

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 8 September 1977

relating to a proceeding under Article 85 of the EEC Treaty

(IV/312-366 — COBELPA/VNP)

(Only the French and Dutch texts are authentic)

(77/592/EEC)

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Whereas :

Having regard to the Treaty establishing the European Economic Community, and in particular Article 85 thereof,

Having regard to Regulation No 17 of 6 February 1962⁽¹⁾, and in particular Articles 3, 4 and 5 thereof,

Having regard to the notifications to the Commission made on 30 and 31 October 1962 by the Vereeniging van Nederlandsche Papierfabrikanten (VNP), Haarlem, Netherlands, and the Association des Fabricants de Pâtes, Papiers et Cartons de Belgique (COBELPA), Brussels, Belgium, pursuant to Article 5 of Regulation No 17, concerning the exchange of statistical and price information and mutual observance of conditions of business in printing paper and stationery,

Having regard to the Commission Decision of 4 June 1976 to initiate a proceeding,

Having heard the undertakings and associations of undertakings concerned in accordance with Article 19 (1) of Regulation No 17 and with Regulation No 99/63/EEC of 25 July 1963⁽²⁾,

Having regard to the opinion delivered on 18 April 1977 by the Advisory Committee on Restrictive Practices and Dominant Positions in accordance with Article 10 of Regulation No 17,

I. THE FACTS

The facts may be summarized as follows :

1. Undertakings ; market structure

- 1 The Belgian and Dutch paper industry federations, COBELPA and VNP, notified the Commission on 31 and 30 October 1962 respectively of concerted practices between Belgian and Dutch manufacturers of printing paper and stationery. The undertakings currently concerned are the following :

(a) in Belgium :

SA Papeteries de Belgique, Bruxelles,
SA Intermills, La Hulpe,
SA Papeteries de Virginal, Virginal ;

(b) in the Netherlands :

Kon. Papierfabrieken Van Gelder Zonen
NV, Amsterdam,
Gelderland-Tielens Papierfabrieken BV,
Nijmegen,
NV Papierfabrieken Van Houtum & Palm,
Apeldoorn,
Papierfabriek Huiskamp & Sander NV,
Eerbeek,
Kon. Nederlandsche Papierfabriek NV,
Maastricht.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No 127, 20. 8. 1963, p. 2268/63.

- 2 The most important Belgian and Dutch manufacturers of printing paper and stationery are in this list of undertakings, which account in their respective countries for between 80 and 90 % of domestic output (annual Belgian output — excluding newsprint — is around 360 000 tonnes and Dutch output is around 480 000 tonnes) (1).

The market for printing paper and stationery extends to a variety of products of differing qualities. Apart from newsprint, with which this case is not concerned, a distinction has to be made between wood-free and other paper, that is to say between those papers which are manufactured solely from chemical pulp (where the fibres are obtained by chemical processing of the wood) and those manufactured entirely or partly from mechanical pulp (where the fibres are extracted mechanically). There is a second distinction, relating to the surface of the paper, which may be coated or uncoated, that is with or without a fine film of a substance intended to make the surface of the paper smoother and in certain cases whiter. Manufacturers are accustomed, therefore, to distinguish uncoated wood-free paper for mass consumption from all other forms of printing paper and stationery. The former category includes school exercise books, paper in continuous pad or reel form, particularly for machine use, and other types of mass consumption uncoated wood-free paper (see under, point 4, second paragraph).

With regard to printing paper and stationery in general, the apparent annual consumption of such paper is estimated at 455 000 tonnes in Belgium and 591 000 tonnes in the Netherlands (2).

- 3 Belgian and Dutch exports go chiefly to other EEC Member States, the Netherlands being Belgium's main customer (approximately 41 000 tonnes). Dutch exports to the BLEU (approximately 44 000 tonnes), originally the biggest export market, were overtaken some years ago by exports to Germany (3).
- 4 Nearly a third of the quantities imported into Belgium and the Netherlands come from non-member countries, and roughly three-quarters

(1) Average for 1974 and 1975.

