nippon Soda participated in that agreement. Rhône-Poulenc confirms, albeit with less precision than Nippon Soda, that the cartel must have come into being around the mid-1980s (Rhône-Poulenc speaks of 1985). Given the detailed statement and contemporaneous documents provided by Nippon Soda on the operation of the cartel during the 1980s, the Commission can pinpoint the birth of the cartel in February 1986 (see recitals 82 to 85). Degussa claims that it did not participate in the infringement until mid-1992. It admits just two meetings prior to that and claims that they were unrelated to the 'summit' meetings (see recitals 124 to 125). The Commission cannot accept this version of events. It is clearly established in the factual part of this Decision that Degussa was actually involved in the infringement from early 1986 (see, *inter alia*, recitals 82 to 89 and 96 to 121).
- (254) Note that, in so far as it affected Austria, Finland, Norway and Sweden, the cartel does not constitute an infringement of competition rules before the entry into force of the EEA Agreement on 1 January 1994.
- (255) Though the original cartel meetings ('summit' meetings held once or twice per year) ceased in their original form by the end of 1988 (after one member had announced that it was quitting the arrangements), the evidence in the Commission's file clearly shows that not only did the remaining parties never manifest any intention of terminating the arrangements, but that the operation of the cartel continued unabated until February 1999, contrary to what Degussa and Aventis have submitted.
- (256) As established in the factual part of this Decision, the change in situation caused by one member quitting the arrangements and the arrival on the market of Monsanto with its analogue liquid product may have required the remaining parties to adapt their collusion, but the basic structure of the scheme continued and indeed evolved to meet the changing conditions. This does not constitute the formation of a new cartel but simply reflects the organic development of a complex scheme of collusion.

D. DURATION OF THE INFRINGEMENT

- (251) Although bilateral contacts between methionine producers did take place before the initial multilateral meeting,

(257) The cartel continued until February 1999. Even though the trilateral meetings between Degussa, Rhône-Poulenc and Nippon Soda may have ended in mid-1998, contacts did not end (assuming they have ended) until February 1999 (meeting of 4 February 1999 in Nancy).

(258) Degussa argues that the Commission should consider the meeting in Copenhagen in 1997 as the last date for the infringement as far as Degussa is concerned. Moreover, in its reply to the statement of objections, Degussa alleges that the Commission has failed to specify just how long it considers Degussa to have been involved in the cartel. It understands that the Commission alleges Degussa to have participated until mid-1998.

(259) The Commission must dismiss these arguments. First, the Commission has clearly indicated in points 61 and 99 of its statement of objections (German version) that it considers Degussa to have participated in the infringement until February 1999. It cannot therefore claim that its rights of defence would be infringed if the Commission were to consider Degussa to have participated in the cartel beyond mid-1998. Secondly, the Commission has sufficiently demonstrated that Degussa actually continued to participate right up to the presumed end of the cartel in February 1999 (see recitals 182 to 185).

E. REMEDIES

1. ARTICLE 3 OF REGULATION No 17

(260) Where the Commission finds there is an infringement of Article 81(1) of the EC Treaty or Article 53(1) of the EEA Agreement, it may require the undertakings concerned to bring such infringement to an end in accordance with Article 3 of Regulation No 17⁽⁹⁵⁾.

(261) In this circumstance, the Commission stated in its statement of objections that it was not possible to declare with absolute certainty that the infringement has ceased.

(262) In its reply to the statement of objections, Aventis emphasises that it has satisfied itself of the complete termination of AAN's involvement in any illegal methionine agreements since the beginning of February 1999, a few months before it approached the Commission to disclose the methionine cartel. Nippon Soda pointed out that it put an end to its participation in February 1999. Degussa claims that it ended its participation in 1997.

(263) Notwithstanding these observations, and for the avoidance of doubt, it is necessary to require the undertak-

ings that remain active in the methionine market and to which this Decision is addressed to bring the infringement to an end, if they have not already done so, and henceforth to refrain from any agreement, concerted practice or decision of an association which might have the same or similar object of effect.

2. ARTICLE 15(2) OF REGULATION No 17

GENERAL CONSIDERATIONS

(264) Under Article 15(2) of Regulation No 17, the Commission may by decision impose upon undertakings fines from one thousand to one million euro, or a sum in excess thereof not exceeding 10 % of the turnover in the preceding business year of each of the undertakings participating in the infringement where, either intentionally or negligently, they infringe Article 81(1) of the EC Treaty and/or Article 53(1) of the EEA Agreement.

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

(266) The role played by each undertaking party to the infringement will be assessed on an individual basis. In particular, the Commission will reflect in the fine imposed any aggravating or attenuating circumstances and will apply, as appropriate, the Notice on the non-imposition or reduction of fines in cartel cases⁽⁹⁶⁾.

(267) In assessing the gravity of the infringement, the Commission will take account of its nature, its actual impact on the market, where this can be measured, and the size of the relevant market. The role played by each undertaking party to the infringement will be assessed on an individual basis.

THE AMOUNT OF THE FINE

(268) The cartel constituted a deliberate infringement of Articles 81(1) EC and 53(1) EEA: with full knowledge of the restrictive character of their actions and, moreover, of their illegality, leading producers of methionine combined to set up a secret and institutionalised system designed to restrict competition in a significant industrial sector.

1. *The basic amount*

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

Gravity

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

Nature of the infringement

- (271) It follows from the facts set out above that this infringement consisted of market-sharing and price-fixing practices, which are by their very nature the worst kind of violations of Article 81(1) of the EC Treaty and 53(1) of the EEA Agreement.
- (272) The cartel arrangements involved major operators in the EEA and were conceived, directed and encouraged at high levels in each participating company⁽⁹⁷⁾. By its very nature, the implementation of a cartel agreement of the type described leads automatically to an important distortion of competition, which is of exclusive benefit to producers participating in the cartel and is highly detrimental to customers and, ultimately, to the general public.
- (273) The Commission therefore considers that this infringement constituted by its nature a very serious infringement of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement.
- (274) Nippon Soda argues that the Commission has not sufficiently demonstrated the real gravity of the infringement in assessing the nature of the infringement (and for the purpose of the assessment of any fine), although it does not contest that the infringement of Article 81(1) EC and Article 53(1) EEA is established. In this respect, Nippon Soda submits that the cartel not only lacked the ability (and in particular the demonstrated ability) to exert any meaningful influence on the European market but was singularly ineffective. In Nippon Soda's view, the Commission's documents show that those attending the meetings had little or no ability to control the market in the manner one would expect of an effective cartel.
- (275) The Commission rejects this approach. Firstly, it is demonstrated (see recitals 276 to 291) that the infringement had an impact on the EEA methionine market. Secondly, the fact that the cartel did not achieve all the results desired by its members in no way proves that the cartel had no effect on the market. It is clear that price-fixing and market-sharing cartels by nature jeopardise the proper functioning of the single market. What

matters is that the normal competitive pattern that would have governed the single market for methionine was replaced by a system of collusion concerning the price of the product, the essential component of competition. As such, the infringement of Article 81(1) EC and 53(1) EEA is considered to be very serious.

