

At irregular intervals, the representatives of the enterprises meet with representatives of other European manufacturers of aniline and pigment dyes to discuss questions of common interest, including the price situation. This is intended to establish identical behavior of the participating producers to the fullest possible extent, respecting the questions dealt with. Such a meeting took place on August 18, 1967, in Basle -----,² a meeting at which representatives of all of the enterprises in question participated, among others the defendant listed under 3, as well as representatives of French, English and Swiss dye manufacturers. At this meeting, uniform action on various questions was sought and achieved. When the topic "Miscellaneous" ["*Varia*"] on the agenda was reached, the representative of the Swiss corporation ----- declared that their prices for aniline dyes would be increased by 8% as of October 16, 1967. Afterward, the representative of the defendant listed under 5, -----, and the representative of a French dye manufacturer made statements to the effect that the rate of efficiency of their business would force them to entertain the idea of a price increase.

During the period up to September 19, 1967, the competent bodies of all enterprises which were represented in the meeting of August 18, 1967, decided on an increase of their aniline dyes prices by 8% as of October 16, 1967. During the period between September 8 and 15, 1967, with the participation of the defendants listed under 1 through 3—the Board member ----- also participated for the defendant under 6,—all of the enterprises in question communicated these price increases to all customers and all other related businesses on the ground that increases in costs, particularly the general cost situation, dictated this measure.

Several customers and customers' associations addressed themselves to the Federal Cartel Office, because they supposed that a concerted price arrangement existed among the producers. They particularly criticized the timing of the increase, because they had already calculated and published their prices for the new textile collections. In their opinion, the costs incurred by all dye manufacturers have not increased enough since the last price increase to justify an 8% price increase under present economic conditions.

The prices for aniline dyes had been increased on the German market by the defendants and by their most important competitors as of January 1, 1965. At that time, the rate of increase for all aniline dye products was 15%, for pigment dyes, which increased simultaneously, 10%. Because of the uniformity of this increase, which also evoked the suspicion, on the part of customers of the enterprises in question, that a concerted price arrangement existed, the Federal Cartel Office had started proceedings under paragraph 1, section 1 of article 38, considered together with article 1 GWB, but these proceedings were terminated for lack of proof of an agreement within the meaning of article 1 GWB.³ At the same time, proceedings were under way by the Commission of the European Economic Community against the enterprises in question and other dye manufacturers because of a suspected violation of article 85 of the EEC Treaty, proceedings which have not yet been terminated. These proceedings involve, among other things, a uniform and simultaneous price increase of aniline dyes on foreign markets in January 1964.

In the [Federal Cartel Office's] proceedings concerning the price increase as of January 1, 1965, the defendants listed under 4, 5 and 6 had caused a presentation to be made that intensive competition exists on the dye market which forces them to depart from their price lists—used domestically—so often and to such an extent that the price level falls very substantially over a short period of time. Consequently [this argument continued], an increase of the price level was unavoidable from time to time. When a manufacturer has "the courage to increase his prices" [this argument continued], the others were forced to follow him, because, toward their stockholders, they could not assume the responsibility of passing up an opportunity to make profits.

2. These facts rest on the written declarations of November 15, 1967, made by the defendant listed under 1, of November 24, 1967, made by the defendant under 2, of November 14, 1967, made by the defendant under 3, of October 13, 1967, made by each of the defendants under 4, 5, 6 and 7, of November 14, 1967, made by the witness -----, as well as on the files marked B3-442100-A-232/67 and B3-440000-A-431/64.

² Exact address deleted.

³ See footnote, p. 2.