Source: SOEC Industrial Statistics.

(2) Average for 1974 and 1975

Source: SOEC industrial and NIMEXE statistics.

(3) Average for 1974 and 1975.

Source: SOEC NIMEXE Statistics

of that third from Scandinavian countries (Finland, Norway, Sweden). Imports from Scandinavia account for 5 % of Belgian consumption and nearly 10 % of Dutch consumption (3). (The undertakings concerned state that Scandinavian competition is keener in quality than in price.)

Annual output of uncoated, wood-free printing paper and stationery for bulk use in Belgium is around 49 000 tonnes (of which more than 5 % is exported to the Netherlands and more than 15 % to other countries) (4). Annual Dutch output is 109 000 tonnes (of which nearly 15 % is exported to Belgium and roughly 30 % to other countries) (4).

2. The 'concerted practices'

- 5 (a) The 'practices' notified to the Commission, most of which have lapsed, according to the statements made by the companies concerned in reply to the statement of objections made against them, chiefly concerned the exchange of statistics and general data, the mutual notification of prices and of general terms of sale, supply and payment (including discounts, price increases and reductions and rebates) and participation in working parties formed to standardize qualities and harmonize nomenclatures.
- 6 Initially the practices also had the object of aligning prices and sales conditions on those of manufacturers in the importing country. Foreign manufacturers tended slightly to undercut domestic manufacturers so as to facilitate penetration of the market. COBELPA (by letter dated 29 December 1975) and VNP (by letter dated 12 December 1975) nevertheless indicated, on request, that for a long time their concerted practices had not extended to such price alignment. In the same letters, on the other hand, the two associations confirmed that the notified practices were otherwise still in operation.
- 7 These practices further extended to mutual respect for distribution channels established in Belgium and the Netherlands. The protection

(4) Average for 1974 and 1975.

Source: Groupement Français des Fabricants de Papiers d'Impression et d'Écriture (special statistics produced at the request of several European firms in this industry).

of national quality standards already introduced in Belgium and the Netherlands was also assured through this respect for distribution channels. Belgian and Dutch manufacturers had established these channels on their respective national markets by means of collective agreements with wholesalers. These agreements have been separately notified by COBELPA and VNP.

- 8 These agreements provided for the status of 'approved buyer' to be conferred on only such wholesalers as met all the requirements for approval (technical knowledge and practical experience, attainment of a specified volume of sales and stocking of specified quantities and a specified range of products). The manufacturers undertook to supply only these wholesalers and to grant them certain price concessions (consisting chiefly of a wholesale discount and of an annual rebate calculated on aggregate sales). For their part the wholesalers undertook to work with the manufacturers and to comply with certain rules relating to the fixing of prices. The agreement between Belgian manufacturers and wholesalers terminated on 30 June 1976, and was replaced by a new agreement.
- 9 (b) The notifications gave no indication of the specific cooperation which lasted for some time between the major producers of mass consumption uncoated wood-free printing paper and stationery (Papeteries de Belgique, Intermills, Van Gelder Zonen, and Kon. Nederlandsche Papierfabriek). They had an understanding to exchange monthly output and sales figures through COBELPA and VNP, with a precise breakdown to type of paper and country of destination.

On three occasions, in January, July and August 1973, COBELPA sent forms to the Groupement Français de Fabricants de papiers d'Impression et d'Écriture (GFPIE), which centralizes figures for mass consumption uncoated wood-free paper, with details not only of aggregate figures for Belgium but also individual output and sales figures for Papeteries de Belgique and Intermills. At the bottom of these forms there were two boxes one of which had to be completed. In each case Papeteries de Belgique and Intermills marked the box indicating that they agreed to their figures being

provided to other manufacturers that were willing to reciprocate. Thereafter until January 1975 inclusive COBELPA sent GFPIE aggregate figures for Belgium together with individual figures for Papeteries de Belgique and Intermills, but on a different form which no longer provided for the transmission of the figures to other manufacturers. Since January 1975 COBELPA has provided its information by telex and now gives only aggregate figures for Belgium (output, domestic sales, exports to each of the EEC Member States and exports out of the EEC).

