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⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 1660/98
of 20 July 1998**

approving the Protocol establishing the fishing possibilities and the financial compensation provided for in the Agreement between the European Economic Community and the Government of the Revolutionary People's Republic of Guinea on fishing off the Guinean coast for the period 1 January 1998 to 31 December 1999

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43, in conjunction with the first sentence of Article 228(2) and the first subparagraph of Article 228(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Whereas, pursuant to the Agreement between the European Economic Community and the Government of the Revolutionary People's Republic of Guinea on fishing off the Guinean coast⁽²⁾, the two Parties have conducted negotiations to determine any amendments and additions to be made to the Agreement at the end of the period of application of the Protocol annexed thereto;

Whereas, as a result of those negotiations, a new Protocol establishing the fishing possibilities and the financial compensation provided for in the abovementioned Agreement for the period 1 January 1998 to 31 December 1999 was initialled on 11 December 1997;

Whereas it is in the Community's interest to approve the new Protocol;

Whereas the fishing possibilities should be apportioned among the Member States on the basis of the traditional allocation of fishing possibilities under the fisheries Agreement,

HAS ADOPTED THIS REGULATION:

Article 1

The Protocol establishing the fishing possibilities and the financial compensation provided for in the Agreement between the European Economic Community and the Government of the Revolutionary People's Republic of Guinea on fishing off the Guinean coast for the period 1

January 1998 to 31 December 1999 is hereby approved on behalf of the Community.

The text of the Protocol is attached to this Regulation⁽³⁾.

Article 2

The fishing possibilities laid down in the Protocol shall be allocated among the Member States, according to gross registered tonnage and number of vessels, as follows:

(a) cephalopods/fin-fish:

Spain:	1 350 GRT
Italy:	1 200 GRT
Greece:	1 450 GRT

(b) shrimps:

Spain:	700 GRT
Portugal:	200 GRT
Greece:	100 GRT

(c) tuna seiners:

France:	19 vessels
Spain:	14 vessels

(d) pole-and-line tuna vessels:

France:	8 vessels
Spain:	5 vessels

(e) surface longliners:

France:	3 vessels
Spain:	23 vessels
Portugal:	2 vessels.

If licence applications from those Member States do not exhaust the fishing possibilities established in the Protocol, the Commission may consider licence applications from any other Member States.

⁽¹⁾ OJ C 210, 6. 7. 1998.

⁽²⁾ OJ L 111, 27. 4. 1983, p. 1.

⁽³⁾ For the text of the Protocol, see OJ 196, 14. 7. 1998, p. 28.

Article 3

The President of the Council is hereby authorised to designate the persons empowered to sign the Protocol in order to bind the Community.

Article 4

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 20 July 1998.

For the Council

The President

W. MOLTERER

COMMISSION REGULATION (EC) No 1661/98
of 27 July 1998
concerning the classification of certain goods in the Combined Nomenclature

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff⁽¹⁾, as last amended by Regulation (EC) No 1048/98⁽²⁾, and in particular Article 9 thereof,

Whereas in order to ensure uniform application of the Combined Nomenclature annexed to the abovementioned Regulation, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation;

Whereas Regulation (EEC) No 2658/87 has set down the general rules for the interpretation of the Combined Nomenclature and those rules also apply to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific Community provisions, with a view to the application of tariff and other measures relating to trade in goods;

Whereas, pursuant to the said general rules, the goods described in column 1 of the table annexed to the present Regulation must be classified within the appropriate CN codes indicated in column 2, by virtue of the reasons set out in column 3;

Whereas it is accepted that binding tariff information issued by the customs authorities of Member States in respect of the classification of goods in the Combined Nomenclature and which do not conform to the rights

established by this Regulation, can continue to be invoked, under the provisions in Article 12(6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽³⁾, for a period of three months by the holder;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Tariff and Statistical Nomenclature Section of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column 1 of the annexed table are now classified within the Combined Nomenclature within the appropriate CN codes indicated in column 2 of the abovementioned table.

Article 2

Binding tariff information issued by the customs authorities of Member States which do not conform to the rights established by this Regulation can continue to be invoked under the provisions of Article 12(6) of Regulation (EEC) No 2913/92 for a period of three months.

Article 3

This Regulation shall enter into force on the 21st day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 July 1998.

For the Commission
Mario MONTI
Member of the Commission

⁽¹⁾ OJ L 256, 7. 9. 1987, p. 1.
⁽²⁾ OJ L 151, 21. 5. 1998, p. 1.

⁽³⁾ OJ L 302, 19. 10. 1992, p. 1.

ANNEX

Description	CN code	Grounds
(1)	(2)	(3)
Tanning preparation, in the form of a green powder based on inorganic compounds, containing: — approximately 26 % chromium expressed as chromium oxide — approximately 8 % sodium and 17 % sulphur — with a basicity of about 33 %	3202 90 00	Classification is determined by the provisions of General Rules 1 and 6 for the interpretation of the Combined Nomenclature, note 1(a) to Chapter 28 and the wording of CN codes 3202 and 3202 90 00 See also HS explanatory notes I and I(B) to heading 3202

COMMISSION REGULATION (EC) No 1662/98
of 28 July 1998
establishing the standard import values for determining the entry price of certain
fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 1498/98 ⁽²⁾, and in particular Article 4 (1) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy ⁽³⁾, as last amended by Regulation (EC) No 150/95 ⁽⁴⁾, and in particular Article 3 (3) thereof,

Whereas Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commis-

sion fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto;

Whereas, in compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 29 July 1998.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ L 198, 15. 7. 1998, p. 4.

⁽³⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 28 July 1998 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0707 00 05	052	71,6
	999	71,6
0709 90 70	052	48,4
	999	48,4
0805 30 10	382	60,5
	388	71,4
	524	67,2
	528	56,7
	999	63,9
0806 10 10	052	122,2
	400	292,6
	412	187,0
	600	80,6
	624	163,0
	999	169,1
0808 10 20, 0808 10 50, 0808 10 90	388	70,1
	400	74,3
	508	108,4
	512	64,7
	524	61,6
	528	50,7
	720	167,0
	800	142,8
	804	112,7
	999	94,7
0808 20 50	052	108,0
	388	94,5
	512	98,9
	528	89,7
	999	97,8
0809 10 00	052	190,8
	064	128,0
	066	70,3
	999	129,7
0809 20 95	052	456,0
	061	260,9
	400	297,5
	404	387,3
	616	264,5
	999	333,2
0809 40 05	064	79,4
	066	95,8
	624	206,5
	999	127,2

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2317/97 (OJ L 321, 22. 11. 1997, p. 19). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1663/98
of 28 July 1998

fixing Community producer and import prices for carnations and roses with a view to the application of the arrangements governing imports of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4088/87 of 21 December 1987 fixing conditions for the application of preferential customs duties on imports of certain flowers originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip ⁽¹⁾, as last amended by Regulation (EC) No 1300/97 ⁽²⁾, and in particular Article 5 (2) (a) thereof,

Whereas, pursuant to Article 2 (2) and Article 3 of above-mentioned Regulation (EEC) No 4088/87, Community import and producer prices are fixed each fortnight for uniflorous (bloom) carnations, multiflorous (spray) carnations, large-flowered roses and small-flowered roses and apply for two-weekly periods; whereas, pursuant to Article 1b of Commission Regulation (EEC) No 700/88 of 17 March 1988 laying down detailed rules for the application of the arrangements for the import into the Community of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip ⁽³⁾, as last amended by Regulation (EC) No 2062/

97 ⁽⁴⁾, those prices are determined for fortnightly periods on the basis of weighted prices provided by the Member States; whereas those prices should be fixed immediately so the customs duties applicable can be determined; whereas, to that end, provision should be made for this Regulation to enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

The Community producer and import prices for uniflorous (bloom) carnations, multiflorous (spray) carnations, large-flowered roses and small-flowered roses as referred to in Article 1b of Regulation (EEC) No 700/88 for a fortnightly period shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 29 July 1998.

It shall apply from 29 July to 11 August 1998.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 382, 31. 12. 1987, p. 22.

⁽²⁾ OJ L 177, 5. 7. 1997, p. 1.

⁽³⁾ OJ L 72, 18. 3. 1988, p. 16.

⁽⁴⁾ OJ L 289, 22. 10. 1997, p. 1.

ANNEX

(ECU/100 pieces)

Period from 29 July to 11 August 1998				
Community producer price	Uniflorous (bloom) carnations	Multiflorous (spray) carnations	Large-flowered roses	Small-flowered roses
	15,02	14,93	25,12	10,66
Community import prices	Uniflorous (bloom) carnations	Multiflorous (spray) carnations	Large-flowered roses	Small-flowered roses
Israel	6,40	9,73	8,32	9,21
Morocco	—	—	—	—
Cyprus	—	—	—	—
Jordan	—	—	—	—
West Bank and Gaza Strip	—	—	—	—

COMMISSION REGULATION (EC) No 1664/98
of 28 July 1998
amending Regulation (EEC) No 1201/89 laying down rules implementing the
system of aid for cotton

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Article 1

Having regard to the Act of Accession of Greece, and in particular Protocol 4 on cotton, as last amended by Council Regulation (EC) No 1553/95 ⁽¹⁾,

Having regard to Council Regulation (EEC) No 1964/87 of 2 July 1987 adjusting the system of aid for cotton introduced by Protocol 4 annexed to the Act of Accession of Greece ⁽²⁾, as last amended by Regulation (EC) No 1553/95, and in particular Article 2(4) thereof,

Having regard to Council Regulation (EC) No 1554/95 of 29 June 1995 laying down the general rules for the system of aid for cotton and repealing Regulation (EEC) No 2169/81 ⁽³⁾, as last amended by Regulation (EC) No 1419/98 ⁽⁴⁾, and in particular Article 11(1) thereof,

Whereas, as a result of adjustments to the system of aid for cotton introduced by Regulation (EC) No 1419/98, the corresponding amendments must be made to Commission Regulation (EEC) No 1201/89 of 3 May 1989 laying down rules implementing the system of aid for cotton ⁽⁵⁾, as last amended by Regulation (EC) No 1740/97 ⁽⁶⁾;

Whereas Regulation (EC) No 1419/98 introduces a procedure for revising production estimates before 1 December so that an advance payment closer to the final aid amount can be made; whereas Regulation (EEC) No 1201/89 should accordingly be amended with a view to applying this mechanism;

Whereas the adjustments to the system of aid provide for the possibility of cotton being ginned on behalf of producer groups; whereas the rules for administering the aid and the conditions that the group must fulfil so the aid can be passed on should be specified for such cases;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Flax and Hemp,

Regulation (EEC) No 1201/89 is hereby amended as follows:

1. Article 5(2) is replaced by the following:

‘2. On the same date as the world market price for unginned cotton as referred to in Article 1(1) is fixed and for the same period, the Commission shall fix:

- from 1 September, the advance referred to in the first subparagraph of Article 5(3a) of Council Regulation (EC) No 1554/95 ^(*),
- from 16 December, the advance referred to in the second subparagraph of Article 5(3a) of Regulation (EC) No 1554/95.

On application by the parties concerned, advances paid before 16 December shall be increased to take account of the amount referred to in the second indent of the first subparagraph, except where the difference between the two amounts is less than ECU 1/100 kg. Such applications shall be accompanied by proof that an additional security designed to ensure that Article 9(8) is complied with has been lodged.

^(*) OJ L 148, 30. 6. 1995, p. 48.’;

2. Article 10(3) is replaced by the following:

‘3. The following provisions shall apply where the cotton is to be ginned on behalf of an individual producer or a producer group as referred to in Article 7(2) of Regulation (EC) No 1554/95.

- (a) No later than 10 days before the date of first placing in supervised storage, the ginning undertaking concerned shall submit a declaration to the agency referred to in Article 7(1) to the effect that the cotton is to be ginned on behalf of an individual producer or, as the case may be, of a producer group.

In addition, such declarations, to be signed by both parties concerned, shall specify:

- (i) the way the ginning undertaking is to administer applications for supervised storage as provided for in Article 9 and aid applications as provided for in Article 7;

⁽¹⁾ OJ L 148, 30. 6. 1995, p. 45.

⁽²⁾ OJ L 184, 3. 7. 1987, p. 14.

⁽³⁾ OJ L 148, 30. 6. 1995, p. 48.

⁽⁴⁾ OJ L 190, 4. 7. 1998, p. 4.

⁽⁵⁾ OJ L 123, 4. 5. 1989, p. 23.

⁽⁶⁾ OJ L 244, 6. 9. 1997, p. 1.

