Opinion of the Advisory Committee on restrictive practices and dominant positions given at its 414th meeting on 4 September 2006 concerning a draft decision relating to Case COMP/F/38.456 — Bitumen (The Netherlands)

(2007/C 176/05)

1. The Advisory Committee agrees with the European Commission assessment of the facts as an agreement and/or concerted practice within the meaning of Article 81 of the Treaty.

2. The Advisory Committee agrees with the European Commission assessment of the product and the geographic area affected by the cartel in the draft decision.

3. The Advisory Committee agrees in particular with the assessment that the entire system of preparatory and joint meetings, with the ensuing agreements between the group of bitumen suppliers and the group of road builders on gross prices and rebates for road pavement bitumen in the Netherlands forms part of a single overall scheme and therefore constitutes a single infringement of Article 81 of the Treaty of both bitumen suppliers and road builders.

4. The Advisory Committee agrees with the European Commission draft decision as regards the addressees of the decision, specifically with reference to imputation of liability to parent companies of the groups concerned and the proposal to close the proceeding against Volker Wessels Stevin Infra BV and Wegenbouwmaatschappij J. Heijmans BV.

5. The Advisory Committee agrees that Shell, within the group of bitumen suppliers, and KWS, within the group of the bitumen purchasers, bear a special responsibility for their role in instigating and leading the cartel.

6. The Advisory Committee agrees with the European Commission as regards the assessment of the applications made under the 2002 Leniency Notice, including that Wintershall AG should not be covered by the immunity application of BP.

7. The Advisory Committee agrees to close the proceedings against ExxonMobil.

8. The Advisory Committee recommends the publication of its opinion in the Official Journal of the European Union.

9. The Advisory Committee asks the Commission to take into account all the other points raised during the discussion.