VNP similarly transmitted individual figures for Van Gelder Zonen and Kon. Nederlandsche Papierfabriek until January 1975 inclusive, and thereafter sent aggregate figures for the Netherlands only. On seven occasions, from January to April and from June to August 1974, Kon. Nederlandsche Papierfabriek marked the box on the monthly form specifying that it agreed to its figures being passed on to other manufacturers that were willing to reciprocate. In letters dated 22 and 30 October 1974, transmitting the monthly figures of Van Gelder Zonen and Kon. Nederlandsche Papierfabriek for September 1974, VNP also specified that the tables were to be used 'for the exchange of individual figures between manufacturers of mass consumption uncoated wood-free paper that have agreed to such exchanges'.

The companies concerned abandoned the transmission of individual figures to firms which wished to reciprocate after noting a failure to reciprocate on the part of certain others which were supposed to be involved. They continued, however, for some time, to include individual figures 'in support' of their aggregate country-by-country figures. Only at the beginning of 1975, when they learnt that the Commission was examining their practices, did they stop sending individual figures.

- 10 Cooperation between the undertakings and associations of undertakings concerned now extends to no more than the gathering of statistics for circulation as aggregates, no figures for individual undertakings being specified.
- 11 (c) COBELPA and VNP have stated that those of their practices which involved more detailed cooperation within Benelux countries had in any event been overtaken by events

some time ago. The market is said to have developed in such a way that all the rationalization, standardization and distribution measures taken at Benelux level have lost much of their original purpose.

- 12 In the face of keen competition from other common market manufacturers, they say they have been obliged to reorganize on a large scale and to reduce their product range. The result is that, while achieving success on certain export markets, they have had to abandon a large proportion of their domestic market to competitors in other Community countries. This would not, they say, have been necessary if they had been in a position appreciably to restrict competition.
- 13 In general terms, the substantial market shares gained in Belgium and the Netherlands by foreign competitors are, it is claimed, expanding and in any case far larger than in other Member States such as Germany and France. From this it is concluded that the notified practices have in no way hampered the development of trade between Member States.
- 14 (i) As to whether the exchange of figures relating to individual firms from 1973 'as a matter of reciprocity' can be regarded as having been included in the notifications made in 1962 by COBELPA and VNP, the parties claim that the exchange of information was expressly referred to among the 'concerted practices' notified. Even if the proposal for an exchange of information, which was never put into effect, could constitute an 'agreement' contrary to Article 85, such an agreement fell within the scope of the notification.
- 15 (ii) The exchange of information on prices which was the practice in the past applied, say the firms, only to the prices permitted by the national authorities in Belgium and the Netherlands under price legislation in those countries. Naturally, manufacturers are legally entitled to charge prices or give discounts so that they sell below the permitted prices. However, they maintain that on no occasion did they exchange information as to the price actually charged.

Reference to correspondence concerning information on prices (including discounts, price

increases and reductions and rebates) is, however, informative. In particular, letters referring to the situation in Belgium frequently used expressions such as the following:

'... A few particulars as to the Belgian market and the prices charged there;' (letter dated 19 October 1973);

'... The increase in the price for this series was Bfrs 1.20, although this figure has not been officially notified; ...' (*ibid*);

'... We can inform you that on their market Belgian manufacturers raised the price of varieties for bulk use by Bfrs 1.20 per kg with effect from 1 November 1973; ...' (letter dated 29 November 1973);

'... To amplify the information given on 8 February, we can now give you details of prices currently charged in Belgium:

I by a German manufacturer: (since 14 January) ...

II by a Belgian manufacturer: (since 1 January 1974) ...

* CORALUX and CORA

The usual bulk discounts are given for 3, 5, 10 and 20 tonnes, broken down into lots of at least one tonne per colour from the standard range, in the 56 × 88 and 61 × 86 formats or submultiples thereof. The two qualities may be combined.