The actual impact of the infringement on the methionine market in the EEA

- (276) The infringement was committed by undertakings which during the material period held the lion's share⁽⁹⁸⁾ of the world and European markets for methionine. Moreover, the arrangements were specifically aimed at raising prices higher than they would otherwise have been and restricting the quantities sold. Given that these arrangements were implemented, they had a material impact on the market.
- (277) There is no need to quantify in detail the extent to which prices differed from those which might have been applied in the absence of these arrangements. Indeed, this cannot always be measured in a reliable manner, since a number of external factors may simultaneously have affected trends in the price of the product, so making it extremely difficult to draw conclusions on the relative importance of all possible causal effects.
- (278) The cartel agreements were, however, implemented. Throughout the duration of the cartel, the parties would exchange their sales figures and, on the basis of those figures, as Degussa confirms in its reply to the Commission's statement of objections, the parties would agree new target prices (see recitals 88, 128, 130, 139, 150 and 154). The exchange of these sales figures and market shares was instrumental in the sustained pressure put on the prices and so constituted a crucial element of the cartel. In practice, the new target prices were effectively announced to customers, usually through the specialised press (see recitals 88, 136, 157 and 167). The parties would closely monitor the implementation of their agreements by organising regular multilateral and bilateral meetings among them. At these meetings, the parties would exchange their sales figures, discuss market prices (thus enabling the parties to monitor whether the agreed target prices were being met) and, if necessary, agree to adjust the target prices (see, for instance, recitals 88, 128, 130, 139, 150 and 154).
- (279) Whereas during the earlier years of the cartel, the parties (which controlled virtually all methionine production) were able to focus on increasing methionine prices (see recitals 98, 103, 106, 112, 128, 136 and 137), this became increasingly difficult when Monsanto (Novus) entered the market. When prices began falling significantly under the combined effects of Monsanto's

arrival on the methionine market and a general fall in demand (Rhône-Poulenc speaks of 30 % by the summer and Autumn of 1989), the cartel members nevertheless managed to reverse this downward trend through their combined efforts: prices were successfully increased between July 1990 until 1992 to 1993. Thereafter, their efforts were focused on maintaining the existing prices (see for instance recitals 137, 152, 153 and 160).

(280) This is confirmed by a note submitted by Nippon Soda in relation with a meeting held on 17 May 1993⁽⁹⁹⁾, in which it is shown that prices in the methionine market were rising. Degussa managed to sell methionine at a price of 6,80 DEM/kg to one of its larger customers, CEBECO. Prior to the meeting of 7 November 1990, prices had still been at 2,50 USD/kg (4,03 DEM/kg⁽¹⁰⁰⁾). As shown in recital 112, the cartel members agreed at their November 1990 meeting to increase prices from 2,50 USD/kg to 2,80 USD/kg (4,51 DEM/kg⁽¹⁰¹⁾). Nippon Soda quotes higher dollar prices: the first increase in January (1991) was supposed to push the dollar price up to 3,30 to 3,50 USD/kg (equivalent to 5,10 DEM/kg, according to Nippon Soda's own information; 5,31-5,64 DEM/kg on the basis of Eurostat figures⁽¹⁰²⁾) and the second up to 3,60-3,70 USD/kg (5,80-5,92 DEM/kg⁽¹⁰³⁾).

(281) In view of the above and the effort invested by each participant in the complex organisation of the cartel, there is no doubt that the anti-competitive agreement was implemented throughout the material period of the infringement. Such continuous implementation over a period of more than 10 years ought to have had an impact on the market. That this was indeed the case is shown in recitals 279 and 280.

(282) Nippon Soda submits that its ability to cause significant damage to other operators or consumers in any market within the Commission's jurisdiction is virtually nil because it has no sales of its own in the EEA and played only a passive role in the cartel. Nippon Soda sells its methionine to Mitsui in Japan, which then sells the product in the EEA, where it has an estimated market share of only []*. In addition, Nippon Soda submits that the cartel itself was singularly ineffective (see recitals 274 and 275). According to Nippon Soda, the evidence in the Commission's file demonstrates that the participants had only a limited ability to influence the market. Indeed, Nippon Soda submits that in practice, the producers had neither the ability nor the will actually to fix the market price, regardless of the discussions at their meetings. In support of its arguments, Nippon Soda cites the Commission's own evidence for the 1992 to 1993 period, which shows that prices routinely fell below the target price of 6,20 DEM/kg.

(283) Moreover, the members of the alleged cartel appeared to 'cheat' to such a degree that the meetings gradually lost their 'raison d'être', degenerating into social occasions before ceasing altogether. While Nippon Soda agrees that none of these factors would necessarily exonerate

a company from a finding that it had breached Article 81(1) of the Treaty, each of them is apposite to, and in Nippon Soda's submission, determinative of, any finding that the Commission may make regarding the 'gravity' of any infringement that Nippon Soda is found to have committed.

(284) In its reply to the statement of objections, Degussa draws the same conclusions, emphasising that the infringement was confined to setting target prices. According to Degussa, there was never any agreement on a mechanism to implement price increases or to allocate quotas, volumes or clients. Nor was there a control mechanism involving a compensation system to monitor the implementation of the agreement.

(285) In fact, according to Degussa, the evidence shows that, in spite of the meetings between Rhône-Poulenc, Nippon Soda and Degussa, prices fell continuously (5 DEM/kg by the summer of 1994).

(286) Degussa submits that the cartel was also ineffective because Novus (with an EEA-wide market share of []*) did not participate in the agreements. For the same reason, the participants would never have been able to implement price increases or a volume allocation scheme. Consequently, according to Degussa, the infringement had only an 'insignificant' impact on the EEA market.

(287) None of the arguments used by the parties to minimise the Commission's finding that the cartel had an actual effect on the market is conclusive. The explanations for the failure to achieve the target prices (in particular as from 1992 to 1993), may have some validity, but they do not demonstrate in a convincing manner that the implementation of the cartel agreement could not have played a role in the setting and fluctuation of prices on the methionine market. Indeed, given that the parties had replaced the uncertain situation of free competition with continuous collusion, prices were necessarily established at a level different to that which would have prevailed in a competitive market.