- (ii) the way individual producers or producer groups are to prove they have fulfilled their obligations regarding entitlement to the aid to the ginning undertaking;
 - (iii) an undertaking that the aid will be passed on to the individual producer or the producer group.
- (b) Where ginning is carried out on behalf of a producer group, fulfilment of the undertaking provided for in point (a)(iii) shall imply provision by the group of proof of the undertaking to pay each member the minimum price, adjusted in accordance with paragraph 2(g). To that end, the group shall in particular supply the price at which the producers deliver the unginned cotton, as determined in accordance with paragraph 2(f).
- (c) Paragraph 2(h) shall apply *mutatis mutandis* where the cotton is ginned on behalf of an individual producer or a producer group.
- (d) Without prejudice to Articles 7 and 9, applications for supervised storage and aid applications shall include a reference to the declaration provided for in (a).
- (e) At the request of the individual producer or the producer group concerned, the documents referred to in Articles 7 and 9 concerning applications for supervised storage and aid applications may be sent to them by the competent agency;'
3. in Article 12(1)(e) and in the introductory part of Article 13, 'Article 7(2)' is replaced by 'Article 7(1) and (2)';
4. the second subparagraph of Article 12(3) is replaced by the following:
'Prior authorisation may be granted in particular for quantities ginned on behalf of an individual producer or of a producer group.';
5. in Article 14(1)(e), 'Article 5(3)' is replaced by 'the first subparagraph of Article 5(3a)';
6. the following point is added to Article 14(1):
'(f) by 25 November at the latest each year, the most recent figures on quantities placed in supervised storage and the revised production estimate for unginned cotton as referred to in the second subparagraph of Article 5(3a) of Regulation (EC) No 1554/95.';
7. in the second subparagraph of Article 14(1), 'the third indent of (d)' is replaced by 'the second indent of (d)'.

Article 2

This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Communities*.

It shall apply from 1 September 1998.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

**COMMISSION REGULATION (EC) No 1665/98
of 28 July 1998**

**determining the extent to which applications submitted in July 1998 for import
licences for the tariff quota for beef and veal provided for in the Interim Agree-
ment between the Community and the Republic of Slovenia can be accepted**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European
Community,

Having regard to Commission Regulation (EC) No 2527/
97 of 15 December 1997 laying down for 1998 detailed
rules for the application of the tariff quota for beef and
veal provided for in the Interim Agreement between the
Community and the Republic of Slovenia⁽¹⁾, and in
particular Article 3(4) thereof,

Whereas Article 1(3) of Regulation (EC) No 2527/97 fixes
the quantity of fresh or chilled beef and veal originating
in Slovenia which may be imported under special condi-
tions from 1 July to 31 December 1998; whereas the

quantity of meat for which import licences have been
submitted is such that applications may be granted in full,

HAS ADOPTED THIS REGULATION:

Article 1

Import licences shall be granted for the full quantities
covered by applications submitted for the quota referred
to in Regulation (EC) No 2527/97 for the period 1 July to
31 December 1998.

Article 2

This Regulation shall enter into force on 29 July 1998.

This Regulation shall be binding in its entirety and directly applicable in all Member
States.

Done at Brussels, 28 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 346, 17. 12. 1997, p. 56.

COMMISSION REGULATION (EC) No 1666/98**of 28 July 1998****opening a standing invitation to tender for the export of barley held by the
Austrian intervention agency**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals⁽¹⁾, as last amended by Commission Regulation (EC) No 923/96⁽²⁾, and in particular Article 5 thereof,

Whereas Commission Regulation (EEC) No 2131/93⁽³⁾, as last amended by Regulation (EC) No 2193/96⁽⁴⁾, lays down the procedure and conditions for the disposal of cereals held by intervention agencies;

Whereas a standing invitation to tender should be opened for the export of 100 750 tonnes of barley held by the Austrian intervention agency;

Whereas special procedures must be laid down to ensure that the operations and their monitoring are properly effected; whereas, to that end, provision should be made for a security lodgement scheme which ensures that aims are met while avoiding excessive costs for the operators; whereas derogations should accordingly be made to certain rules, in particular those laid down in Regulation (EEC) No 2131/93;

Whereas, where removal of the barley is delayed by more than five days or the release of one of the securities required is delayed for reasons imputable to the intervention agency the Member State concerned must pay compensation;

Whereas Article 7(2a) of Regulation (EEC) No 2131/93 provides for the possibility of reimbursing the successful tenderer for the lowest transport costs between the place of storage and the actual place of exit; whereas, in view of Austria's geographical position, that provision should be applied;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

Subject to the provisions of this Regulation the Austrian intervention agency issues a standing invitation to tender

for the export of barley held by it in accordance with Regulation (EEC) No 2131/93.

Article 2

1. The invitation to tender shall cover a maximum of 100 750 tonnes of barley for export to third countries.
2. The regions in which the 100 750 tonnes of barley are stored are set out in Annex I.

Article 3

1. Notwithstanding the third paragraph of Article 16 of Regulation (EEC) No 2131/93, the price to be paid for the export shall be that quoted in the tender.
2. No export refund or tax or monthly increase shall be granted on exports carried out pursuant to this Regulation.
3. Article 8(2) of Regulation (EEC) No 2131/93 shall not apply.
4. In application of Article 7(2a) of Regulation (EEC) No 2131/93, the successful tenderer shall be reimbursed for the lowest transport costs between the place of storage and the actual place of exit.

Article 4

1. The export licences shall be valid from their date of issue within the meaning of Article 9 of Regulation (EEC) No 2131/93 until the end of the fourth month thereafter.
2. Tenders submitted in response to this invitation to tender may not be accompanied by export licence applications submitted pursuant to Article 44 of Commission Regulation (EEC) No 3719/88⁽⁵⁾.

Article 5

1. Notwithstanding Article 7(1) of Regulation (EEC) No 2131/93, the time limit for submission of tenders in respect of the first partial invitation to tender shall be 9 a.m. (Brussels time) on 30 July 1998.

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 191, 31. 7. 1993, p. 76.

⁽⁴⁾ OJ L 293, 16. 11. 1996, p. 1.

⁽⁵⁾ OJ L 331, 2. 12. 1988, p. 1.

2. The time limit for submission of tenders in respect of subsequent partial invitations to tender shall be 9 a.m. (Brussels time) each Thursday thereafter.

3. The last partial invitation to tender shall be 9 a.m. (Brussels time) on 27 May 1999.

4. Tenders shall be lodged with the Austrian intervention agency.

Article 6

1. The intervention agency, the storer and the successful tenderer shall, at the request of the latter and by common agreement, either before or at the time of removal from storage as the successful tenderer chooses, take reference samples for counter-analysis at the rate of at least one sample for every 500 tonnes and shall analyse the samples. The intervention agency may be represented by a proxy, provided this is not the storer.

The analyses results shall be forwarded to the Commission in the event of a dispute.

Reference samples for counter-analysis shall be taken and analysed within seven working days of the date of the successful tenderer's request or within three working days if the samples are taken on removal from storage. Where the final result of sample analyses indicates a quality:

- (a) higher than that specified in the notice of invitation to tender, the successful tenderer must accept the lot as established;
- (b) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, providing that the differences having regard to those criteria do not exceed the following limits:
 - two kilograms per hectolitre as regards specific weight, which must not, however, be less than 60 kg/hl,
 - one percentage point as regards moisture content,
 - half a percentage point as regards impurities as specified in points B.2 and B.4 of the Annex to Commission Regulation (EEC) No 689/92⁽¹⁾, and
 - half a percentage point as regards impurities as specified in point B.5 of the Annex to Regulation (EEC) No 689/92, the percentages admissible for noxious grains and ergot, however, remaining unchanged,

the successful tenderer must accept the lot as established;

(c) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, and a difference exceeding the limits set out in point (b), the successful tenderer may:

— accept the lot as established, or

— refuse to take over the lot in question. The successful tenderer shall be discharged of all his obligations relating to the lot in question and the securities shall be released only once he has informed the Commission and the intervention agency forthwith in accordance with Annex II; however, if he requests the intervention agency to supply him with another lot of intervention barley of the quality laid down at no additional charge, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall notify the Commission immediately thereof in accordance with Annex II;

(d) below the minimum characteristics laid down for intervention, the successful tenderer may not remove the lot in question. He shall be discharged of all his obligations relating to the lot in question and the securities shall be released only once he has informed the Commission and the intervention agency forthwith in accordance with Annex II; however, he may request the intervention agency to supply him with another lot of intervention barley of the quality laid down at no additional charge. In that case, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall immediately inform the Commission thereof in accordance with Annex II.

2. However, if the barley is removed before the results of the analyses are known, all risks shall be borne by the successful tenderer from the time the lot is removed, without prejudice to any means of redress of which he may avail himself against the storer.

3. If, as a result of successive replacements, the successful tenderer has not received a replacement lot of the quality laid down within one month of the date of his request for a replacement, he shall be discharged of all his obligations and the securities shall be released once he has informed the Commission and the intervention agency forthwith in accordance with Annex II.

4. Except where the final results of analyses indicate a quality below the minimum characteristics laid down for intervention, the costs of taking the samples and conducting the analyses provided for in paragraph 1 but not of inter-bin transfers shall be borne by the EAGGF in respect of up to one analysis per 500 tonnes. The costs of inter-bin transfers and any additional analyses requested by the successful tenderer shall be borne by him.

⁽¹⁾ OJ L 74, 20. 3. 1992, p. 18.

Article 7

By derogation from Article 12 of Commission Regulation (EEC) No 3002/92⁽¹⁾, the documents relating to the sale of barley in accordance with this Regulation, and in particular the export licence, the removal order referred to in Article 3(1)(b) of Regulation (EEC) No 3002/92, the export declaration and, where necessary, the T5 copy shall carry the entry:

- Cebada de intervención sin aplicación de restitución ni gravamen, Reglamento (CE) n° 1666/98
- Byg fra intervention uden restitutionsydelse eller -avgift, forordning (EF) nr. 1666/98
- Interventionsgerste ohne Anwendung von Ausfuhrerstattungen oder Ausfuhrabgaben, Verordnung (EG) Nr. 1666/98
- Κριθή παρέμβασης χωρίς εφαρμογή επιστροφής ή φόρου, κανονισμός (ΕΚ) αριθ. 1666/98
- Intervention barley without application of refund or tax, Regulation (EC) No 1666/98
- Orge d'intervention ne donnant pas lieu à restitution ni taxe, règlement (CE) n° 1666/98
- Orzo d'intervento senza applicazione di restituzione né di tassa, regolamento (CE) n. 1666/98
- Gerst uit interventie, zonder toepassing van restitutie of belasting, Verordening (EG) nr. 1666/98
- Cevada de intervenção sem aplicação de uma restituição ou imposição, Regulamento (CE) n° 1666/98
- Interventio-ohraa, johon ei sovelleta vientitukea eikä vientimaksua, asetus (EY) N:o 1666/98
- Interventionskorn, utan tillämpning av bidrag eller avgift, förordning (EG) nr 1666/98.

Article 8

1. The security lodgement pursuant to Article 13(4) of Regulation (EEC) No 2131/93 must be released once the export licences have been issued to the successful tenderers.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28 July 1998.

2. The obligation to export to the third countries shall be covered by a security amounting to ECU 50 per tonne of which ECU 30 per tonne shall be lodged when the export licence is issued, with the balance of ECU 20 per tonne being lodged before removal of the cereals.

Article 15(2) of Regulation (EEC) No 3002/92 notwithstanding:

- the amount of ECU 30 per tonne must be released within 20 working days of the date on which the successful tenderer supplies proof that the barley removed has left the customs territory of the Community,
- the amount of ECU 20 per tonne must be released within 15 working days of the date on which the successful tenderer supplies the proof referred to in Article 17(3) of Regulation (EEC) No 2131/93.

3. Except in duly substantiated exceptional cases, in particular the opening of an administrative enquiry, any release of the securities provided for in this Article after the time limits specified in this same Article shall confer an entitlement to compensation from the Member State amounting to ECU 0,015 per 10 tonnes for each day's delay.

This compensation shall not be charged to the European Agricultural Guidance and Guarantee Fund (EAGGF).

Article 9

Within two hours of the expiry of the time limit for the submission of tenders, the Austrian intervention agency shall notify the Commission of tenders received. Such notification shall be made using the model set out in Annex III and the telex or fax numbers set out in Annex IV.

Article 10

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 301, 17. 10. 1992, p. 17.