** package of 500 reams: + 1.80 per 1 000 reams; coloured interleaves every 100 sheets: + 6 %
to: exporters to Belgium' (letter dated 11 February 1974).

- 16 (iii) As regards mutual respect for distribution channels (wholesalers with the status of 'approved buyers'), the undertakings concerned state that this practice has lost much of its economic significance, for new distribution structures have emerged since notification was made in 1962. In addition to the network of wholesalers, there are now said to be parallel channels in the form of intermediaries (agents) acting for manufacturers and selling a considerable proportion of their output, particularly to processing industries. In the Benelux roughly 55 % of total paper imports are said to be handled by such agents.

3. Statements made by the undertakings concerned during the investigation

17 (a) By Commission letters dated 23 September 1975 (to COBELPA) and 24 September 1975 (to VNP) the undertakings were informed that their notifications had been subjected to routine scrutiny, and that there was doubt as to whether the notified practices were still operating in the same way as in 1962. They were asked to inform the Commission in case their notifications were no longer relevant.

18 According to a provisional reply by VNP made on 6 October 1975, there followed consultations between the relevant undertakings and associations. The Commission was informed of the outcome by letters dated 12 December 1975 (VNP) and 29 December 1975 (COBELPA). As is already stated at point 6, COBELPA and VNP said that most of the notified practices were still operating, with the exception of price alignment.

In the statement of objections dated 21 June 1976, the Commission took account of this and concentrated its criticism on those practices which the undertakings themselves said they were still operating.

19 (b) In their written replies to the objections made against them the undertakings stated that the notified practices had lost their purpose by virtue of developments on the European market. They undertook to abandon those which were not already abandoned. They also decided that there was no need for the oral hearing provided for by Article 7 of Regulation No 99/63/EEC.

COBELPA and VNP also requested the Commission to confirm that, in view of the assurances they had given that they had terminated the offending practices, it had no grounds to continue with proceedings in this case.

II. APPRAISAL

20 Article 85 (1) of the EEC Treaty prohibits as incompatible with the common market all

agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and have as their object or effect the prevention, restriction or distortion of competition within the common market.

21 By letters dated 12 and 29 December 1975, VNP and COBELPA respectively informed the Commission that they had abandoned the practice of aligning prices. By the same letters, after having two months to consult each other, they stated that they were continuing the other practices notified in 1962.

22 The statement made in September 1976 in the written comments on the objections to the effect that the practices which were still continuing at the end of 1975 had also lost their purpose and were therefore to be abandoned, leads the Commission to believe that these practices have in fact ceased. Nevertheless this statement raises certain doubts as to the likely future conduct of the parties. Furthermore, in their written comments, they expressed the view that none of the practices to which the Commission had taken objection was incompatible with Article 85 of the EEC Treaty. They must therefore be made aware of the limits set by the Article on cooperation between them in the field earlier covered by the notifications.

23 In the circumstances of this case there can be no grounds for declaring that the Commission has no reason to continue the proceeding.

24 The object of the practices of the undertakings concerned was to restrict and distort competition within the common market. Such conduct indicates the existence of agreements, or at the very least concerted practices, as the parties themselves have recognized. Their conduct was caught by the prohibition in Article 85 (1), for the following reasons.

The exchange of statistical tables

- 25 The collection and analysis of figures with the object of preparing output and sales statistics within an industry is in legal terms a task for statistical offices and trade associations working with firms. There is therefore no objection where national trade associations representing the same interests but in different countries exchange the same statistical information giving a picture of the output and sales of the relevant industry without identifying individual undertakings.
- 26 The same principles apply to cases in which the dissemination of information relating to products during certain periods of time goes beyond official statistics. Undertakings which share in such exchanges of information must expect that the Commission will be particularly concerned as to whether the markets in question might be regarded as having been tacitly shared or whether there has been concertation on prices.
- 27 The individual firms (Papeteries de Belgique, Intermills, Van Gelder Zonen and Kon. Nederlandsche Papierfabriek) which during 1973 and 1974 agreed to exchange certain monthly output and sales figures, broken down by type of paper and country of destination (the sort of figures which are usually kept strictly confidential), crossed the threshold which separates a lawful information agreement from a practice intended to restrict and distort competition. These concerted practices thus resulted in the establishment of a system of solidarity and mutual influence designed to coordinate business activities. They replaced the normal risks of competition by practical cooperation, resulting in conditions of competition differing from those obtaining in a normal market situation. Conduct such as this is not covered by the Commission notice on cooperation between undertakings ⁽¹⁾, particularly paragraph II 1.
- 28 The fact that information agreements such as this have the immediate effect of creating transparent market conditions in no way invalidates this conclusion. The undistorted competition