(288) The fact, highlighted by Nippon Soda and Degussa, that, for all the cartel's efforts, methionine prices diminished over time, certainly illustrates the difficulties encountered by the parties in increasing prices in a difficult market situation. It does not, however, demonstrate that the illegal practice had no effect on the market, nor does it demonstrate that prices were not kept above a competitive level.

(289) On the contrary, when examining the combined efforts of the cartel members (see recital 278 et seq.), it can reasonably be concluded that during the entire period of the cartel, including after 1992 to 1993, the cartel members managed to maintain prices at a level higher than they would have been without the illicit arrangements.

- (290) As discussed under recital 275, the fact that the results sought by the cartel participants were not entirely achieved in no way proves that the cartel did not affect the market. Moreover, it is inconceivable, given, *inter alia*, the risks involved, that the parties would repeatedly have agreed to meet in locations across the world to set target prices over the period of the infringement if they had perceived the cartel as having little or no impact on the methionine market.
- (291) In its reply to the statement of objections, Degussa submits that the Commission's own evidence supports its claim that Degussa and Rhône-Poulenc acted completely autonomously on the market between 1989 and 1990 (see recitals 101 and 102). This argument cannot, however, be followed. Not only does the Commission have ample evidence showing that Rhône-Poulenc and Degussa actually continued to take part in the infringement between 1989 and 1991 (see recitals 95 to 125), but the fact that Rhône-Poulenc and Degussa may well have had 'hidden agendas' causing them to disregard to some extent the commitments made towards the other cartel participants does not imply that they did not implement the cartel agreement. As the Court of First Instance held in the Cascades case, 'an undertaking which, despite colluding with its competitors follows a more or less independent policy on the market may simply be trying to exploit the cartel for its own benefit' ⁽¹⁰⁴⁾.

The size of the relevant geographic market

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

Conclusion of the Commission on the gravity of the infringement

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

Classification of cartel participants

- (294) Within the category of very serious infringements, the proposed scale of likely fines makes it possible to apply differential treatment to undertakings in order to take

account of the effective economic capacity of the offenders to cause significant damage to competition and to set the fine at a level which ensures it has sufficient deterrent effect. This seems particularly necessary where, as in this case, there is considerable disparity in the size of the undertakings participating in the infringement.

- (295) In the circumstances of this case, which involves several undertakings, it will be necessary, when setting the basic amount of the fines, to take account of the specific weight, and therefore the real impact on competition, of each undertaking's offending conduct.
- (296) For this purpose the undertakings concerned can be divided into different categories according to their relative importance in the market concerned, subject to adjustment where appropriate to take account of other factors and especially the need to ensure effective deterrence.
- (297) As a basis for comparison of the relative importance of the undertakings in the market concerned, the Commission considers it appropriate in this case to take their respective shares of the world market for the product. Given the global character of the market, these figures provide the most suitable picture of the participating undertakings' capacity to cause significant damage to other operators in the common market and/or the EEA. Moreover, the world 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. The comparison is based on shares of the world market for the product in the last full calendar year of the infringement (year 1998).
- (298) Rhône-Poulenc and Degussa were among the three major producers of methionine in the relevant geographic market. In 1998 their estimated shares of the world market were []* and []* respectively.
- (299) Nippon Soda was a smaller player on the world methionine market. In 1998 its estimated market share was []*, almost four times smaller than that of Rhône-Poulenc, the next smallest player.
- (300) As far as the EEA is concerned, Rhône-Poulenc's market share in 1998 was some []* and Degussa's some []*. Nippon Soda, however, accounted for only about []* of the EEA market for methionine (in its reply to the Commission's statement of objections, Nippon Soda estimates its EEA share at []*).
- (301) Rhône-Poulenc and Degussa will therefore constitute a first category. Nippon Soda will constitute a second category.

(302) On the basis of the above, the Commission sets the basic amounts of the fines determined for gravity as follows:

- Aventis SA/AAN and Degussa: EUR 35 million,
- Nippon Soda: EUR 8 million.

Sufficient deterrence

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

(304) With respective worldwide turnovers of []* and []* in 2000, Aventis and Degussa are much larger players than Nippon Soda (worldwide turnover of []* (2000)). In this respect, the Commission considers that the appropriate starting point for a fine resulting from the criterion of the relative importance in the market concerned requires further upward adjustment to take account of the size and overall resources of Aventis and Degussa respectively.

(305) On the basis of the above, the Commission considers that the need for deterrence requires that the starting point for their fine determined under recital 302 should be increased by 100 % (x2) to EUR 70 million as regards Degussa and Aventis SA.

Duration of the infringement

(306) The Commission considers that Aventis, Degussa and Nippon Soda have infringed Article 81(1) of the Treaty from February 1986 until February 1999 and Article 53(1) of the EEA Agreement from 1 January 1994 until February 1999.

(307) Although Nippon Soda does not contest the duration of the infringement itself, it avers that the duration to be taken into account for the purpose of determining the fine can not be 13 years. In support of its argument it submits that the meetings changed in nature and composition over the years and gradually 'petered out'; that the Commission has adduced little or no evidence in respect of certain periods of time; and that the Commission has received and acknowledged evidence that certain activities ceased very early on in the 13-year period.

(308) In its reply to the statement of objections, Nippon Soda submits that, although the Fines Notice indicates that an infringement of 'long duration' may merit an increase of 10 % per annum, this does not mean that every infringement should be subject to such a 'per year'

increase. Secondly, the purpose of looking at duration separately is to permit penalties to be imposed for restrictions 'which have had a harmful impact on consumers over a long period'. As discussed earlier under 'Gravity', Nippon Soda claims that the actual impact on consumers has not been demonstrated. Thirdly, Nippon Soda submits that it would be wrong, when considering fines, to regard the duration as being the period between the first and last element of a complex infringement without assessing what occurred between.

(309) For its part, Aventis does not substantially contest the duration of the infringement in its reply to the Commission's statement of objections, although it casts some doubts on the credibility of Nippon Soda's information on the starting date of the infringement, in particular regarding the meeting of February 1986. As mentioned earlier, it submits in this context that the fact that it did not have more detailed information concerning the contacts in the 1980s should not be construed as an effort to conceal these contacts, but rather that, as it is to be expected, the recollections and records were more complete in the 1990s. The initiation and duration of the cartel arrangements have been established under recitals 82 to 86 and 251 to 259. Lastly, Degussa firmly contests the duration of the infringement, only admitting its participation in the infringement between 1992 and 1997. The duration of Degussa's participation in the cartel is discussed under recitals 251 to 259).