ANNEX I

<i>(tonnes)</i>	
Place of storage	Quantity
Niederösterreich/nördl. Burgenland	71 997
Steiermark/südl. Burgenland	8 540
Oberösterreich	20 213

ANNEX II

**Communication of refusal of lots under the standing invitation to tender for the export of
barley held by the Austrian intervention agency**

(Article 6(1) of Regulation (EC) No 1666/98)

- Name of successful tenderer:
- Date of award of contract:
- Date of refusal of lot by successful tenderer:

Lot No	Quantity in tonnes	Address of silo	Reason for refusal to take over
			<p>— Specific weight (kg/hl)</p> <p>— % sprouted grains</p> <p>— % miscellaneous impurities (Schwarzbesatz)</p> <p>— % of matter which is not basic cereal of unimpaired quality</p> <p>— Other</p>

*ANNEX III***Standing invitation to tender for the export of barley held by the Austrian intervention agency**

(Regulation (EC) No 1666/98)

1	2	3	4	5	6	7
Tender No	Consignment No	Quantity (tonnes)	Offer price (ECU/tonne) (1)	Price increases (+) or reductions (-) (ECU/tonne) p.m.	Commercial costs (ECU/tonne)	Destination
1						
2						
3						
etc.						

(1) This price includes the increases or reductions relating to the lot to which the tender refers.

ANNEX IV

The only numbers to use to call Brussels are (DG VI-C-1)

— fax: 296 49 56,
295 25 15;
— telex: 22037 AGREC B,
22070 AGREC B (Greek characters).

COMMISSION REGULATION (EC) No 1667/98**of 28 July 1998****opening a standing invitation to tender for the export of barley held by the
Swedish intervention agency**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals⁽¹⁾, as last amended by Commission Regulation (EC) No 923/96⁽²⁾, and in particular Article 5 thereof,

Whereas Commission Regulation (EEC) No 2131/93⁽³⁾, as last amended by Regulation (EC) No 2193/96⁽⁴⁾, lays down the procedure and conditions for the disposal of cereals held by intervention agencies;

Whereas a standing invitation to tender should be opened for the export of 83 972 tonnes of barley held by the Swedish intervention agency;

Whereas special procedures must be laid down to ensure that the operations and their monitoring are properly effected; whereas, to that end, provision should be made for a security lodgement scheme which ensures that aims are met while avoiding excessive costs for the operators; whereas derogations should accordingly be made to certain rules, in particular those laid down in Regulation (EEC) No 2131/93;

Whereas, where removal of the barley is delayed by more than five days or the release of one of the securities required is delayed for reasons imputable to the intervention agency the Member State concerned must pay compensation;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

Subject to the provisions of this Regulation the Swedish intervention agency issues a standing invitation to tender for the export of barley held by it in accordance with Regulation (EEC) No 2131/93.

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 191, 31. 7. 1993, p. 76.

⁽⁴⁾ OJ L 293, 16. 11. 1996, p. 1.

Article 2

1. The invitation to tender shall cover a maximum of 83 972 tonnes of barley for export to third countries.

2. The regions in which the 83 972 tonnes of barley are stored are set out in Annex I.

Article 3

1. Notwithstanding the third paragraph of Article 16 of Regulation (EEC) No 2131/93, the price to be paid for the export shall be that quoted in the tender.

2. No export refund or tax or monthly increase shall be granted on exports carried out pursuant to this Regulation.

3. Article 8(2) of Regulation (EEC) No 2131/93 shall not apply.

Article 4

1. The export licences shall be valid from their date of issue within the meaning of Article 9 of Regulation (EEC) No 2131/93 until the end of the fourth month thereafter.

2. Tenders submitted in response to this invitation to tender may not be accompanied by export licence applications submitted pursuant to Article 44 of Commission Regulation (EEC) No 3719/88⁽⁵⁾.

Article 5

1. Notwithstanding Article 7(1) of Regulation (EEC) No 2131/93, the time limit for submission of tenders in respect of the first partial invitation to tender shall be 9 a.m. (Brussels time) on 30 July 1998.

2. The time limit for submission of tenders in respect of subsequent partial invitations to tender shall be 9 a.m. (Brussels time) each Thursday thereafter.

3. The last partial invitation to tender shall be 9 a.m. (Brussels time) on 27 May 1999.

4. Tenders shall be lodged with the Swedish intervention agency.

Article 6

1. The intervention agency, the storer and the successful tenderer shall, at the request of the latter and by common agreement, either before or at the time of

⁽⁵⁾ OJ L 331, 2. 12. 1988, p. 1.

removal from storage as the successful tenderer chooses, take reference samples for counter-analysis at the rate of at least one sample for every 500 tonnes and shall analyse the samples. The intervention agency may be represented by a proxy, provided this is not the storer.

The analyses results shall be forwarded to the Commission in the event of a dispute.

Reference samples for counter-analysis shall be taken and analysed within seven working days of the date of the successful tenderer's request or within three working days if the samples are taken on removal from storage. Where the final result of sample analyses indicates a quality:

- (a) higher than that specified in the notice of invitation to tender, the successful tenderer must accept the lot as established;
- (b) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, providing that the differences having regard to those criteria do not exceed the following limits:

- two kilograms per hectolitre as regards specific weight, which must not, however, be less than 60 kg/hl,
- one percentage point as regards moisture content,
- half a percentage point as regards impurities as specified in points B.2 and B.4 of the Annex to Commission Regulation (EEC) No 689/92 ⁽¹⁾, and
- half a percentage point as regards impurities as specified in point B.5 of the Annex to Regulation (EEC) No 689/92, the percentages admissible for noxious grains and ergot, however, remaining unchanged,

the successful tenderer must accept the lot as established;

- (c) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, and a difference exceeding the limits set out in point (b), the successful tenderer may:

- accept the lot as established, or
- refuse to take over the lot in question. The successful tenderer shall be discharged of all his obligations relating to the lot in question and the securities shall be released only once he has informed the Commission and the intervention agency forthwith in accordance with Annex II; however, if he requests the intervention agency to supply him with another lot of intervention barley

of the quality laid down at no additional charge, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall notify the Commission immediately thereof in accordance with Annex II;

- (d) below the minimum characteristics laid down for intervention, the successful tenderer may not remove the lot in question. He shall be discharged of all his obligations relating to the lot in question and the securities shall be released only once he has informed the Commission and the intervention agency forthwith in accordance with Annex II; however, he may request the intervention agency to supply him with another lot of intervention barley of the quality laid down at no additional charge. In that case, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall immediately inform the Commission thereof in accordance with Annex II.

2. However, if the barley is removed before the results of the analyses are known, all risks shall be borne by the successful tenderer from the time the lot is removed, without prejudice to any means of redress of which he may avail himself against the storer.

3. If, as a result of successive replacements, the successful tenderer has not received a replacement lot of the quality laid down within one month of the date of his request for a replacement, he shall be discharged of all his obligations and the securities shall be released once he has informed the Commission and the intervention agency forthwith in accordance with Annex II.

4. Except where the final results of analyses indicate a quality below the minimum characteristics laid down for intervention, the costs of taking the samples and conducting the analyses provided for in paragraph 1 but not of inter-bin transfers shall be borne by the EAGGF in respect of up to one analysis per 500 tonnes. The costs of inter-bin transfers and any additional analyses requested by the successful tenderer shall be borne by him.

Article 7

By derogation from Article 12 of Commission Regulation (EEC) No 3002/92 ⁽²⁾, the documents relating to the sale of barley in accordance with this Regulation, and in particular the export licence, the removal order referred to in Article 3(1)(b) of Regulation (EEC) No 3002/92, the export declaration and, where necessary, the T5 copy shall carry the entry:

⁽¹⁾ OJ L 74, 20. 3. 1992, p. 18.

⁽²⁾ OJ L 301, 17. 10. 1992, p. 17.

- Cebada de intervención sin aplicación de restitución ni gravamen, Reglamento (CE) n° 1667/98
- Byg fra intervention uden restitutionsydelse eller -avgift, forordning (EF) nr. 1667/98
- Interventionsgerste ohne Anwendung von Ausfuhrerstattungen oder Ausfuhrabgaben, Verordnung (EG) Nr. 1667/98
- Κριθή παρέμβασης χωρίς εφαρμογή επιστροφής ή φόρου, κανονισμός (ΕΚ) αριθ. 1667/98
- Intervention barley without application of refund or tax, Regulation (EC) No 1667/98
- Orge d'intervention ne donnant pas lieu à restitution ni taxe, règlement (CE) n° 1667/98
- Orzo d'intervento senza applicazione di restituzione né di tassa, regolamento (CE) n. 1667/98
- Gerst uit interventie, zonder toepassing van restitutie of belasting, Verordening (EG) nr. 1667/98
- Cevada de intervenção sem aplicação de uma restituição ou imposição, Regulamento (CE) n° 1667/98
- Interventio-ohraa, johon ei sovelleta vientitukea eikä vientimaksua, asetus (EY) N:o 1667/98
- Interventionskorn, utan tillämpning av bidrag eller avgift, förordning (EG) nr 1667/98.

Article 8

1. The security lodgement pursuant to Article 13(4) of Regulation (EEC) No 2131/93 must be released once the export licences have been issued to the successful tenderers.
2. The obligation to export to the third countries shall be covered by a security amounting to ECU 50 per tonne of which ECU 30 per tonne shall be lodged when the

export licence is issued, with the balance of ECU 20 per tonne being lodged before removal of the cereals.

Article 15(2) of Regulation (EEC) No 3002/92 notwithstanding:

- the amount of ECU 30 per tonne must be released within 20 working days of the date on which the successful tenderer supplies proof that the barley removed has left the customs territory of the Community,
- the amount of ECU 20 per tonne must be released within 15 working days of the date on which the successful tenderer supplies the proof referred to in Article 17(3) of Regulation (EEC) No 2131/93.

3. Except in duly substantiated exceptional cases, in particular the opening of an administrative enquiry, any release of the securities provided for in this Article after the time limits specified in this same Article shall confer an entitlement to compensation from the Member State amounting to ECU 0,015 per 10 tonnes for each day's delay.

This compensation shall not be charged to the European Agricultural Guidance and Guarantee Fund (EAGGF).

Article 9

Within two hours of the expiry of the time limit for the submission of tenders, the Swedish intervention agency shall notify the Commission of tenders received. Such notification shall be made using the model set out in Annex III and the telex or fax numbers set out in Annex IV.

Article 10

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

<i>(tonnes)</i>	
Place of storage	Quantity
Stallarholmen	2 062
Motala	2 807
Rök	4 994
Gamleby	2 835
Ättersta	7 584
Broddbo 1	5 997
Velanda	7 645
Hova	12 981
Brännarp	2 624
Helsingborg	13 311
Djurön	21 132

ANNEX II

**Communication of refusal of lots under the standing invitation to tender for the export of
barley held by the Swedish intervention agency**

(Article 6(1) of Regulation (EC) No 1667/98)

- Name of successful tenderer:
- Date of award of contract:
- Date of refusal of lot by successful tenderer:

Lot No	Quantity in tonnes	Address of silo	Reason for refusal to take over
			— Specific weight (kg/hl) — % sprouted grains — % miscellaneous impurities (Schwarzbesatz) — % of matter which is not basic cereal of unimpaired quality — Other

*ANNEX III***Standing invitation to tender for the export of barley held by the Swedish intervention agency**

(Regulation (EC) No 1667/98)

1	2	3	4	5	6	7
Tender No	Consignment No	Quantity (tonnes)	Offer price (ECU/tonne) (1)	Price increases (+) or reductions (-) (ECU/tonne) p.m.	Commercial costs (ECU/tonne)	Destination
1						
2						
3						
etc.						

(1) This price includes the increases or reductions relating to the lot to which the tender refers.

ANNEX IV

The only numbers to use to call Brussels are (DG VI-C-1)

— fax: 296 49 56,
295 25 15;

— telex: 22037 AGREC B,
22070 AGREC B (Greek characters).

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 11 February 1998

declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement

(Case No IV/M.986 — Agfa-Gevaert/DuPont)

(notified under document number C(1998) 1290)

(Only the English text is authentic)

(Text with EEA relevance)

(98/475/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 and in particular Article 57(2)(a) thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings ⁽¹⁾, as amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 8(2) thereof,

Having regard to the Commission Decision of 9 October 1997 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations ⁽²⁾,

Whereas:

- (1) On 8 September 1997 the Commission received a notification of a proposed concentration pursuant to Article 4 of Regulation (EEC) No 4064/89 ('the

Merger Regulation'), by which the undertakings Agfa-Gevaert AG and Agfa-Gevaert NV ('Agfa'), which belong to the Bayer group, were to acquire within the meaning of Article 3(1) of the Merger Regulation the graphic arts film and offset printing plates businesses belonging to the group of E. I. DuPont de Nemours & Company ('DuPont').

