3. The defendants deny that the price increase of October 16, 1967 was agreed upon. They unanimously declare that they adhered by autonomous decisions to the price increase made by the ---------- company and/or other manufacturers, because the unfavorable rate of return requires a price increase which the market, through price increases of competitors, had made possible.

The defendants repeat their defence presented in the proceedings concerning the price increase of January 1, 1965; in this respect, the defendant listed under 5 asserts again that extraordinary competition reigns on the international dye market. For this reason [the argument continues], the consumers have an opportunity—constantly used by them—to oblige the dye manufacturers to make concessions on prices and on sales conditions. Despite separate initial calculations [the argument continues], the increases must be carried out at the same percentage, because there are approximately 2500 products to be sold and the overall result obtained in the sale of dyes is controlling for the determination of economic profitability.

III. Respecting the established facts, the defendants have violated paragraphs 1, section 1 of article 38 GWB, which forbids, among other things, disregarding the ineffectiveness of an agreement set forth in article I GWB.[4] [This violation occurred] because they have informed their customers or rather have had them informed that, as of October 16, 1967, prices increased by 8% would be payable for aniline dyes, although the increase rested on an agreement which was ineffective under article 1 GWB.

1. The defendants' argument, to the effect that the simultaneous and uniform price increase did not rest on an agreement but on independent decisions of the individual enterprises to act in the same way as competitors, cannot be accepted. It is a known phenomenon that, in markets where only some sellers or a small group of sellers with market dominance exist beside a few manufacturers of lesser importance, the small group of sellers with market dominance behave identically, because the participants know that the other competitors, at least those that belong to the same group, will adhere, in any case, to their procedure for establishing prices. This manner of behavior, however, is not of a compulsory character, nor does it determine the real attitude of the enterprises concerned toward the market. The defendants have declared—and the Division has established this for the future—that, to a large extent, they have charged their customers individual prices which are lower than their listed prices and are different from the prices set by competition, because the competitors proceed in the same manner and because the price level constantly drops for competitive reasons. The enterprises in question having themselves admitted their market behavior, particularly as to prices, proves that these enterprises, despite the oligopolistic structure of the market, in fact enjoy freedom of action with respect to prices, that they exercise this freedom, and that they are not subject to inevitable coercion by the market to accept price uniformity. This is further established by the fact that, individually, the enterprises in question do not have uniform prices for their aniline dyes—which could hardly be the case for the type of products and for the multitude of these products which exceed 2500 in number—and therefore simultaneously increase only the price *level* from time to time.

In this connection, the coercion exercised by the oligopolistic market being absent, it is impossible to imagine that, in the present case, the prices of all the participants have been increased at the same time and by the same percentage, despite the differences in cost, without a related agreemnt between all of the enterprises in question. Not to mention that all of the circumstances, such as the magnitude of the increase of thę price level at the same time for the same reasons despite the differences in cost, without a related agreement between all of the and costs of each individual party, particularly of the participants in foreign countries where existing wage and price conditions differ from those in the Federal Republic of Germany, already speak forcefully in favor of an agreement among the defendants, a determination to which all the other market conditions lead. Under present economic conditions, these same considerations, which otherwise led to undercutting competitors' prices, should have caused at least some dye manufacturers, by maintaining their previous prices or by increasing their prices to a lesser extent, to take advantage of competitors' price increases in order to enlarge or secure their shares of the market. Particularly in the present case, it would have been more appropriate to maintain the previous price level at least for

[4] See footnote, p. 2.