(310) The Commission must dismiss Nippon Soda's arguments. Once it has established the existence and the duration of the infringement of Article 81(1) of the EC Treaty, the Commission should take into account, when determining the fine, the entire duration of the infringement. As the Court of Justice (upholding the judgment of the Court of First Instance) has pointed out in Case C-49/92P *Commission v Anic Partecipazioni SpA*, a complex cartel may properly be viewed as a single continuing infringement for the time frame in which it existed, even though 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 EC Treaty. The infringement can therefore rightly be considered as having existed between February 1986 and February 1999.

(311) The Commission therefore concludes that Aventis, Degussa and Nippon Soda have committed the infringement for 12 years and 10 months. The starting amounts of the fines determined for gravity (see recitals 302 and 311) are therefore increased by 10 % per year (and 5 % per six months), i.e. by 125 %.

Conclusion on the basic amounts

(312) The Commission accordingly sets the basic amounts of the fines as follows:

- Aventis SA/AAN: EUR 157,5 million,
- Degussa AG: EUR 157,5 million,
- Nippon Soda Company Ltd: EUR 18 million.

2. Aggravating circumstances

Role of leader in the infringement

- (313) The Commission is in the possession of elements indicating that certain of the addressees of this Decision took initiatives to launch the cartel.
- (314) As mentioned in recitals 82 to 84, Rhône-Poulenc and Degussa first contacted their Japanese counterparts to set up anti-competitive price arrangements in the methionine market and to limit Japanese imports into the EEA. Rhône-Poulenc's recollection of the 1990 meetings is that, together with Degussa, it agreed to 'bring Nippon Soda into the scheme' (see recital 110).
- (315) On the other hand, if one considers the totality of the evidence in this case, as described under the factual part of this present Decision, the picture is that of a joint-initiative cartel. All cartel members have been identified as participating in most of the cartel meetings and taking turns organising the meetings concerned. They all participated actively and directly in the infringement, exchanging their sales figures and reviewing and discussing the target prices.
- (316) Aventis further submits that RPAN has neither compelled another company to take part in the cartel nor acted as an instigator or leader. It submits that Nippon Soda played a very active role in the cartel and that Degussa itself often acted as a leader in the cartel ⁽¹⁰⁵⁾.
- (317) Degussa submits that it should not be considered to have played a more active role in the cartel than Rhône-Poulenc or Nippon Soda. Where it was stated in the statement of objections that the 1987 meeting was chaired by Degussa in Frankfurt, Degussa submits that its role was limited to providing a meeting room and introducing the individual participants. When Rhône-Poulenc states that []* of Degussa organised a meeting with Nippon Soda in Hong Kong, it should be understood that she only contacted Nippon Soda after a joint decision by Degussa and Rhône-Poulenc, which led eventually to a meeting being organised in Hong Kong. Finally, the Commission should take into account the fact that its activities during 1991 and 1994 are highlighted because of the fact that most information

relating to this period is based on the notes that were made by []* of Degussa.

(318) In the light of the above, the Commission considers that no specific ringleader can be identified.

3. Attenuating circumstances

Exclusively passive role in the infringement

- (319) Nippon Soda states in its reply that, in so far as discussions concerned the EEA, it always played a passive role in the infringement. It submits that its small market share of the world and EEA methionine market (on which, moreover, it is present only through Mitsui) meant that the European producers acted as natural leaders in matters relevant to the European markets. []*.
- (320) The effective economic capacity of the undertakings to influence the EEA market on the basis of their economic size has been taken into account in the calculation of the basic fine (see recitals 294 to 302).
- (321) The Commission has no reason to consider that Nippon Soda played a passive, 'follow-my-leader' role in the infringement. Nippon Soda participated in the vast majority of the cartel meetings identified and took part directly and actively in the infringement. Indeed, Nippon Soda took part in the meetings and exchanged sales information throughout its participation. Nippon Soda cannot therefore claim to have played a purely 'passive' role ⁽¹⁰⁶⁾.
- (322) Nippon Soda's own background paper of 5 May 1990 ⁽¹⁰⁷⁾, for instance, clearly indicates that in 1989, 'Nippon Soda and Rhône-Poulenc had tried to persuade Degussa not to match the low prices then being offered by Monsanto and Sumitomo', thus actively intervening to give direction to the cartel's operations.
- (323) The Commission therefore concludes that Nippon Soda is not entitled to benefit from a reduction in fine on the basis of an allegedly purely passive role in the cartel.
- (324) Finally, the fact that Nippon Soda was a small player in the methionine market does not relieve it of its own corporate responsibility. In particular, Nippon Soda could have reported the cartel to the Commission.

Non-implementation in practice of the offending agreements

- (325) As discussed in recitals 278 to 281 the Commission considers that the anti-competitive agreements were carefully implemented. This attenuating circumstance is not therefore applicable to any of the addressees of this Decision.

Other attenuating circumstances

- (326) As discussed before (see recitals 282 to 287), Nippon Soda and Degussa have submitted that the Commission should take the view that the arrangements only had an 'insignificant' impact on the EEA market. Both Nippon Soda and Degussa point out that despite the cartel arrangements, prices kept falling below the agreed target prices. Both Degussa and Nippon Soda have also submitted that the participants were not always willing to implement the agreements.
- (327) The Commission considers that the infringement had a material impact on the EEA market, as has been discussed under recitals 276 to 291. The Commission firstly notes that the implementation of agreements on target prices does not necessarily require that these exact prices be applied. The regular failure to apply the agreed price targets does not necessarily constitute an attenuating circumstance. The agreements can be held to be implemented when the parties fix their prices in order to move them in the direction of the target agreed upon. This was the case for the cartel affecting the methionine market.
- (328) Secondly, although already discussed under recital 291, the Commission stresses once again that the fact that an undertaking which has been proved to have participated in collusion on prices with its competitors did not behave at all times 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. As stated earlier, an undertaking which despite colluding with its competitors follows a more or less independent policy on the market may simply be trying to exploit the cartel for its own benefit⁽¹⁰⁸⁾.
- (329) As for Nippon Soda's claim (see recital 282) that its participation in the cartel arrangements could not have caused more than an insignificant impact on any market within the Commission's jurisdiction, given that it does not itself sell methionine in the EEA, the Commission points out that the mere fact that Nippon Soda sells in the EEA through an independent distributor cannot in itself constitute an attenuating circumstance. As far as Nippon Soda is concerned, it has not only been demonstrated that it actively participated in the cartel arrangements during the entire period of the cartel (see recitals 319 to 324), but also that the infringement had an actual impact on the market (see recitals 276 to 291). As mentioned before, the Commission has duly taken into account the fact that Nippon Soda's economic size in comparison to the other cartel members meant that its effective economic capacity to influence the EEA market was smaller (see recitals 294 to 302).
- (330) Degussa also points out that it has taken measures to prevent any future infringement of anti-trust rules. In this context, it has adopted a compliance programme. The Commission welcomes the fact that Degussa has set

up an antitrust law compliance policy. It nevertheless considers that this initiative came too late and cannot, as a prevention tool, dispense the Commission from its duty to penalise an infringement of the competition rules committed by Degussa in the past. In the light of the above, the Commission will not consider the adoption by Degussa of a compliance programme as an attenuating circumstance justifying a reduction in fine.