- (2) By decision of 29 September 1997, the Commission ordered the continuation of the suspension of the notified concentration pursuant to Article 7(2) and Article 18(2) of the Merger Regulation. On 9 October 1997, the Commission decided to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation. On 24 November 1997 the Commission, in accordance with Article 18(1) of the Merger Regulation, submitted its objections to the notifying party.

I. THE PARTIES

- (3) Bayer AG is a diversified chemical and pharmaceutical company. Agfa AG is a company belonging to the Bayer group. Agfa produces photographic products, technical imaging systems

⁽¹⁾ OJ L 395, 30. 12. 1989, p. 1; corrigendum OJ L 257, 21. 9. 1990, p. 13.

⁽²⁾ OJ C 238, 29. 7. 1998.

and graphic systems, amongst others through its subsidiaries Agfa-Gevaert AG (Germany) and Agfa-Gevaert NV (Belgium).

- (4) DuPont, which has its corporate headquarters in the United States of America, is an internationally diversified group of undertakings concerned with chemicals and energy.
- (5) Both Agfa and DuPont are active worldwide in the production of graphic arts film and offset printing plates. They also deliver products, equipment and chemicals for graphic arts purposes and provide maintenance services.

II. THE OPERATION

- (6) On 29 July 1997, Agfa and DuPont entered into an agreement by which DuPont's worldwide graphics and press room business would become wholly owned by Agfa. The agreement consists of the acquisition of the graphic arts and press room activities of the US undertaking E. I. DuPont de Nemours & Company. The operation is carried out through the abovementioned subsidiaries of Agfa AG, Agfa-Gevaert AG and Agfa-Gevaert NV, which will acquire the graphic arts and press room businesses (including R&D, production, distribution, services, chemicals and services) of DuPont. The principal locations of the assets are in Germany for the production of graphic arts film and distribution/service facilities, and in the United Kingdom for offset printing plates. The operation also concerns the acquisition of all inventory, all technology and other industrial property rights relating to the operation of the business and goodwill and customer information, as well as the purchase of all shares and partnership interests in a company providing equipment services (DuPont Printing & Publishing GmbH & Co. KG.). DuPont's so-called proofing activities, which form part of the graphic arts process whereby the ultimate presswork is simulated, are not part of the takeover.

III. CONCENTRATION

- (7) The above described operation constitutes a concentration within the meaning of Article 3 of the Merger Regulation, since Agfa acquires control of a part of the undertaking of DuPont within the meaning of Article 3(1) of the Merger Regulation.

IV. COMMUNITY DIMENSION

- (8) The combined aggregate worldwide turnover of the undertakings concerned exceeds ECU 5 000 million (Bayer [...] ⁽¹⁾ million). The aggregate Community-wide turnover of each exceeds ECU 250 million (Bayer: ECU [...] million, sold assets of DuPont: ECU [...] million). They do not achieve more than two-thirds of their turnover in one and the same Member State. The operation therefore has a Community dimension within the meaning of Article 1(2) of the Merger Regulation and constitutes a cooperation case under Article 58 of the EEA Agreement.

V. COMPETITIVE ASSESSMENT

1. Relevant product markets

- (9) The concentration affects the sectors of graphic arts film and offset printing plates. Graphic arts film and offset printing plates are used for the reproduction of text and images onto paper or other material. These form part of the larger economic sector of printing and publishing and, more specifically, the so-called pressroom and pre-pressroom operations.
- (10) Graphic arts film and offset printing plates are used at different stages of the printing process. Graphic arts products are used to convert text and artwork into images on film in preparation for their transfer onto an (offset) printing plate. Although other means exist for reproduction of text and/or image, such as ink-jet printing, offset printing technology is considered to provide a clearer printed product and it is used when larger numbers of printed copies are needed. In any event, neither the notifying party nor any of the competitors and customers whom the Commission questioned in its investigation claimed that other printing technologies should be included in the definition of the relevant product market.
- (11) In the pre-press room and press room sector, graphic arts film and offset printing plates are sold either direct to end-users or to dealers. End-users are found in the printing and publishing industries, for example newspaper printers, commercial printers and printers of packaging. Dealers are also referred to as wholesalers, distributors or retailers. The notifying party considers that, even though such dealers are of varying size and may offer a smaller or larger range of products and/or services, they should be regarded as a homogeneous group

⁽¹⁾ In the published version of this Decision, some information has been omitted or replaced by approximations, pursuant to Article 17(2) of the Merger Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets.

for the competitive analysis. According to the notifying party, they all perform basically the same function, namely reselling, and are basically subject to the same conditions, except that (for example) larger distributors who also perform certain after-sales services may benefit from more favourable conditions (prices) than smaller retailers. The enquiry of the Commission has shown that the assessment as presented by the notifying party is reasonable. Hereinafter the term 'dealers', will be used for all parties performing reselling functions.

(12) Furthermore, the enquiry of the Commission has shown that both dealers and end-users benefit from similar conditions, any variations being largely decided on the basis of objective conditions (such as rebates linked to volume of purchases or to additional services being provided by dealers). Moreover, in certain geographic areas of the EEA, sales by dealers are carried out on the basis of territorial exclusivity, which excludes competition in that geographic area between producer and dealer. Furthermore, in those areas where a customer theoretically has the choice between purchasing direct from the producer or from a dealer, the data made available by Agfa and DuPont show that certain categories of customers, such as larger newspaper printers, are supplied direct by the producer and that competition between direct sales by producers and sales via dealers is only marginal, since differences in respective sales conditions hardly exist. Consequently, the definition of a separate market at the distribution level would not be justified. In view of that conclusion, the term 'customers' is used when referring both to end-users and to dealers.

(13) The notifying party has distinguished five relevant product markets within the graphic arts film sector and four relevant product markets within the offset printing plates sector. The distinction is made on the basis of technical characteristics of the base material, the production technique (conventional or digital) being used and the different applications of the various types of film and plate. According to the parties, the fact that certain products may generally be used for similar purposes from a customer point of view, is outweighed by the fact that those products nevertheless have specific qualities and are 'system-bound', which means that expensive product specific equipment is needed for the processing of a particular type of film or plate. Nearly all of the competitors and customers who replied to the Commission's enquiry agreed that the products which are described in recital 14 *et seq.* are not interchangeable and belong to separate product markets.

(14) Consequently, the notifying party has stated that the following nine product markets can be defined:

Graphic arts film:

- camera film
- contact film
- blue laser recorder film
- red laser recorder film
- infra-red laser recorder film.

Offset printing plates:

- positive plates
- negative plates
- plates for computer to plate (CtP) technology
- electrostatic plates.

In general, when referring to graphic arts films and offset printing plates in a more general sense, the term 'consumables' is used in this Decision.

Markets for graphic arts film

(15) Camera film and contact film are used in traditional, analogue processes, whereby images or text are transposed onto a film. With camera film, images are produced onto the film by (photographic) exposure, creating a film on which the original images are reproduced in so-called half tone images. Contact film may be used to manipulate existing half tone images, for example to correct colour on images which have previously been put onto camera film and/or to assemble images. Exposure to the original information takes place by direct contact in a so-called contact frame. Since contact film uses different machinery and has different (downstream) applications from camera film and is only substitutable to a limited extent, the notifying party has submitted that separate product markets exist, which is confirmed by competitors and customers alike.

(16) Recorder films are used in so-called digital processes whereby exposure to light takes place by laser. In these digital processes, the images are manipulated by computer. Because of the different techniques and equipment being used as compared to the above analogue processes, recorder films should generally be distinguished from camera film and contact film. Three types of recorder film exist: blue laser, red laser and infra-red laser. The three laser techniques are the products of technological advancements from one to another and can be used for varying quality applications and thus respond to different customer needs. Each type of laser

recorder film requires the end-user to apply specific equipment, depending on the type of laser used. For example, blue laser film cannot be used with red laser equipment. For these reasons, blue, red and infra-red recorder films are not regarded as interchangeable from the end-user's point of view, and belong to separate product markets. The Commission's investigation has confirmed Agfa's viewpoint.

- (17) On the basis of the above, the Commission can agree with the notifying party that for the purpose of this proceeding, within the graphic arts film sector the above described five different product markets can be distinguished.

Markets for offset printing plates

- (18) The Commission has considered whether it can agree with the distinction of four different product markets, and notably the distinction between positive and negative printing plates, as presented by the notifying party, and has in this respect assessed elements on the demand and supply side.

- (19) On the demand side, the overwhelming majority of customers (end-users and dealers) expressed their agreement with the thesis that different product markets exist for positive and negative plates (as well as for CtP and electrostatic plates). Positive plates have a high light-sensitive coating and are exposed to positive film originals and so-called positive developer (chemicals). Positive plates can generally be used for high-quality (colour) printing. With negative plates, the sensitivity of the chemical layer of the printing plate is different and negative film and negative developer are used. Negative plates are used for different applications from positive plates, in particular for newspaper printing, where speed and reliability are more important than image quality. The two types of plate therefore meet different customer needs.

- (20) Furthermore, once the choice of a particular type of plate has been made, Agfa has stated that a change from positive to negative plates or vice versa would normally never occur, since the client's whole workflow, including the plate-processing equipment used, as well as films and chemicals to be applied, are adapted to using either negative or positive plates. Even though no exact data are available, switching will indeed involve substantial cost, for example relating to a change of the corresponding processing equipment for film, which in itself represents a cost of some ECU 10 000 per processor.

- (21) As a result of the above factors, from the viewpoint of demand, positive printing plates and negative printing plates form separate product markets.

- (22) Regarding plates for CtP and electrostatic plates, the following additional points are relevant. 'Direct-to-plate' technology is different in that it eliminates the use of film and the images are directly transferred to the printing plate. When the original is derived from digital data, transferred via a laser, the technology is referred to as 'computer-to-plate' (CtP) technology. CtP technology requires specific equipment (digital plate-setters) and particular types of printing plates, different from traditional positive and negative printing plates. For these reasons, plates for CtP technology have to be regarded as forming a separate product market from positive and negative printing plates. This view corresponds with that of the notifying party and nearly all competitors and customers.

- (23) With CtP technology there are basically five different systems which can be distinguished: photopolymer, silver, hybrid (mixture of photopolymer and silver), thermal on-press and thermal off-press. These systems generally answer the same customer need: the advantage of CtP technology for the customers is that it eliminates the use of film in offset-plate production. Given that CtP technology has only been introduced relatively recently and the different systems are seen, both from a customer's point of view and a producer's point of view as directly competing, and given that at this stage of market development it cannot be foreseen whether any one or more of the CtP technologies will develop as a trendsetter, all CtP plates are, for the purpose of this proceeding, regarded as belonging to one relevant product market. Competitors and customers agree with that position as well.

- (24) Another direct-to-plate technology is based on the use of electrophotography, which is applied in combination with electrostatic plates. This is another non-contact process, but is considered inferior to the newer CtP technology. Since DuPont is not present on the market for electrostatic plates, this market is not affected by the merger.