aimed at by the EEC Treaty is incompatible with an artificially created market situation in which abnormal standards of information and market stability eliminate certain competitive risks; this is all the more so where the benefit of the artificial improvement in market information accrues solely to the seller, as in this case, and not to the buyer.

The mutual notification of prices, discounts, price increases and reductions, rebates and general terms of sale, supply and payment

- 29 The only possible explanation for the exchange of this information is again the desire to coordinate market strategies and to create conditions of competition diverging from normal market conditions, by replacing the risks of pricing competition by practical cooperation. The undertakings concerned in this naturally worked out their export prices policy in the light of the conduct of firms which, in by and large the same conditions, were also manufacturing for sale in the country of destination and which had the natural advantage of being closer to the user and having long-standing ties with national distributors. This also explains why the information exchanged related only to prices charged on the home market and why the recipients of the information were foreign exporters wishing to do business there.
- 30 Undertakings wishing to export could admittedly have obtained the price lists of their competitors in the country of destination through other sources, but this would have been a more complicated and more time-consuming method. It may therefore be assumed that the spontaneous notification of all significant information on prices artificially alters the conditions of competition and establishes between competitors a system of solidarity and mutual influence. This assumption is not invalidated by the fact that Belgium and the Netherlands have legislation on prices, since on many

⁽¹⁾ OJ No C 75, 29. 7. 1968, p. 3.

occasions the undertakings informed each other of prices actually charged which were not necessarily the same as the prices permitted by the national authorities. It follows that the organization of an exchange of information on prices constituted an agreement having as its object the restriction and distortion of competition within the common market.

Mutual respect for established distribution channels

31 The object of this conduct was indirectly to restrict competition. It aimed to limit the effects of competition at the distribution level. It was aimed at preventing foreign producers from supplying dealers who had not been given the status of 'approved buyers' under the approval system then applied by the national manufacturers. In this way these dealers were prevented from seeking to penetrate markets reserved for approved dealers by passing on to the consumer part of the discount granted by the foreign manufacturer. The practice thus constituted a means of artificially containing sales by foreign manufacturers on the home market.

32 The operation of this organized marketing system was not impeded by the existence of a major network of agents selling for foreign manufacturers. These agents, acting as commercial agents, had to comply strictly with the pricing instructions given by the manufacturers whose products they were selling; in other words by those who were involved in the system of solidarity and mutual influence referred to above.

Effect on trade between Member States

These agreements, which had the object of restricting or distorting competition, were such as to affect trade between Member States.

33 The monthly exchange of detailed output and sales figures by the four largest Benelux firms in the circumstances described above (see paragraph 27), was apt to deflect trade flows from their normal channels, to hinder the economic

interpenetration aimed at by the Treaty and to jeopardize the harmonious operation of a single market between all the Member States.

34 The mutual notification of prices and their components (discounts, etc.) and of general terms of sale, supply and payment further reinforced this tendency towards cooperation. The firms thus worked out their pricing and sales policies in line with those of the respective domestic producers in a manner conflicting with the competitive system which the EEC Treaty seeks to establish. This conduct also artificially influenced trade flows.

35 The effect of respecting established distribution channels was that, when manufacturers exported to other Benelux countries, they refused to supply dealers who had not been given the status of 'approved buyers' in the country of destination. The conditions of trade between Member States were thus altered and artificially restricted.