- (331) The Commission therefore concludes that there are no attenuating circumstances applicable to the participants in this infringement affecting the methionine market.

4. Application of the Commission's Leniency Notice

- (332) The addressees of this Decision have cooperated with the Commission at different stages of the investigation into the infringement for the purpose of obtaining the favourable treatment set out in the Commission's Leniency Notice. In order to meet the legitimate expectations of the undertakings concerned as to the non-imposition or reduction of the fines on the basis of their cooperation, the Commission examines in the following section whether the parties concerned satisfied the conditions set out in the Leniency Notice.

Non-imposition of a fine or a very substantial reduction of its amount ('Section B')

- (333) Aventis submits that it meets the conditions set out in the Commission Leniency Notice in order to obtain a reduction of at least 75 % of the fine or even an exemption from the fine that would otherwise have been imposed.
- (334) Aventis (AAN) points out that it was the first producer to take the initiative of informing the Commission of the existence of the methionine cartel and its involvement in it and that it was the first producer to adduce decisive evidence without which, according to Aventis, the cartel might not have been disclosed. Furthermore, Aventis submits that RPAN had already ended its involvement in the cartel when it informed the Commission about the existence of the cartel in May 1999.
- (335) Aventis further submits that it has continuously cooperated with the Commission and provided all the information in its possession. In addition, Aventis submits that it has neither compelled another company to take part in the cartel nor acted as an instigator or leader, contrary to the statements made by Nippon Soda.
- (336) Furthermore, Aventis (Rhône-Poulenc's successor)⁽¹⁰⁹⁾ contests any explicit or tacit suggestion in the statement of objections that Rhône-Poulenc tried to conceal or minimise the contacts between the producers in the 1980s. On the contrary, Aventis submits, the beginning and the end of the contacts between the methionine producers would not have been disclosed had it not been for Rhône-Poulenc, which was the only one to

describe the last three meetings from the month of May 1998 to February 1999. Aventis claims that it was aware, when denouncing the cartel, that the cartel would be considered as an infringement of long duration, i.e. more than five years, and that this factor could result in a significant increase in the amount of fine. Finally, according to Aventis, the Commission should consider that AAN has not participated in any previous infringement of the same type.

(337) Aventis also points out that in cartels like the methionine cartel, the Leniency Notice should be most effectively applied: if the Commission does not grant exemption from a fine to the first party informing it about the illegal practices in a cartel like the methionine cartel, the leniency policy of the Commission will not produce the desired effect of inciting companies to denounce a cartel.

(338) The Commission accepts that Aventis was the first undertaking to submit decisive evidence on the existence of an international cartel affecting the EEA in the methionine industry. That information was provided in a statement submitted by Rhône-Poulenc on 26 May 1999 after which the Commission carried out an investigation at the premises of Degussa-Hüls. Aventis therefore fulfils the conditions set out in Section B of the Leniency Notice.

(339) The Commission notes that Rhône-Poulenc was not in a position to supply any documentary evidence of the violation on the grounds that RPAN employees either did not create or did not keep any relevant documents. The Commission also notes that the statement was not comprehensive as to the operation of the cartel during the 1980s. At first, on the basis of the information at its disposal, Aventis even considered that these arrangements 'did not constitute an organised effort to reach agreements to fix prices or rig the market and that they had been discontinued in 1987 or 1988'. The Commission acknowledges however that this could be explained by an incomplete recollection of events, as submitted by Aventis/AAN. Lastly, the Commission notes that Aventis did not substantially contest the facts described in the Commission's statement of objections. The Commission will take into account all of these elements when determining the amount of the reduction in fine.

(340) The Commission accordingly grants Aventis a 100 % reduction of the fine that would otherwise have been imposed if it had not cooperated with the Commission.

(341) Nippon Soda submits that the information it provided on the infringement prior to 1990 means that Nippon Soda should be considered to meet all the terms set out in categories B or C of the Leniency Notice. Nippon Soda argues that if the Commission were to find that

Nippon Soda's evidence of the pre-1990 infringements does not meet the conditions set out in B or C of the Leniency Notice, it would not be giving Nippon Soda due credit for its contributions made by in respect of this period. Nippon Soda therefore requests the Commission to utilise its discretion to acknowledge and reward the value added by Nippon Soda in respect of the pre-1990 period by granting a reduction greater than that provided for in the Leniency Notice.

(342) Neither Nippon Soda or Degussa were the first to provide the Commission with decisive information on the methionine cartel, as required under point (b) of section B of the Leniency Notice. Nor do they meet the condition set out under point (a) of section B.

Substantial reduction in a fine ('Section C')

(343) Nippon Soda or Degussa were not the first to provide the Commission with decisive information on the methionine cartel, as required under point (a) of section C of the Leniency Notice. Accordingly, neither of the above undertakings meets the conditions as set out in section C.

Significant reduction of a fine

(344) With regard to the period after 1990, Nippon Soda submits that it meets and exceeds all of the conditions set out in category D of the Leniency Notice. It should therefore be allowed the maximum level of leniency available under category D of the Leniency Notice in respect of the post 1990 period, i.e. 50 %. However, Nippon Soda argues that its cooperation in this case has enabled the Commission to present a case in respect of the post-1990 period that is much sounder and well documented than would otherwise have been possible. Nippon Soda therefore believes that the Commission should use its discretion to grant a higher level of leniency in relation to this period. Finally, Nippon Soda also submits that it should be granted a reduction in its fine for not having contested any of the facts contained in the statement of objections.

(345) The Commission accepts that Nippon Soda provided information which contributed materially to establishing the facts relating to the existence of the cartel arrangements prior to 1990. However, as mentioned above, Nippon Soda cannot benefit from either categories B or C of the Leniency Notice because it was not the first to adduce decisive evidence as required under point (b) of section B and point (a) of section C ⁽¹¹⁰⁾.

(346) The Commission concludes that Nippon Soda fulfils the conditions set out in the first and second indent of section D(2) of the Leniency Notice.