- (25) From a supply side point of view, a number of factors were considered. The great majority of suppliers (seven out of nine) communicated to the Commission their agreement with the contention that different product markets exist for positive and negative plates (as well as for CtP and electrostatic plates). In spite of the fact that for certain producers production of different types of plates may take place using the same production lines, the opportunities for producers actually to switch are limited for the following reasons:

- (26) First, it appeared from the investigation that only some producers actually manufacture all types of plates. According to data available for 1996, only three suppliers (Agfa, DuPont and Polychrome) produced in the EEA plates for CtP, and two suppliers (Agfa and Polychrome) produced electrostatic plates.
- (27) Secondly, not all the installed lines of production have the capacity for producing negative and positive plates as alternatives. For example, out of DuPont's capacity of [...] lines of production, [...] can actually produce either negative or positive plates. For Agfa, [...] out of [...] production lines are unable to produce all four kinds of plate.
- (28) Thirdly, in so far as production lines can actually be used to make positive and negative (and other) plates as alternatives, production has to be halted and a switch at least requires the adjustment of the chemical mix for the coating to be applied and recalibration of the machinery. Agfa/DuPont have stated that this is technically not very complicated, but have not supplied any cost data in this respect. However, according to one producer, although technically not very complicated, such a switch would involve costs of between ECU 350 000 and 800 000.
- (29) Fourthly, in addition to the direct switching costs, a producer who would be willing to switch to producing and selling either more negative or positive plates will encounter costs of establishing a (new) customer base through creating or expanding its own sales network, as positive and negative plates are generally sold to different types of users and negative plate sales are largely based on direct sales by producers and to a lesser extent on sales via (existing) dealer networks. One competitor replied that owing to the additional distribution costs encountered in the negative plates market, it is concentrating its sales on the market for positive plates where it can use existing dealer channels. A further cost for developing a customer base lies in the existence of so-called package deals with end-users as explained in Section V.3.A.
- (30) In addition to the above factors, one would expect, in view of the fact that production costs for the different types of plates are more or less equal according to the notifying party, that in case of immediate substitutability, there would, on a market such as the one concerned, normally be competitive pressure for the average sales prices and margins for different types of plates to converge. However, price levels and margins show clear differences: in 1996 the average price for negative plates on the EEA market was at ECU 6,54, for positive plates ECU 6,07, namely a difference of 7,2 %, for CtP plates ECU 9,61 (31,9 % difference) and for electrostatic plates ECU 9,14 (28,4 % difference). As regards margins, Agfa's margins on positive and negative plates differed by [...] %, whereas DuPont's margins showed a difference of as much as [...] %. Moreover, there are important differences in terms of market shares. For example, in 1996 DuPont held [< 15] %, Agfa [< 20] %, Horsell-Anitec [< 17] % and Lastra [< 13] % of the positive plates market and they attained respectively [< 30] %, [< 30] %, [< 7] % and [< 5] % of the negative plates market.
- (31) Taking into account all the above characteristics, the Commission considers that in addition to arguments relating to the absence of demand-side substitutability, the lack of immediate supply substitutability confirms that distinct product markets exist for positive, negative, CtP and electrostatic offset printing plates.
- Markets for equipment, chemicals and servicing*
- (32) According to the notifying party, the provision of equipment, chemicals and servicing are simply to be considered 'ancillary' to the consumable markets of graphic arts film and offset printing plates. The notifying party does not submit that these are separate product markets. However, from the information received from various competitors and customers, it would also appear that there could be separate markets for equipment, for chemicals and for servicing, and that within these markets a further subdivision is conceivable.
- (33) Equipment includes imaging equipment, such as cameras used to capture images and/or text, and (digital) equipment needed to transfer images or text onto film. Also, specialised equipment is available for processing printing plates, so that they can be used on printing machinery. Both DuPont and Agfa are suppliers of such equipment, which is partly produced by the companies themselves or is produced for them by third parties (original equipment manufacturers, or 'OEMs'). The ability of producers of film and plates to supply equipment in addition means that customers can be served on the basis of a 'one-stop-shop' approach. Apart from the producers of film and plates who also offer equipment, there are in addition independent specialised equipment producers.
- (34) Given the link between certain types of equipment and the products used with them (films and plates), it is conceivable that a narrower definition than that proposed by the notifying party regarding

markets for equipment used for the particular types of film and plate (such as image setters for red laser film and processors for printing plates), is appropriate. However, the definition of one or more product markets for equipment can be left open, since a competition problem would not arise even on the basis of this potential narrower market definition.

- (35) Chemicals consist mainly of developers and fixers. Chemicals are supplied by Agfa and DuPont, as well as by producers of other graphic arts films and offset plates, and by other suppliers. As for equipment, chemicals are often purchased from the same supplier as delivers the consumables (films and plates). For chemicals, due to their specific applications for the particular films and plates, it is also conceivable that a narrower definition of the market is appropriate. However, the definition of one or more product markets can be left open, since a competition problem would not arise even on the basis of this narrower possible market definition.
- (36) As regards servicing, this concerns in particular after-sales (maintenance) service on the equipment. This can be done by a variety of suppliers, but is often carried out by the suppliers of the equipment and could therefore be considered to be directly linked to the equipment sales. However, certain providers offer services independently of equipment sales and a separate market may therefore exist, even at the level of servicing of particular types of equipment or of equipment brands. Nevertheless, the definition of the market for equipment services can be left open, since a competition problem would not arise even on the basis of such a market definition.

2. Relevant geographic markets

Markets for graphic arts films and offset printing plates

- (37) According to the notifying party the relevant geographic markets for graphic arts films and offset printing plates are EEA-wide.
- (38) During its enquiry the Commission considered whether the relevant geographic market could be narrower (national) or wider.
- (39) As regards the possible definition of narrower geographic markets, the enquiry has shown that on each of the affected product markets there are substantial trade flows between Member States. There are a limited number of production sites throughout the EEA, and dealers in various Member States buy direct from those sites. There

are no legislative or technical barriers to imports. Furthermore, price tendencies in the various Member States, measured over the last three years, have to a large extent shown a similar trend throughout the EEA.

- (40) As regards the possible definition of wider geographic markets, customers in general do not consider that suppliers who do not sell from within the EEA are alternative sources. The main reasons given are: the proximity to the customer and the necessity to respond rapidly to customer demand. Furthermore, an analysis of market price trends in different world regions over the period 1992 to 1996 has shown that in the EEA there has been a steady decrease in prices, whereas for example in the United States of America, prices in 1996 were higher than in 1992.
- (41) For these reasons the Commission can agree with the definition of geographic market proposed by the notifying party. Moreover, customers and competitors questioned by the Commission have nearly all confirmed that the geographic market in question is the EEA.

Markets for equipment, chemicals and servicing

- (42) The definition of the geographic market for equipment, chemicals and servicing can be left open, since on all alternative narrower market definitions considered (namely national for services and EEA for equipment and chemicals), no competition problem would arise.

3. Assessment

- (43) It is concluded that the notified concentration will create a dominant position for Agfa on the EEA markets for negative printing plates. On the markets for graphic arts film and the markets for positive offset printing plates and plates for CtP, it is considered that the operation does not lead to the creation or the reinforcement of a dominant position.

General remarks

- (44) According to the parties and almost all the suppliers, the reported market size and market shares are more reliable when calculated on the basis of volume (in square metres) rather than on the basis of estimates on value. From the Commission's enquiry it can be concluded that there are generally no significant price differences between competitors which would render the use of volume as a base, rather than value, less reliable.

A. Effects of the concentration on the market of negative printing plates

Market size

- (45) On the basis of the sales provided by Agfa and DuPont as well as their main competitors, the Commission estimates that total sales of negative plates in the EEA amounted to some 30,9 million square metres (Mm²) in 1996. According to a forecast estimated by the notifying party, the market for negative plates will continue to increase by 2 to 3 % a year, at least for the next five years.

Market shares

- (46) The cumulated market shares in the EEA of Agfa and DuPont and its main competitors are as given in the table below. It is noted that on 1 December 1997 Kodak and Sun Chemical, the owner of Polychrome, notified to the Commission⁽¹⁾ the merging of their activities in the graphic arts sector (including offset printing plate activities), through the creation of a joint venture named 'Kodak Polychrome Graphics'. Accordingly, the position of Kodak and Polychrome is assessed jointly in this document, both as regards the negative plates market and as regards the other films and plates markets.

Negative plates	Volume		
	1994	1995	1996
Agfa	[< 30] %	[< 30] %	[< 30] %
DuPont	[< 35] %	[< 35] %	[< 30] %
Agfa and DuPont	[< 60] %	[< 60] %	[< 55] %
Kodak/Polychrome	< 19 %	< 20 %	< 23 %
Fuji	< 8 %	< 10 %	< 10 %
Horsell	< 7 %	< 7 %	< 7 %
Lastra	< 5 %	< 5 %	< 5 %
Others	< 6 %	< 6 %	< 6 %
Total	100 %	100 %	100 %
Total 000 m ²	28 950	30 064	30 964

Position of the new entity

- (47) The cumulated market share of Agfa and DuPont was at [< 55] % in 1996. Between 1994 and 1996 Agfa was able to slightly increase its market share, whereas DuPont's market share decreased from [< 35] % to [< 30] %, the largest decrease being noted in 1996. In spite of the decrease of their combined market share, the new entity will be 2,5 times larger (in terms of market share) than the next largest competitor (Kodak/Polychrome), the other competitors having shares of less than 10 %.

- (48) Agfa states that after the operation the joint market shares of Agfa and DuPont would decrease by several percentage points as a result of the implementation of the transaction, the reason being that customers who were previously sourcing from both Agfa and DuPont (in particular newspaper printers), would, in order to ensure an alternative of supply, decide to start purchasing from a different supplier. Agfa showed that sales representing some [< 5] % of the combined Agfa and DuPont market share could be affected by such decisions. However, Agfa has informed the Commission of its intention to continue selling the plate types of DuPont through the existing sales channels of DuPont, so that DuPont plates will remain as a separate source of supply to those end-users. Furthermore, it may be expected that as a result of other alliances, namely the recently announced joint venture between Kodak and Polychrome and the decision of International Paper taken in October 1997 to divest itself of its subsidiary Horsell-Anitec, a similar customer reaction will take place, as a result of which Agfa and DuPont may be expected to pick up market share.

- (49) The combined EEA capacity of Agfa and DuPont is at [. . .] Mm². The capacity utilisation of Agfa and DuPont was at [. . .] % and [. . .] % respectively, whereas that of its main competitors was higher (see below under position of competitors). The new entity will therefore have sufficient capacity available to respond to the expected increase in demand.

Position of competitors

- (50) The main competitors on the market for negative printing plates are Kodak/Polychrome, Fuji, Horsell-Anitec and Lastra. Of these competitors, most held stable market shares over the period 1994 to 1996, except Kodak/Polychrome and Fuji, which increased their shares by 4 and 2 % respectively. It is noted that, in contrast with the

⁽¹⁾ OJ C 372, 9. 12. 1997, p. 19.

markets for graphic arts film, the addition of market shares is not such that the new joint venture between Kodak and Polychrome has become a much stronger competitor, Kodak having had a market share of less than 4 % in 1996.

- (51) The EEA capacity of the largest competitor was less than 35 Mm² in 1996, compared to [< 80] Mm² for the new entity. Capacity utilisation of the main competitors was between 75 and 95 %. This shows that, as for the new entity, competitors also have capacity to respond to an increase in market demand, but that in comparison Agfa would have more incentive to do so.

Loss of DuPont as a competitor

- (52) DuPont, with [< 30] % of the EEA market, has, like Agfa, a leading position ([< 30] %), and is an important force on the market for negative plates. This is confirmed by a significant proportion of dealers and end-users. Of those having sent in a reply to the Commission enquiry, 42 % of dealers and 31 % of end-users expressly commented on this point. Their replies show that after the merger, and with the absence of DuPont as a competitor, they will have less choice and that price decay will stop or that they will have to accept price increases.
- (53) In relation to the decrease of DuPont's market share, it is important to note that the decision of DuPont to divest itself of its graphic arts film and offset printing plates business dates from 1994 and that this fact has been public knowledge, as a result of which customers will have looked for other suppliers. A further explanation for the loss of sales, according to DuPont, lies in the fact that in 1996, DuPont increased by [...] % its average price of negative plates, whereas average prices on the market decreased by [...] %.

Buying power

- (54) According to Agfa around [> 50] % of Agfa and DuPont negative plates sales are made direct to end-users, such as newspaper printers, who account for the greatest part of those sales. However, at the same time Agfa also submits that the total number of newspaper printers in the EEA is 1 900, whilst there are no less than 32 080 end-users, essentially book printers, commercial printers and packaging printers. Furthermore, there are over 700 dealers. It has to be noted that for end-users, negative plates generally only account for 1 to 5 % of their total production costs. Moreover, a combination of the 10 largest end-users (newspapers) of Agfa and

DuPont plates represent only [< 20] % of the negative plates sales of Agfa and [< 20] % of DuPont. These newspaper customers generally do not keep any significant stock of negative plates and are hence dependent on producers who can ensure rapid supplies and security of supplies. In addition, the end-users, including newspaper printers, generally do not have a very important position on their own markets, which could otherwise give them a better negotiating position. Therefore, given the level of fragmentation of customers, it cannot be maintained that customers have appreciable buying power.

- (55) Moreover, the relative purchasing volume of end-users and dealers of Agfa/DuPont will diminish after the operation in view of the larger overall sales volume of the new entity and the fact that larger customers are generally not the same for Agfa and for DuPont.

- (56) In conclusion, taking into account the small proportion that the individual end-users and dealers represent in the sales of Agfa and DuPont, it does not appear that customers have currently, or would have in the future, appreciable buying power. This has also been confirmed by the replies of customers to the Commission's enquiry, in which 16 % of them indicated that they would have to accept price increases after the operation.

Potential competition

- (57) In the present case, in the analysis of potential competition, regard was had, first, to the level of competition potentially being exercised by producers already having a market presence and who could develop additional production capacity, and, secondly, to the possible entry of new competitors on the EEA market.

Current competitors

- (58) In assessing whether future competition from existing competitors on the offset printing plates markets would form a sufficient restraint on the position of the new entity the current competitors were analysed.

(a) Application of production capacity

- (59) The major existing suppliers on the markets for printing plates are Kodak/Polychrome, Fuji, Lastra and Horsell. As regards Kodak/Polychrome, Kodak does not have a production capacity in the EEA.