36 Finally, it is proper to state that undertakings established in two Member States were parties to the contested agreements. The effect of these agreements, taken together, was to put an appreciable curb on freedom of trade in the Community. The various restrictions and distortions have to be considered in their economic and legal context. The various aspects of the relevant firms' conduct within the system of solidarity and mutual influence which they had created, were capable of producing a cumulative effect, so that trade could be appreciably affected.

37 In quantitative terms this possibility of an adverse effect becomes evident when it is considered that, in respect of non-specialized, uncoated, wood-free printing paper and stationery for bulk use, the Belgian industry, whose annual output is around 49 000 tonnes, of which more than 20 % is exported, exports more than 5 % of its output to the Netherlands. The Dutch industry, on the other hand, with an annual output of roughly 109 000 tonnes, of which about 45 % is exported, exports nearly 15 % of its output to Belgium. It is not possible to work out figures expressing

how trade would have developed if there had been no collusion on prices and sales. It is, however, clear that normal competitive behaviour, considering in particular the sensitivity of demand to price levels, could not have failed to have had its proper effect on the flow of such trade and on its intensity.

38 These conclusions are in no way invalidated by the fact that the industries in other Community countries traditionally supply a greater proportion of domestic demand. The reason for this is that these industries can produce a broader product range within their own countries in view of the greater scope offered by their larger national economies.

39 Under Article 85 (3), the provisions of Article 85 (1) may be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of the objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

40 *The exchange of individualized statistics agreed between the four largest firms (Pape-teries de Belgique, Intermills, Van Gelder Zonen, Kon. Nederlandsche Papierfabriek) is caught by the prohibition in Article 85 (1), so that the question of the applicability of Article 85 (3) must therefore be considered.*

Under Article 4 (1) of Regulation No 17, a decision applying Article 85 (3) may not be given in respect of an agreement which is not notified. The agreement for the exchange of individual statistics was not completely notified to the Commission. For this reason alone the conduct of the parties cannot be exempted. However, even if the agreement had been notified it could not have benefited from exemption for the following reasons.

41 The conditions precedent for a declaration of exemption pursuant to Article 85 (3) in respect of the practice of exchanging statistics between firms are not met. The agreement made no contribution to improving the production or distribution of the relevant goods, nor to promoting technical or economic progress, for the purposes of Article 85 (3). Any improvement in the production and sales planning of the firms in question resulting from the monthly exchange of figures relating to individual firms was not in itself sufficient to satisfy the tests of Article 85 (3).

Article 85 (3) cannot be taken to extend to every benefit resulting from an agreement of this type for the production and sales of the firms concerned. Such benefits are manifestly the usual result of such an agreement, so that if they are treated as an improvement for this purpose Article 85 (3) must be taken to give a general exemption to all such agreements, since the restrictions they impose would, on this basis, have to be regarded as indispensable for the attainment of these objectives. Yet 'improvement' for the purpose of Article 85 (3) cannot be defined in such subjective terms as the undertakings own view of their proper interest. It follows from the objects of Article 85 that the concept of 'improvement' must be construed in such terms as to require the agreement to entail appreciable objective benefits which compensate for their anti-competitive effects. This is not the case of an agreement for the exchange of figures broken down by firm, which tends to prevent the firms concerned from adopting a competitive attitude towards one another.

Furthermore, a fair share of any resulting benefit was not given to the consumer. The object of the agreement was the artificial crea-

tion of a market situation whose unusual open nature and stability was for the sole benefit of the producer and not of the consumer.

- 42 The agreement concerning *mutual notification of prices*, discounts, price increases and reductions, rebates and general terms of sale, delivery and payment, also fails the tests of Article 85 (3). There was no contribution to improving production or distribution or to promoting technical or economic progress for the purpose of Article 85 (3). The underlying purpose of the agreement was to help to stabilize prices in economically slack periods. It may well be quite legitimate for an industrialist to operate a pricing policy assuring his firm of the profitability which will provide the sound financial bases required for renewal of plant and for expansion to meet increased demand. But in the system of undistorted competition aimed at by the EEC Treaty, this objective cannot legitimately be pursued by the establishment of a system of solidarity and mutual influence resulting in coordination of the pricing policies operated by the firms concerned. Any benefits which such a system may have for profitability do not constitute an improvement for the purpose of Article 85 (3), for they cannot be regarded as appreciable objective benefits such as would compensate for their anti-competitive effects.