- (347) The information provided by Nippon Soda was detailed and therefore extensively used by the Commission in the pursuit of its investigation. Nippon Soda provided valuable information on the background, origin and operation of the cartel. As mentioned above, the Commission considers that the information provided by Nippon Soda in relation to the period prior to 1990 contributed materially to establishing the existence of the cartel arrangements between 1986 and 1990. The Commission also acknowledges the fact that Nippon Soda has not contested the facts as set out in the statement of objections. In order to take full account of the value of the information provided concerning the cartel arrangements prior to 1990 and other aspects of Nippon Soda's contribution to the investigation (including not contesting the facts), the Commission will grant it a 50 % reduction in the fine that would have been imposed had it not cooperated with the Commission.
- (348) For its part, Degussa submits that it has cooperated extensively with the Commission during its investigation, providing valuable information on the operation of the cartel between 1992 and 1997, thereby significantly exceeding its legal obligation to reply to the Commission's request for information. Degussa claims it has assisted the Commission in clarifying, classifying and putting the documents into the right context, enabling the Commission to demonstrate the functioning of the cartel between 1992 and 1997. Consequently, Degussa submits that it qualifies for a significant reduction in fine.
- (349) The Commission notes, however, that the information provided by Degussa was either found during the investigation carried out at the premises of Degussa-Hüls of 16 June 1999 or provided by Degussa in reply to the Commission's request for information of 28 July 1999.
- (350) In this respect, Degussa submits that the Commission, in its statement of objections, has wrongly refused to accept the voluntary nature of Degussa's cooperation. Degussa submits that, according to the case-law of the Court of First Instance⁽¹¹¹⁾, it was not obliged to reply to the questions that the Commission formulated in its Article 11 letter because, they 'clearly went beyond purely factual elements'.
- (351) The Commission cannot accept this argument and reaffirms its view that most of Degussa's cooperation can not be classified as 'voluntary'. Indeed, most of the information provided by Degussa in reply to the Article 11 request falls entirely within the ambit of an undertaking's duty under Article 11 of Regulation No 17 to reply fully to such requests. None of the questions in the Commission's Article 11 letter referred to by Degussa in support of its claim can be considered as undermining Degussa's rights of defence. As the Court held in the Orkem case⁽¹¹²⁾, Regulation No 17 does not give an undertaking under investigation any right to evade the investigation on the grounds that the results thereof might provide evidence of an infringement by it of the competition rules. On the contrary, it imposes on the undertaking an obligation to cooperate actively, which implies that it must make available to the Commission all information relating to the subject-matter of the investigation.
- (352) In its request for information, the Commission sought mainly to obtain factual clarification of documents (and certain unclear quotations made in those documents) found at Degussa's premises during the investigation carried out on 16 June 1999 and the production of documents already in existence. It is settled case-law of the Courts⁽¹¹³⁾ that the Commission is entitled to request such factual clarification. In this respect, the Court of First Instance stated⁽¹¹⁴⁾ that 'the mere fact of being obliged to answer purely factual questions put by the Commission [...] cannot constitute a breach of the principle of respect for the rights of defence or impair the right to fair legal process. There is nothing to prevent the addressee of such questions or requests from showing, whether later during the administrative procedure or in proceedings before the Community courts, when exercising his rights of defence, that the facts set out in his replies or the documents produced by him have a different meaning from that ascribed to them by the Commission.'
- (353) The Commission nevertheless accepts that Degussa could not have been compelled to provide all the information it provided and that the information provided by Degussa confirmed the vast majority of the meetings between 1992 and 1997 as well as a number of the facts in question. Considering the overall cooperation of Degussa with the investigation, the Commission accordingly concludes that Degussa fulfils the conditions set out in the first indent of section D(2) of the Leniency Notice and grants Degussa a 25 % reduction of the fine that would have been imposed had it not cooperated with the Commission.
- (354) Degussa however contests the facts of the statement of objections in so far as they relate to the duration of the cartel. Degussa claims that 'the facts, as described in the statement of objections, are only correct insofar as they state that Degussa was part of the illegal arrangement between mid-1992 until 1997 (Copenhagen meeting)'. The Commission has demonstrated in the factual part of this Decision that Degussa did in fact participate in the cartel arrangements for the entire duration of the infringements. The Commission must therefore conclude that Degussa does not fulfil the conditions set out in the second indent of section D(2) of the Leniency Notice. Consequently, Degussa does not qualify for a reduction of the fine pursuant to the second indent of section D(2) of the Commission's Leniency Notice.

Conclusion on the application of the Leniency Notice

(355) In conclusion, with regard to the nature of their co-operation and in the light of the conditions as set out in the Leniency Notice, the Commission will grant to the addressees of this Decision the following reductions of their respective fines:

- to Aventis SA/AAN: a reduction of 100 %,
- to Degussa AG: a reduction of 25 %,
- to Nippon Soda Company Ltd: a reduction of 50 %.

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

(356) In conclusion, the fines to be imposed, pursuant to Article 15(2)(a) of Regulation No 17, are to be as follows:

- Aventis SA/AAN: EUR 0,
- Degussa AG: EUR 118 125 000,
- Nippon Soda Company Ltd: EUR 9 000 000,

HAS DECIDED AS FOLLOWS:

Article 1

Aventis SA and Aventis Animal Nutrition SA, jointly liable, Degussa AG and Nippon Soda Company Ltd have infringed Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement by participating, in the manner and to the extent set out in the reasoning, in a complex of agreements and concerted practices in the sector of methionine.

The duration of the infringement was as follows:

- from February 1986 until February 1999.

Article 2

The undertakings named in Article 1 shall forthwith bring the said infringement to an end, if they have not already done so. They shall henceforward refrain in relation to their activities in methionine from any agreements or concerted practices that may have the same or a similar object or effect as the infringement.

Article 3

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

- Degussa AG, a fine of EUR 118 125 000,

— Nippon Soda Company Ltd, a fine of EUR 9 000 000.

Article 4

The fine shall be paid within three months of the date of the notification of this Decision to the following account:

Account No 642-0029000-95 of the European Commission with:

Banco Bilbao Vizcaya Argentaria (BBVA) SA
Avenue des Arts/Kunstlaan, 43
B-1040 Brussels

(SWIFT code: BBVABEBB)

(IBAN code: BE76 6420 0290 0095)

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

Article 5

This Decision is addressed to:

Aventis SA
1, Avenue de l'Europe
F-67300 Strasbourg

Aventis Animal Nutrition SA
42, Avenue Aristide Briand
F-92150 Antony

Degussa AG
Bennigsenplatz 1
D-40474 Düsseldorf

Nippon Soda Company Ltd
Shinotemachi Building
2-2-1 Otemachi / Chiyoda-Ku
Tokyo 100-8165 (Japan)

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

Done at Brussels, 2 July 2002.