Polychrome had a capacity utilisation in 1996 of more than [...] %. It also has significant sales in positive plates and in CtP and will therefore also have to keep capacity available to respond to demand for these products. It is noted that plates for CtP is a rapidly growing market where margins are higher than in the market for negative plates, so that there will be more incentive to apply production capacity to CtP plates. Its flexibility to further increase its production of negative plates will therefore be restricted. Fuji, which mounted a production plant in the EEA in 1993, has already achieved a capacity utilisation of more than [...] %. As far as the Commission is aware, they are not planning any further construction of production capacity. Fuji sells three times as many positive plates as negative and has started selling CtP plates, so they would also have to keep the bulk of their capacity available for an increase in positive plates and plates for CtP. Incidentally, Fuji has stated that it does not have the scale in both production and sales to make further significant inroads into the negative plates market within the next two to three years. Horsell, which principally sells on the positive plates market (more than [...] % of its sales) had a capacity utilisation of more than [...] %. It is noted that in the last quarter of 1997 it became known that International Paper, the owner of Horsell, had decided to divest this business, so it cannot be expected to undertake important expenditure to expand its business in negative plates, given that it is primarily a positive plate supplier. Lastra, who also sells principally on the positive plates market (more than [...] % of its total plate sales) had a capacity utilisation of more than [...] %.

(60) In addition to the above factors, and as regards Lastra and Horsell specifically, in order to be able to apply any additional capacity for production and sales of negative printing plates, they would have to set up a new customer base, since the majority of end-users for negative plates are newspaper printers, which are generally supplied directly by the producers. In order to increase their sales of negative plates, they would have to set up such a network, the construction of which is considered to involve high costs. Lastra, for example, does not have a direct sales force, except in Italy. Incidentally, even in Italy, DuPont has, according to its submissions, lost only two customers to Lastra, whereas DuPont has argued that it faces fierce competition from Lastra.

(61) In comparison with the position of its competitors, Agfa/DuPont have a far higher level of unused

capacity and, post-transaction, the DuPont share of this capacity is no longer burdened by a high depreciation cost. They will have a scale advantage both for production and sales, which many competitors have identified as a key element in the strong position for the new entity. Since DuPont's loss of market share will be halted and is expected to be reversed, the possibility for the other incumbents to bid away the customers of DuPont is eliminated, unless they have a better scale advantage or can provide a better range of products. This is all the more unlikely since DuPont and Agfa, as the two first competitors on the market, will complement their product ranges, which were already the most extensive on the market. In addition, the new entity will have the most competitive cost conditions for any growth in output. Furthermore, its distribution network and customer base is more developed than any of its competitors, Agfa/DuPont having a well-developed presence in all the plates markets.

(62) The above factors demonstrate that competitors which have a significant position on the negative plate market already have a high capacity utilisation and that competitors with more available capacity lack the distribution network and customer base to increase sales. Especially since the position of the new entity in terms of available capacity, distribution network, access to customers and product coverage will be far better than for the other companies, potential competition is considered to exert insufficient competitive pressure for restraining the new entity's market power.

(b) Access to customers

(63) The majority of end-users and dealers questioned by the Commission saw difficulties in switching negative plates supplier. The Commission considers that, although it is theoretically possible to switch to a negative plate supplied by other producers, this in practice is limited by the following factors.

(64) First, changing supplier is more difficult when the end-user has concluded a 'package deal'. Typically, suppliers enter into an agreement whereby they agree to provide equipment free of charge or on favourable conditions, but whereby the customer agrees to purchase its consumables (films and plates) from the equipment supplier for a period of time, generally two to three years, the cost of the

equipment being assimilated into the prices charged for the consumables. According to the Commission's enquiry, this type of agreement is common in the sector of graphic arts and printing plates and competitors have informed the Commission that these types of deals are increasing.

(65) Figures supplied by the notifying party indicate that for Agfa [< 10] % and for DuPont around [< 30] % of total sales are linked with package deals. These figures are higher for new contracts, for instance in the United Kingdom for DuPont nearly [> 50] % of new contracts contain such clauses against nearly [< 40] % of current contracts. Agfa has not supplied figures in this respect.

(66) The main purchasers of negative printing plates are newspaper printers, book printers, commercial printers and packaging printers as well as trade shops. According to Agfa and DuPont, customers are under no legal obligation to continue buying consumables from the manufacturer who provides the equipment and arranges its financing. A customer can decide at any time to pay off the outstanding debt for the equipment and purchase consumables from another supplier. However, the Commission considers, and its enquiry has confirmed, that for end-users who have limited financial capacity, the ability to pay off the remaining debt is restricted. It is probable that the end-user will wait until the 'package deal' expires to find another equivalent supplier of equipment and consumables, and even then the readiness to switch suppliers is restricted, especially if a competitor cannot offer the same package due to a more limited product range. In this respect, figures supplied by the notifying party indicate that less than [...] % of end-users that enter into this type of contract decide to switch supplier before the contract expires and that only [...] % of end-users actually switch suppliers after expiry of the contract. The existence of such contracts therefore constitutes a barrier for competitors wishing to challenge the position of Agfa/DuPont.

(67) A further element in the assessment of switching of supplier concerns the existence of exclusivity arrangements with suppliers of equipment, which are important in relation to the ability of the new entity and its competitors to conclude package deals. It is furthermore noted that Agfa and DuPont also sell equipment for platesetting and processing. This equipment is either produced internally (DuPont) or obtained, often on an OEM basis, from independent equipment suppliers. Moreover, Agfa has included, in contracts with two of its independent equipment suppliers, exclusivity arrangements whereby these producers cannot sell the equipment concerned to competitors of Agfa

when equipment has been produced on the basis of Agfa specifications. The fact that post-transaction Agfa will be able to propose package deals using equipment produced in-house, whereas certain of its competitors (e.g. Kodak/Polychrome, Lastra, Konica), are unable to do so, puts Agfa in a stronger position to conclude such package deals. Consequently, the opportunities for delivering equipment directly and the relationship of Agfa/DuPont with suppliers of equipment constitutes an additional barrier for competitors wishing to contest the position of Agfa/DuPont by offering similar package deals.

(68) Secondly, a limiting factor for switching suppliers, at least for a number of dealers, are existing exclusive distribution arrangements: those dealers may only carry Agfa or DuPont products respectively. Agfa has contended that such arrangements are relatively unimportant, since only [...] Agfa dealers and only [...] dealers of DuPont out of a total of 700 dealers in the EEA are bound by such clauses. However, such dealers are often significant as they cover a large area, often the whole territory of a Member State, and hence represent an important part of the turnover of Agfa and DuPont. Agfa has submitted that [< 60] % of Agfa's sales of offset printing plates to dealers and [< 10] % of DuPont's sales in the EEA are made on an exclusive basis. Specific figures for negative plates sales were not provided by Agfa and DuPont. These existing exclusivity arrangements are considered to constitute further barriers for existing competitors to challenge the position of Agfa/DuPont.

(69) Thirdly, as has been argued by a number of end-users, a switch of suppliers would more fundamentally affect their production process. According to Agfa, switching to a different negative plate supplier can be carried out within a matter of hours by recalibrating the existing equipment. However, customers have stated that they effectively would need a period of one to three months in order to carry out evaluation tests with recalibrated equipment or new equipment before considering changing their supplier of negative plates, since they would have to be sure that with different plates and potentially different equipment the same quality of end-result would be obtained, and since a change would have an impact on other parts of their printing process (such as modification of substrates, inks, temperature) which would have to be adapted. A factor which is considered important in this respect relates to the exclusivity clauses that Agfa maintains with certain equipment suppliers, as explained in recital 68, as a result of

which Agfa's equipment is preset to Agfa's negative plate specifications, making it more difficult for end-users to consider using plates of a different manufacturer. Furthermore, a significant quantity of end-users buy their negative plates supplies from dealers with whom they have long-standing relations. Both Agfa and DuPont maintain exclusivity clauses with a number of those dealers, who are hence precluded from offering negative plates from alternative suppliers to such end-users.

(70) As regards the possibility for end-users to switch, Agfa has further submitted that certain clients, for example larger newspaper printers, have a second source of supply policy, which would in fact confirm that switching to plates from a different supplier is not a problem. However, the Commission does not find this argument convincing. Indeed, only a limited amount of end-users (primarily newspaper printers) appear to pursue such a policy, and it is not a general phenomenon on the negative plates market. According to figures supplied by Agfa, [...] clients who purchase at the same time from Agfa and DuPont represent [< 5] % of the total EEA plates market. The fact that certain larger customers have a second supply source is due to their need to continue production when the original source of supply is not available. This means nevertheless that in order to go to a new supplier, the above described barriers would exist.

(71) In conclusion, the Commission considers that not only the disruptive effect of switching suppliers for end-users but also the practice of tying sales of consumables to sales of equipment, and the exclusivity arrangements with dealers, are factors which limit the possibilities for current competitors to challenge the position of the new entity. As regards package deals, such competitors would either have to be able to provide financing for the existing equipment and take over any (financial) obligations entered into, and/or be able to offer a similar package to the end-user. The relative stability of market shares illustrates that under the present conditions, longstanding competitors who have sufficient market experience, will not be able to do so.

New competitors

(72) According to the notifying party, entry into the affected product markets for potential newcomers requires significant capital investment for manufacturing facilities in offset printing plates, even though no precise figures have been submitted as to the cost of setting up a production line for negative plates. Furthermore, it requires a high

degree of manufacturing know-how, but, according to the notification, this is not primarily dependent on technology covered by patents. Competitors agree that this is the case for mature technologies like negative plates.

(73) As mentioned above, a significant proportion of competitors and dealers have stated that end-users request their supplies from a source which could provide a full range of products (films, plates, equipment, chemicals and services). A new producer would only be likely to succeed if it were able to provide a similar full range of products/services. Consequently, no new entrant could move into the negative plates market on the basis of a limited investment, — that is, without being able to offer a significantly full range of products.

(74) Furthermore, both for new entrants and existing competitors, a degree of investment would be needed in order to finance equipment purchases by end-users, owing to the increasingly common practice of selling on the basis of 'package deals', as explained above.

(75) No firms have entered the films markets over the last five years and competitors consulted by the Commission have stated that the entry of new competitors on the negative plates market is not foreseeable. Agfa has claimed that a new competitor from the media industry will enter the market, but neither in the notification nor during the proceeding have they provided any name of a potential new entrant or stated when such an entrant would enter the market.

Presence in related markets

(76) As was stated above, Agfa and DuPont also have a strong presence in related markets for graphic arts film and other kinds of offset printing plates, as well as a significant presence on the markets for equipment, chemicals and services, as will be analysed in recitals 78 to 108. Post-transaction Agfa will be able to offer an even wider range of products. The presence in related markets presents a clear advantage in comparison with competitors such as Lastra, Horsell, and others who sell a more limited product range. It must be taken into account that 66 % of competitors and 78 % of dealers (out of nine competitors and 26 dealers who replied to the Commission enquiry) have stated that end-users seek their supplies from a source capable of providing a full range of products (films, plates, equipment, chemicals and services). Consequently, the presence of Agfa/DuPont on related markets represents another reason why, in combination with the other above factors, Agfa/DuPont could resist losing market share to any competitor.

Conclusion

- (77) The Commission considers that the concentration of the negative plates businesses of Agfa and DuPont will result in the creation of a dominant position on the EEA market. This conclusion is based on the high combined market shares attained by Agfa and DuPont, the distance between the new entity and other competitors, the loss of DuPont as competitor, the insufficient countervailing power on the demand side, the existence of barriers to entry and the difficulty to switch suppliers (due to package deals and exclusivity arrangements), the strong overall presence on other related markets and the lack of potential competition, as described above.

B. Effects of the concentration on the market for positive offset printing plates

Market size

- (78) The market size in value and in volume for positive printing plates for the period from 1994 to 1996 are set out in Annex III ⁽¹⁾. In 1996, it was the most important market of the affected markets in terms of sales (ECU 385 million). Since 1994, the EEA market has decreased in value but increased in volume.

Market shares

Positive plates	Volume		
	1994	1995	1996
Agfa	[< 20] %	[< 20] %	[< 20] %
DuPont	[< 15] %	[< 15] %	[< 15] %
Agfa and DuPont	[< 35] %	[< 35] %	[< 30] %
Kodak/Polychrome	< 20 %	< 22 %	< 24 %
Fuji	< 10 %	< 10 %	< 12 %
Lastra	< 11 %	< 12 %	< 13 %
Horsell	< 18 %	< 15 %	< 17 %
Konica	< 5 %	< 5 %	< 5 %
Others	< 6 %	< 6 %	< 6 %
Total	100 %	100 %	100 %
Total 000 m ²	69 142	73 703	79 516

⁽¹⁾ Business secret: all annexes are deleted for publication.