In addition no fair share of any benefit resulting from the agreement on the exchange of information on prices and other terms of business accrued to the consumer, for what the agreement achieved was stabilization of prices in the interests of producers and not of users.

- 43 The agreement for mutual respect for established distribution channels also fails the tests for exemption under Article 85 (3). This agreement makes no contribution to improving production or distribution of the relevant goods or to promoting technical or economic progress within the meaning of Article 85 (3). The obligation to import 45 % of total imports through the approved wholesalers in the importing country wherever the goods are not imported

direct by the foreign manufacturer's local agent there, leaving such agents to handle the remaining 55 % of imports, may indeed help to prevent sharp fluctuations in the market shares held by each manufacturer. Any improvement which this produces for these manufacturers in planning production or sales capacity, however, cannot be regarded as an improvement within the meaning of Article 85 (3) since it produces no appreciable objective benefits such as would compensate for the competitive disadvantages which it creates. The significance of these disadvantages is clearly evident from the fact that the agreement prevents non-approved dealers from penetrating the market reserved for approved agents. Lastly, the agreement for the mutual respect of established distribution channels does not allow the consumer a fair share of the resulting benefit.

The agreement prevents buyers from taking advantage of any reduced prices which non-approved dealers seeking to penetrate the relevant markets may have charged them by passing on part of the discounts granted by the foreign manufacturers,

HAS ADOPTED THIS DECISION :

Article 1

The agreement to which S.A. Papeteries de Belgique, Brussels, S.A. Intermills, La Hulpe, Kon. Papierfabrieken Van Gelder Zonen N.V., Amsterdam, and Kon. Nederlandsche Papierfabriek N.V., Maastricht, were party in 1973 and 1974 and under which they exchanged monthly output and sales figures, broken down by type of paper and by country of destination, for their mass consumption uncoated wood-free printing paper and stationery business, and the agreements to which the undertakings listed in Article 3 were party from 1958 to the first half of 1976, agreements concerning the printing paper and stationery (but not newsprint) business, and under which :

- (a) they exchanged information on prices, rebates, price increases and reductions, discounts and general terms of sale, supply and payment ;

(b) they respected each other's distribution channels, established by the approval of wholesalers, to whom the status of 'approved buyer' was accorded, constituted infringements of Article 85 (1) of the Treaty establishing the European Economic Community.

Article 2

The applications made to the Commission on 30 and 31 October 1962 by Vereeniging van Nederlandsche Papierfabrikanten, Haarlem, and the Association des Fabricants de Pâtes, Papiers et Cartons de Belgique, Brussels, for a declaration that Article 85 (1) was inapplicable pursuant to Article 85 (3), are rejected.

Article 3

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

- Association des Fabricants de Pâtes, Papiers et Cartons de Belgique, Brussels, Belgium;
- Vereeniging van Nederlandsche Papierfabrikanten, Haarlem, Netherland;

- SA Papeteries de Belgique, Brussels, Belgium;
- SA Intermills, La Hulpe, Belgium;
- SA Papeteries de Virginal, Virginal, Belgium;
- Kon. Papierfabrieken Van Gelder Zonen NV, Amsterdam, Netherlands;
- Gelderland-Tielens Papierfabrieken BV, Nijmegen, Netherlands;
- NV Papierfabrieken Van Houtum & Palm, Apeldoorn, Netherlands;
- Papierfabriek Huiskamp & Sanders NV, Eerbeek, Netherlands;
- Kon. Nederlandsche Papierfabriek NV, Maastricht, Netherlands.

Done at Brussels, 8 September 1977.

For the Commission

Raymond VOUEL

Member of the Commission