For the Commission

Mario MONTI

Member of the Commission

(*) The square brackets marked with an asterisk denote confidential information which has been deleted from the text.

(¹) OJ L 13, 21.2.1962, p. 204/62.

(²) OJ L 1, 4.1.2003, p. 1.

(³) OJ L 354, 30.12.1998, p. 18.

(⁴) OJ C 241, 8.10.2003.

(⁵) OJ L 395, 30.12.1989, p. 1.

(⁶) Case IV/M.1378 (OJ C 254, 7.9.1999, p. 5).

(⁷) [1767].

- (⁸) [1800-1801, 1802-1805, 1806-1809, 1810-1813, 1814-1820].
- (⁹) Sumitomo Article 11 reply, p. 6 et seq.
- (¹⁰) [1767].
- (¹¹) [1614-1615].
- (¹²) [1732].
- (¹³) [1616].
- (¹⁴) [1767].
- (¹⁵) The distinction may not have been as apparent to others as it was to Nippon Soda: Degussa continued to use the term 'Summit' throughout. The direction and focus of the meetings appear however to have changed with the arrival of Monsanto (whose methionine business was later to be spun off and incorporated as Novus) on the European market in 1988 to 1989.
- (¹⁶) [1802-1805].
- (¹⁷) [1712-1713, 1719].
- (¹⁸) [1719-1720].
- (¹⁹) Nippon Soda submission of 23 February 2000, pages 4 and 5 [1767-1768].
- (²⁰) [1800-1801].
- (²¹) [1800-1801].
- (²²) This is obviously a typing error and 1990 is meant.
- (²³) The note also shows that the cartel members were essentially concerned with Monsanto's arrival on the market (documents found at Degussa showing details of Monsanto's 1990 sales in tonnes and its important customers indicate that Monsanto was a main preoccupation of the cartel, see at pages 49 and 50-51. At various moments throughout the duration of the cartel, they would try to obtain the cooperation of Monsanto.
- (²⁴) [1712].
- (²⁵) [1768].
- (²⁶) [1772-1773].
- (²⁷) [1773].
- (²⁸) [1782-1799].
- (²⁹) [558].
- (³⁰) [134-137].
- (³¹) [195].
- (³²) [136].
- (³³) [567].
- (³⁴) [192-193].
- (³⁵) [198].
- (³⁶) [190-191].
- (³⁷) [187].
- (³⁸) [173].
- (³⁹) [192-193].
- (⁴⁰) [175-180].
- (⁴¹) [1806-1809].
- (⁴²) [1810-1813].
- (⁴³) [1814-1820].
- (⁴⁴) [1814-1820] (page 5).
- (⁴⁵) [167-172].
- (⁴⁶) [167-172] (page 4).
- (⁴⁷) At several times in the arrangements, it was suggested that the participants should try to persuade Novus to join the arrangements. However, nothing came of this.
- (⁴⁸) [154-158].
- (⁴⁹) [154-158] (last page).
- (⁵⁰) [118-121].
- (⁵¹) [122].
- (⁵²) [125-133].
- (⁵³) [59].
- (⁵⁴) [105-115].
- (⁵⁵) [105-115] (page 11).
- (⁵⁶) [80-83].
- (⁵⁷) [97].
- (⁵⁸) []* of Degussa, who participated until 1991.
- (⁵⁹) [294].
- (⁶⁰) [1776].
- (⁶¹) [1773, 1745-1754].
- (⁶²) [1773].
- (⁶³) [1724-1725].
- (⁶⁴) [1724].
- (⁶⁵) [1725].
- (⁶⁶) [1775].
- (⁶⁷) [1726].
- (⁶⁸) See Final Act of the Agreement on the European Economic Area (OJ L 1, 3.1.1994, p. 3).
- (⁶⁹) Pursuant to Article 56(1)(b) of the EEA Agreement, and without prejudice to the competence of the Commission where trade between Member States is affected, the ESA is also competent on cases where the turnover of the undertakings concerned in the territory of the EFTA States equals 33 % or more of their turnover in the territory of the EEA.
- (⁷⁰) See below under Chapter 5 'Effect upon trade between Community Member States and EEA Contracting Parties'.
- (⁷¹) Joined Cases T-305/94, etc., *Limburgse Vinyl Maatschappij NV and others v Commission* (PVC II) (1999) ECR II-931, at paragraph 715.
- (⁷²) The case-law of the Court of Justice and Court of First Instance analysed below in relation to the interpretation of the terms 'agreements' and 'concerted practices' in Article 81 of the EC Treaty expresses principles well established before the signature of the EEA Agreement. It therefore applies equally to these terms in so far as they are used in Article 53 of the EEA Agreement. References to Article 81 therefore apply also to Article 53.
- (⁷³) Case 48/69, *Imperial Chemical Industries v Commission* (1972) ECR 619 at paragraph 64.
- (⁷⁴) Joined Cases 40-48/73, etc., *Suiker Unie and others v Commission* (1975) ECR 1663.
- (⁷⁵) See also judgment of the Court of First Instance in Case T-7/89 *Hercules v Commission* (1991) ECR II-1711, at paragraph 256.
- (⁷⁶) See judgment of the Court of Justice in Case C-199/92 P *Hüls v Commission* (1991) ECR I-4287, at paragraphs 158-166.
- (⁷⁷) Judgment of the Court of First Instance in Case T-7/89 *Hercules v Commission*, at paragraph 264.
- (⁷⁸) At paragraph 696.
- (⁷⁹) Judgment of the Court of First Instance in Case T-7/89 *Hercules v Commission*, at paragraphs 262-263.
- (⁸⁰) Judgment of the Court of Justice in Case C-49/92 *Commission v Anic* (1999) ECR I-4125, at paragraph 83.
- (⁸¹) See judgment of the Court of First Instance in T-25/95 et al. *Cimenteries CBR and Others v Commission* (2000) ECR II-491, paragraph 2430.
- (⁸²) According to Degussa's reply to the Commission's Article 11 letter, this meeting was held in Lisbon on 15 to 17 March 1992. In its reply to the statement of objections, Degussa refers to it as the 'Barcelona' meeting of 1992, but it is understood that this should in fact read as 'Lissabon' instead of 'Barcelona'.