Position of the new entity

- (79) In comparison with the market for negative plates, both Agfa and DuPont have much lower individual market shares. In 1996, Agfa was the second player in terms of market share and DuPont only the sixth. Both Agfa and DuPont lost market share between 1994 and 1996. Their combined market share was at [< 30] % in 1996, decreasing from [< 35] % in 1994.
- (80) Also, the relative size of the new entity on this market would be much smaller than in the market for negative plates, Agfa/DuPont being only 1,3 times as large as the first competitor, with three other companies having significant market shares of around 12 % or more.

Position of competitors

- (81) The position of competitors on the market for positive plates is much more balanced than on the market for negative plates. Apart from Agfa and DuPont, four other main competitors are present, the market leader being Kodak/Polychrome with around 24 % of the market. In addition, Horsell, Lastra and Fuji have significant market shares from around 12 to 17 %.
- (82) Furthermore, a number of Agfa and DuPont competitors gained market share between 1994 and 1996 (around 3 percentage points for Polychrome and around two percentage points for Fuji and Lastra).

Conclusion

- (83) Given the more limited market position of Agfa/DuPont on the market for positive printing plates as compared to their position on the market for negative printing plates and the stronger presence of competitors, the Commission considers that the operation will not lead to a situation where competition will be significantly impeded as a result of the creation of a dominant position on the EEA market for positive offset printing plates.

C. Effects of the concentration on the market for plates for CtP technology

General

- (84) The market for computer-to-plate technology is a rapidly developing market, both in terms of the volume of plates being sold and in terms of the number of suppliers entering the market, as is further explained below. Competitors and potential competitors in this market consider that it will take some five years for CtP to become an established technology. Estimates by competitors of what percentage the CtP plates market will by then represent of the overall offset plates sector vary, but it is expected that by the year 2001 CtP plates will have a share of the EEA market of between 11 and 14 %, whereas it is expected that eventually 25 % of the metal offset plates market will consist of CtP plates. The reason why predictions are difficult to

give is that growth is limited due to the fact that CtP technology is not yet mature and that customers are still awaiting further product developments, especially in light of the fact that to switch to CtP technology would require substantial investment in new equipment, CtP platesetters currently costing between ECU 100 000 and ECU 500 000.

- (85) As regards technological developments, various CtP technologies can be distinguished, as explained in the above section regarding the product market definition. Even though silver, photopolymer and hybrid plates were already sold between 1994 and 1996, thermal plates, first sold by Kodak in the United States of America, were only introduced in the EEA in 1997. No precise data exist as yet on sales of this type of technology, but a number of current and potential competitors have expressed the view that thermal plate technology will become the most commonly used. This results from the fact that thermal CtP technology has the distinct advantage for customers that processing can take place under normal daylight conditions, whereas this is not the case for the other CtP plates. Thermal CtP plates would, according to estimates presented to the Commission, eventually represent some 50 to 80 % of total CtP plate sales.

Market size

- (86) Consumption was calculated on the basis of the sales figures of the parties active in sales of plates for CtP. Sales in the EEA amounted to less than 1,6 Mm² and ECU 15,6 million in 1996. Even though sales of CtP plates represented, in 1996, only some 2 to 3 % of overall sales in the markets for offset printing plates, sales in 1996 in volume were more than 250 % higher than in 1994.

Market shares

- (87) On the basis of the sales figures submitted by Agfa, DuPont and Polychrome, the market shares as given in the table below were calculated for 1994 to 1996.

CtP	Volume		
	1994	1995	1996
Agfa	[< 30] %	[< 20] %	[< 25] %
DuPont	[< 75] %	[< 75] %	[< 60] %
Agfa and DuPont	100 %	[< 90] %	[< 75] %
Polychrome	0,0 %	< 14 %	[< 30] %
Others	0,0 %	0,0 %	0,0 %
Total	100 %	100 %	100 %
Total 000 m ²	381	< 800	< 1 600

The position of the new entity and of competitors

- (88) In view of their market shares in 1996, Agfa and especially DuPont are strong players in the emerging market for CtP plates. The operation, when assessed on the basis of figures of 1996, means that DuPont, as a market leader in CtP, will be taken over by one of its only two competitors. As a result, the combined market share of Agfa and DuPont is nearly three times higher than that of Polychrome. However, in the analysis in this market which shows such strong development, account must also be taken of recent and future developments in order to assess the strength of the new entity after the operation. The following factors are important in this respect:

- (89) Agfa and DuPont were the first to introduce CtP technology in the EEA. However, as can be seen from the table above, Polychrome, who entered the market on the basis of its own hybrid CtP technology in 1995, was able to gain substantial market share, mostly from DuPont. This indicates that it is likely that other new competitors will also be able to gain market share when entering the market.

- (90) That likelihood is based in part on the fact that thermal CtP technology has only recently made its entry on the EEA market and is expected to become the most widely used. DuPont and Agfa do not yet have thermal CtP plates commercially available, as opposed to four other competitors (Kodak, Polychrome, Presstek and Printing Development Inc.). Agfa has stated that it foresees the introduction of its thermal plate [...]. It has been estimated that in 1997, Kodak, which is apparently successfully selling CtP plates in the United States of America, has already gained a market share of some 10 % in the EEA and is expected to make further inroads into the market. Given the technological advantage of Kodak, it is in any event expected that its market share in CtP plates (or that of Kodak Polychrome Graphics following the formation of the joint venture) will become more important than that in the other plates markets, especially when it can market its CtP plates through the existing sales channels of Polychrome.

- (91) It was demonstrated that in 1997 at least three large producers other than Agfa, DuPont and Polychrome have started selling CtP plates on the EEA market (Kodak, Fuji and Mitsubishi). At the beginning of 1998, other producers were expected to enter the market within a period of a few months to two years (Horsell, Lastra, etc.). In the investigation, a number of dealers and end-users also

stated that they foresee several other new entrants on the market for CtP (within a maximum of two to three years). According to Agfa and DuPont, a total number of 15 producers are either already selling or have announced their market entry, 14 of which would be capable of offering thermal CtP technology. Most of these entrants possess their own CtP technology and have confirmed that patents do not prevent access to the market.

- (92) Furthermore, apart from Agfa, certain of the competitors in CtP plates have their own equipment manufacturing (such as Fuji and Presstek). Also, a large number of independent producers of equipment are present on the market (including more than 25 producers of platesetters for CtP). Therefore, the availability of equipment for CtP plates would appear to be sufficient, especially in view of the apparent necessity for competitors to combine plate sales with equipment, in order to be able to propose package deals.

Other factors

Barriers to entry

- (93) According to the notifying party, entry into the CtP market requires significant research and development and investment, although to what extent this would be necessary depends on whether a potential new entrant would attempt to develop its own technology or whether it would try to purchase the technology from third parties. The notifying party has stated that entry into the CtP market would cost around three to five years of research and some ECU [...] million. In capital investment, it would also require some ECU [< 20] million, with a potential ECU [< 5] million should the technology be obtained through licensing. Competitors which have recently entered the market or who are planning to do so have stated that the investment needed may be considerably more limited. In any event, the appearance in 1997 of a number of competitors on the market for CtP plates, as well as the imminent entry of others, demonstrates that the investment required is not an insurmountable barrier to entry on the market for CtP plates. It is recalled that Agfa and DuPont as well as their competitors have expressed that patents are not an impediment to market access, most producers having developed their own technology.

Choice of supplier

- (94) The market for CtP plates is still at a developing stage and the installed equipment base is as yet limited. No industry standard for CtP technology has emerged. Consequently, at the current level of market development, competition in CtP technology takes place at the level of the different kinds of systems which are being introduced, rather than at the level of CtP plates itself. It does appear,

however, that plates for CtP are more system-bound than conventional plates, which makes it, in comparison with conventional plates, more difficult for end-users to change to a plate from a different supplier, if this supplier does not offer plates for the same CtP system. For example, a silver CtP plate cannot easily be exchanged for a polymer plate, given the different equipment used. Nevertheless, at the present stage of market evolution and in view of the availability of equipment from different producers as well as the entry of a significant number of suppliers on the CtP plates market, as was explained at recital 93, a number of alternative suppliers of different types of CtP systems and plates will become available.

Conclusion

- (95) Given the above aspects of the emerging CtP market, the Commission considers that the rapid shift in market shares with the arrival of Polychrome as a competitor indicates the likely downward movement of Agfa/DuPont's market share. This trend will no doubt continue with the entry of a number of competitors. In recent months, companies like Kodak have entered the market and appear to have already acquired a significant market share, and other competitors will also arrive with competing products, thereby exerting significant competitive pressure on Agfa/DuPont. Under these circumstances, it is considered that the position of Agfa/DuPont, in spite of its current high market shares, will not be such as significantly to impede competition on the EEA market of CtP plates.

D. Effects of the concentration on the markets of graphic arts film

- (96) The markets of graphic arts film generally have similar characteristics, for example as regards competitors present and the distribution of the products, and hence the assessment below comprises all five relevant markets.

Market size

- (97) According to Agfa, the size of the markets of camera, contact, blue laser, red laser and infra-red laser films was as follows in 1996:

Camera film: 17 Mm²/ECU 93,6 million

Contact film: 17,4 Mm²/ECU 100,5 million

Blue laser recorder film: 12,5 Mm²/ECU 56,1 million

Red laser recorder film: 51,2 Mm²/ECU 272 million

Infra-red laser recorder film: 13,1 Mm²/ECU 72,5 million

- (98) The markets for camera, contact and blue laser recorder film are all decreasing rapidly. The market for infra-red laser is showing a rather stable trend, whereas the market for red laser film is increasing strongly (see Annex II). The notifying party has submitted market data which illustrates that the current trend for sales of the different types of film will continue at least until the year 2002 (see Annex I).

Market shares

1996	Camera	Contact	Blue laser	Red laser	Infra-red laser
Agfa	[< 30] %	[< 30] %	[< 20] %	[< 35] %	[< 30] %
DuPont	[< 15] %	[< 15] %	[< 25] %	[< 10] %	[< 10] %
Agfa and DuPont	[< 40] %	[< 45] %	[< 40] %	[< 45] %	[< 40] %
Kodak/Polychrome	< 33 %	< 24 %	< 27 %	< 27 %	< 32 %
Fuji	< 7 %	< 8 %	< 11 %	< 9 %	< 11 %
Konica	< 5 %	< 7 %	< 6 %	< 5 %	< 6 %
Imation	< 3 %	< 5 %	< 5 %	< 5 %	< 6 %
Horsell	< 7 %	< 7 %	< 7 %	< 6 %	< 6 %
Mitsubishi	< 2 %	< 2 %	< 2 %	< 3 %	< 2 %
Others (estimates)	< 12 %	< 12 %	< 12 %	< 12 %	< 12 %
Total	100 %	100 %	100 %	100 %	100 %
Total 000 m ²	16 606	17 560	12 857	52 428	11 967

Source: Agfa/DuPont and competitors.

Position of the new entity

- (99) In 1996, Agfa and DuPont had cumulated market shares of between [< 40] % and [< 45] %. During the period 1994 to 1996 cumulated market share decreased by between 2 and 5 % on each of the markets, with the exception of the market for red laser film. On this market, the new entity increased its position somewhat (see Annex II).

Position of competitors

- (100) The addition of market shares of Kodak and Polychrome has significantly diminished the distance that exists in terms of market share between Agfa/DuPont and the first competitor, Kodak/Polychrome holding shares in 1996, on each of the markets, of between < 24 and < 33 %. The other competitor with the most important market shares in the EEA is Fuji, with shares of between < 7 and < 11 %. Further, competitors such as Konica, Imation, Horsell and Mitsubishi, held shares of between < 2 and < 7 %. During the period 1994 to

1996, the main competitors (Kodak/Polychrome, Fuji) were generally able to gain market share. The recent concentration between Kodak and Sun Chemical (Commission Decision of 15 January 1998 in Case IV/M.1042 (')) has created, in the graphic arts film markets, a powerful competitor which will be an important source of competition in the EEA and which will be sufficiently capable of challenging Agfa's position.

- (101) It is noted that as regards red laser film, in the only film market in which a significant increase in volume is taking place and where Agfa/DuPont are particularly strong and have increased their market position somewhat, the next largest competitor has some 27 % of the market and other competitors of international size are also developing their sales. Hence the above conclusion is also valid for the red laser film market.