- ⁽⁸³⁾ See for example judgment of the Court of First Instance in Case T-25/95 *Cimenteries SBR v Commission* (2000) ECR II-491; judgment of the Court of First Instance in Case T-21/99 *Dansk Rorindustri A/S v Commission*, paragraphs 41-49 (not yet published); judgment of the Court of First Instance in Case T-12/89 *Solvay & Cie SA v Commission* (1992) ECR II-907, paragraphs 98-99; judgment of the Court of First Instance in Case T-141/89 *Tréfileurope v Commission* (1995) ECR II-791, at paragraphs 85-86.
- ⁽⁸⁴⁾ Judgment of the Court of First Instance in Case T-25/95 *Cimenteries SBR v Commission* (2000) ECR II-491, at paragraph 3927. See also judgment of the Court of First Instance in Cases T-374/94, T-375/94, T-384/94 and T-388/94 *European Night Services v Commission* (1998) ECR II-3196, at paragraph 136, where the Court has stated this in specific relation to price-fixing agreements.
- ⁽⁸⁵⁾ Judgment of the Court of First Instance in Case T-13/89 *Imperial Chemical Industries v Commission* (1992) ECR II-1021, at paragraph 304.
- ⁽⁸⁶⁾ Judgment of the Court of Justice in Joined Cases 209 to 215 and 218/78 *Van Landewyck and others v Commission* (1980) ECR 3125, paragraph 170.
- ⁽⁸⁷⁾ Case 48/69 *Imperial Chemical Industries* (1972) ECR 619, at paragraphs 132-133.
- ⁽⁸⁸⁾ Case 107/82 *AEG-Telefunken* (1983) ECR 3151, paragraph 50.
- ⁽⁸⁹⁾ Case T-65/89 *BPB Industries* (1993) ECR II-0389, paragraph 149. (Appeal rejected by judgment of the Court in Case C-310/93 (1995) ECR I-0865).
- ⁽⁹⁰⁾ Judgment of the Court in Case C-286/98 *Stora Kopparbergs Bergslags AB* (2000) ECR I-9925, at paragraph 29.
- ⁽⁹¹⁾ Commission decisions in the *Polypropylene* case (OJ L 230, 18.8.1986, p. 1, paragraph 96); in the *PVC* case (OJ L 74, 17.3.1989, p. 1, paragraph 43); and in the *Cartonboard* case (OJ L 243, 19.9.1994, p. 1, paragraph 156). See also Case T-6/89 *Enichem Anic SpA v Commission* (Polypropylene) (1991) ECR II-1623. Judgment upheld by the Court of Justice in case C-49/92 P *Commission v Anic Partecipazioni SpA* (1999) ECR I-4125. Also, Case T-327/94 *SCA Holdings Ltd v Commission* (1998) ECR II-1373. Judgment upheld by the Court of Justice in Case C-297/98 P *SCA Holdings Ltd* (2000) ECR I-10101.
- ⁽⁹²⁾ Case T-352/94 *Mo Och Domsjö AB v Commission* (1998) ECR II-1989, at paragraph 87.
- ⁽⁹³⁾ See also judgment of Court of Justice in *Stora Kopparbergs Bergslags AB v Commission* (2000) ECR I-9925, at paragraphs 37 and 38.
- ⁽⁹⁴⁾ In its reply to the statement of objections, Aventis refers to its letter of 17 January 2002 addressed to the Commission where it states the reasons why it considers that AAN should be the addressee of the Decision rather than Aventis SA.
- ⁽⁹⁵⁾ Under Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements of implementing the Agreement on the European Economic Area 'the Community rules giving effect to the principles set out in Articles 85 and 86 (now Articles 81 and 82) of the EC Treaty [...] shall apply *mutatis mutandis*' (OJ L 305, 30.11.1994, p. 6).
- ⁽⁹⁶⁾ OJ C 207, 18.7.1996, p. 4.
- ⁽⁹⁷⁾ See recital 61.
- ⁽⁹⁸⁾ The cartel members covered virtually all the market during the earlier years of the cartel. After Monsanto's (Novus since 1991) entry into the market, the cartel members gradually lost market shares. However, towards the end of the infringement, the participants would still hold over 60 % of the worldwide and European market for methionine.
- ⁽⁹⁹⁾ [1806-1809].
- ⁽¹⁰⁰⁾ 1 USD = 1,61147 DEM in 1990 (Eurostat official exchange rate).
- ⁽¹⁰¹⁾ 1 USD = 1,61147 DEM in 1990 (Eurostat official exchange rate).
- ⁽¹⁰²⁾ 1 USD = 1,61147 DEM in 1990 (Eurostat official exchange rate).
- ⁽¹⁰³⁾ 1 USD = 1,61147 DEM in 1990 (Eurostat official exchange rate).
- ⁽¹⁰⁴⁾ Case T-308/94 (1998) ECR II-925, paragraph 230.
- ⁽¹⁰⁵⁾ Aventis' reply to the Commission's statement of objections, p. 14.
- ⁽¹⁰⁶⁾ See, for instance, recital 365 of the Commission Decision in Case COMP/36.545/F3 *Amino Acids* (OJ L 152, 7.6.2001, p. 24).
- ⁽¹⁰⁷⁾ See recital 98 and following.
- ⁽¹⁰⁸⁾ Case T-308/94 *Cascades SA v Commission* (1998) ECR II-925, at paragraph 230.
- ⁽¹⁰⁹⁾ As discussed earlier, see under 'Addressees'.
- ⁽¹¹⁰⁾ Nippon Soda also does not meet the condition set out under point (a) of Section B.
- ⁽¹¹¹⁾ Judgment of the Court of First Instance of 20 February 2001 in Case T-112/98 *Mannesmann Röhren-Werke AG v Commission* and judgment of the Court of Justice in Case 374/87 *Orkem v Commission* (1989) ECR 3283, at paragraph 35.
- ⁽¹¹²⁾ Judgment of the Court of Justice in Case 374/87 *Orkem v Commission* (1989) ECR 3283, at paragraph 27.
- ⁽¹¹³⁾ Judgment of the Court of First Instance of 20 February 2001 in Case T-112/98 *Mannesmann Röhren-Werke AG v Commission*, paragraphs 70, 77-78; judgment of the Court of Justice in Case 374/87 *Orkem v Commission* (1989) ECR 3283, paragraphs 37-38, 40. See also judgment of the Court of Justice in Case C-227/92 P *Hoechst AG v Commission* (1989) ECR 2859 and the opinion of Advocate General Mischo delivered on 20 September 2001 in Case C-94/2000 *Roquette Frères SA v Commission* concerning the powers given to the Commission by Article 14 of Regulation 17 to enable it to carry out its duty under the EC Treaty to bring to light any infringement of Articles 81 or 82 of the EC Treaty.
- ⁽¹¹⁴⁾ *Ibid.*, paragraph 78.