Buying power

- (102) According to Agfa and DuPont, there are 1 170 dealers and a total of 42 750 end-users of graphic

(¹) OJ C 32, 30. 1. 1998, p. 5.

arts film (150 book printers, 1 300 newspaper printers, 30 000 commercial printers, 300 packaging printers and 11 000 trade shops or service bureaux). On the market where the new entity will have the strongest position (red laser film), the biggest customer of DuPont in terms of turnover represents [...] % of DuPont's total red laser film sales. In the case of Agfa, the biggest end-user of graphic arts films accounts for only [...] % of its graphic arts film sales. As regards the dealers, the biggest one represents only [...] % for DuPont and only [...] % of Agfa's sales in the EEA.

- (103) Taking into account the small proportion that end-users and dealers represent in the sales of Agfa and DuPont, as well as the fact that, since clients of Agfa and DuPont are generally not the same, purchases by those customers would represent an even smaller proportion of the sales of the new entity, it would not appear that customers have currently, or would have in the future, appreciable buying power. This has also been confirmed by the replies of customers to the Commission's enquiry.

Potential competition and barriers to entry

- (104) Concerning the capacity to switch supplier, investment, presence in related markets and absence of foreseeable new competitors, reference is made to the analysis on the negative printing plates market, since in these respects the negative plates market and the markets for graphic arts film generally show similar characteristics.

Conclusion

- (105) The combined market position of Agfa/DuPont on the markets for graphic arts film, the reduction of its market shares over the last three years (with the exception of red laser film) compared to the stability of the market shares of their main competitors, and the recent creation of a powerful competitor, are the most important factors in the above analysis. In view of these factors, which counter-balance the limited buying power of customers and the absence of foreseeable new competitors, the Commission considers that the operation will not lead to a situation where competition will be significantly impeded as a result of the creation of a dominant position on these markets.

E. *Markets for equipment, chemicals and services*

- (106) Both Agfa and DuPont also offer chemicals and equipment and provide equipment services as a necessary support for their film and plates business. Equipment and chemicals are in principal open for the use of film or plates from all manufacturers, although switching suppliers may present difficulties as machinery may be pre-set to a particular kind of film or plate. Their film and plates competitors also offer equipment, chemicals and services, but to a smaller extent.
- (107) The notifying party has submitted that due to the fact that the provision of equipment, chemicals and services is regarded as an 'ancillary' activity, no separate market research data are available. Nevertheless, it has estimated that the overall EEA market for equipment, chemicals and services for graphic arts film and plates is of some ECU 910 million, of which Agfa sales were at ECU [< 100] million and DuPont sales were at ECU [< 50] million. On the markets for equipment, chemicals and servicing, the new entity would be subject to a greater variety of competitors than on the other affected markets. Other than the suppliers of graphic arts films and/or offset printing plates (such as Kodak/Polychrome and Fuji), a considerable number of manufacturers and dealers who are independent from consumable producers, exist. As regards equipment, manufacturers exist such as Man Roland, Heidelberg, Rockwell, Presstek, Scitex, Creo and Dainippon who all have worldwide activities. Even though no market data are available, Agfa has estimated that the position of the new entity will be strongest for image setters for red laser film where it will have a share of [< 40] % in the EEA, at least for other competitors having shares of between 10 and 20 %. In processors for printing plates the new entity will be the market leader with [< 30] %, but a range of significant competitors exist as well. As regards chemicals, Agfa estimates that the highest share of the new entity can be found in the area of chemicals for graphic arts film, with a maximum of [< 45] % in the EEA, and that for other chemicals its position is more limited. For servicing it is estimated that the new entity will not exceed [< 25] % of the overall EEA market, and that at national levels numerous local competitors exist providing maintenance services. Competitors and customers who replied to the Commission's enquiry did not consider that the position of the new entity would present competitive concerns on any of the above markets, defined in recitals 9 to 42, taken in isolation.

- (108) Therefore, even though the above data indicate that the new entity will have a strong position on the markets for equipment, chemicals and services the new entity would not achieve a dominant position on these markets, even on the basis of the narrowest market definition considered.

VI. CONCLUSION

- (109) It follows from the foregoing that the notified operation will lead to the creation of a dominant position on the EEA market for negative offset printing plates as a result of which effective competition would be significantly impeded, within the meaning of Article 2(3) of the Merger Regulation.

VII. UNDERTAKINGS SUBMITTED BY THE PARTIES

- (110) With a view to removing the competition concerns, Agfa has offered to enter into the following commitments:

- (a) Agfa-Gevaert will release all of its OEM-suppliers of processing equipment for negative plates from any contractual provisions whereby such suppliers of Agfa-Gevaert would be prevented from selling such processing equipment to any third party of their choice. Moreover, as far as processing equipment for negative plates incorporates know-how owned by Agfa-Gevaert, Agfa-Gevaert will release all of its OEM-suppliers of negative plates processing equipment from their obligations not to use such know-how for sales to third parties and will license such know-how at reasonable commercial conditions, namely at a fee which would not exceed [...] % of the sales of the licensed products, to such OEM-suppliers for incorporation in negative plates processing equipment to be sold to third parties. Such licences shall be granted on the basis of a most-favoured-licensee clause, which shall secure non-discriminatory treatment.
- (b) With regard to negative plates, Agfa-Gevaert will release all existing exclusive dealers and distributors of DuPont, who will continue to be supplied by Agfa-Gevaert post-transaction, from any restraint with regard to the sale of competing products.

- (c) Agfa-Gevaert will release all of its dealers in negative plates who are contractually committed to sell exclusively negative plates supplied by Agfa-Gevaert from such exclusivity. This undertaking of Agfa-Gevaert does not apply to (i) exclusive distributors of Agfa-Gevaert for territories where Agfa-Gevaert has no distribution organisation of its own capable of acting as a substitute for that exclusive distributor ([...]), (ii) agents of Agfa-Gevaert for negative plates, where the main function of such agents is to perform logistical services for Agfa-Gevaert ([...]).

- (d) The undertakings pursuant to paragraphs (a) to (c) will apply for a period of five years from the clearance of the notified concentration by the Commission.

- (e) Agfa will provide the Commission with copies of correspondence documenting the implementation of their obligations, no later than 31 March 1998. For each period of 12 months following this Decision, Agfa will also provide the Commission with a report monitoring their compliance with the proposed undertakings as well as a report upon request by the Commission.

VIII. ASSESSMENT OF THE UNDERTAKINGS

- (111) In the assessment of undertakings the question has been whether, as a result of the undertakings, the market power of the new entity would be sufficiently restrained and the competition concerns would be resolved. As has been described in the above assessment, the structural links that Agfa/DuPont have built up with end-users through the use of package deals, as well as the existing structural relations with dealers based on exclusivity arrangements, are important elements in this respect. Consideration was given to potential divestment and sale to a third party or to third parties, of certain production facilities or production lines of negative plates. Such a measure would, however, not sufficiently address the competition concerns, as the structure of the market would not be significantly affected. Agfa itself already has considerable excess capacity. DuPont has, given its planned exit from the market, not made considerable investment in modernisation of its production

lines. Competitors have not expressed the view that they would have an interest in buying up any part of DuPont's business in negative plates. Furthermore, one competitor (International Paper) is itself in the process of selling its graphic arts (including negative printing plates) business (Horsell-Anitec). Hence, a divestment by Agfa of part of the DuPont business would have little effect on the market structure, as opposed to the expected impact of undertakings assessed below.

Package deals

- (112) The first undertaking regarding exclusivity with equipment suppliers is considered important since most of the major suppliers of printing plates have no equipment production of their own and are therefore dependent on such equipment suppliers in order to supply similar package deals as Agfa offers to end-users. Therefore, the Commission considers that by opening up the structure of the supply of equipment, namely by breaking up those relations where independent suppliers of equipment are tied to sell certain equipment to Agfa only, barriers for competitors to offer similar package deals comprising a full range of products will be lifted, as access by competitors to equipment needed for processing negative printing plates will be facilitated. Agfa has stated that in 1996 some [...] % of its equipment sales consisted of equipment procured from suppliers bound by exclusivity arrangements. Competitors will now have the possibility of procuring equipment with the same specifications from Agfa's equipment suppliers, and they will hence be able to offer to their clients, the same type of equipment in package deals (or separately) to end-users. Where competitors can offer more attractive package deals, end-users may be expected to more readily consider a switch of supplier, since their costs for switching are reduced. The significance of this undertaking should also be seen in the light of the fact that competitors have emphasised that the offering of package deals is an increasing phenomenon on the market for printing plates.

Dealer exclusivity

- (113) The undertaking first of all concerns the existing arrangements whereby important dealers are currently foreclosed to competitors of DuPont and Agfa. Post-concentration, a number of important dealers will be allowed to sell products of competitors as well, which will increase the level of inter-brand competition. Furthermore, Agfa has stated that the existing network of DuPont dealers will remain in place, so that dealers will continue to be

supplied with Agfa or DuPont products. Hence, as a result of the undertaking more outlets will become available for Agfa and DuPont products, which will enhance intra-brand competition at the same time as improving inter-brand competition.

- (114) As regards DuPont dealers, existing contracts of this kind are found in six EEA Member States ([...]) and have been concluded, except for [...], with dealers responsible for sales covering the whole of the Member State concerned, DuPont not having a parallel network of its own. This confirms the importance of these outlets.
- (115) For Agfa, contracts containing exclusivity clauses are found in five countries: [...]. According to information from Agfa, in three of those countries ([...]), dealer channels exist in parallel with Agfa's own direct sales channel. In [...], these contracts concern [...] dealers, in [...] [...] major dealer with several sales outlets covering different parts of [...], and in [...] one dealer with [...] as its sales territory. Given that such dealers have longstanding relations with end-users, the inclusion of competing products in the portfolio of such dealers will be important for competitors of Agfa. As regards the existing exclusivity arrangements in [...], Agfa has stated that these have been made in relation to sole distributorship (i.e. the dealer being the sole outlet for Agfa products on this market), whereas in [...] exclusivity arrangements relate to agency contracts, i.e. sales are effected by Agfa itself, the agents performing certain selling and logistical functions, for which they receive a commission. Those arrangements will remain intact.
- (116) The undertaking will improve access to a number of important dealers for Agfa's competitors. This is considered especially important given that, in comparison with Agfa and DuPont, those competitors are more dependent on dealers for sales of negative plates.

Duration of the undertakings and monitoring

- (117) The Commission considers that the above undertakings will have immediate effects on the opening up of marketing structures: existing barriers to competitors to effectively compete with Agfa will be lifted instantly. The period of validity of five years as proposed by Agfa is considered appropriate, since where the undertakings may have a more delayed effect, such as for package deals with their two to three year duration, the five year validity of the undertakings will ensure that the opportunities for competitors to gain access to end-users and dealers remain real.

- (118) Given the immediate effect of the undertakings, the need for close monitoring is limited. Nevertheless, for the Commission to be able to enforce strict compliance by Agfa of its undertakings, Agfa needs to submit a report containing copies of the relevant correspondence of Agfa with the equipment suppliers and dealers concerned, and to inform the Commission on a yearly basis as to whether or not the undertakings are being observed.

Conclusion

- (119) The Commission considers that the above undertakings, through the opening up of structural relations for the distribution of Agfa/DuPont products, will have positive effects for competition on the negative plates market. By reducing the cost to end-users of switching and by ensuring that dealers (and thus their customer base) can benefit from offers from competitors, possibilities for competitors to make inroads into the market share of Agfa after the merger will be considerably enhanced.

IX. FINAL CONCLUSION

- (120) Consequently, the Commission concludes that, subject to full compliance with the above undertakings, the concentration will not create a dominant position as a result of which effective competition would be significantly impeded on the common market or a substantial part of it,

HAS ADOPTED THIS DECISION:

Article 1

Subject to their fulfilment of the conditions in Article 2, the concentration by which Agfa-Gevaert AG and Agfa-Gevaert NV (hereinafter referred to as 'Agfa'), propose to take over the graphic arts business of E. I. DuPont de Nemours & Company is hereby declared compatible with the common market and the functioning of the EEA Agreement.

Article 2

Agfa shall comply fully with the commitments set out in paragraphs (a) to (e) of recital 110.

Agfa shall submit to the Commission, on the first occasion by 31 March 1998 and thereafter once every year, a report and enclosures as described in recital 118.

Article 3

This Decision is addressed to:

Bayer AG
D-51368 Leverkusen.

Done at Brussels, 11 February 1998.

For the Commission

Karel VAN MIERT

Member of the Commission

NOTICE TO READERS

**Statement of income and expenditure of the European Training Foundation for the
1998 financial year**

The budget and the establishment plan are available on Internet at the following address:

<http://www.etf.eu.int>