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## **Disband or go underground? The Nordic pulp and paper export cartels and European competition policies, 1970-1995**

**A work in progress**

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### **Abstract**

During the first half of the 20<sup>th</sup> century, the Nordic pulp and paper industries set up a number of export cartels. Although the treaty of Rome contained strict regulations against restrictive practices, it took several decades before the EEC/EC became a real threat to them or to the other European paper and pulp cartels. The EEC authorities and many national governments were much less willing to attack cartels than the text of the Treaty of Rome would lead one to expect. Some of them felt that cartels were still useful tools that could be used to promote important goals. Not surprisingly, the Nordic cartels could operate for decades in the area of the EEC and even co-operate closely with the local industry. However, during the 1970s and 1980s the EEC/EC and the Western European governments, and eventually the Nordic governments as well, gradually adopted a hostile attitude towards these business alliances. According to my preliminary research results, the Nordic producers reacted to this change, and to the endemic problem of cheating by individual cartel members, by abandoning traditional formal arrangements, and instead resorting to more informal methods of co-operation. Furthermore, the new strict anti-cartel policy promoted the consolidation of the industry.

## Introduction

In 1932 the Nordic (Swedish, Norwegian and Finnish) producers of kraft paper set up a cartel called Scankraft. One observer called it in 1943 “the most perfect type of cartel that has ever existed in paper trade.”<sup>1</sup> The producers managed to build an organisation that regulated the activities of Nordic producers for several decades. During the 1930s and 1940s, the Nordic paper industry set up several other export cartels to regulate prices and quantities sold. These organisations included Scannevs (newsprint), Scanfin (fine paper), Scanpapp (board) and Scansulfit (sulphite and tissue paper). The Nordic pulp industries, in turn, negotiated on export prices on a quarterly basis, first at the national, then at the Nordic level. They also tried to regulate supply, when market developments were unfavourable. These pulp cartels were less formal than the Scan-organisations but no less significant. In addition, there were also several national export associations, most important of which were the Finnish sales cartels, Finnmap (before 1974 Finmap), Finnboard, and Finncell, which sold, respectively, most of the Finnish production of paper, board and pulp.

National export cartels were crucial for the Finnish industry because most of the individual Finnish companies were so small that they could not have competed independently with much larger foreign, and in particular North American competitors in capital-intensive fields of mass-production like pulp and paper. Yet, the high number of paper and pulp cartels reflects also the strongly cyclical nature of the markets in which the producers operated. Hence, whenever two of them met, they soon started to speak about the need to “stabilise” international markets. This focus on price stability rather than on efforts simply to raise prices explains why even some of the customers supported the existence of Nordic cartels.<sup>2</sup>

Nordic countries, although small in population and geographical area, gradually rose to become major exporters of paper and pulp (see Tables 1 and 2). Their most important markets were located in Western Europe, but the United Kingdom and the EEC countries were themselves major paper producers. Their industry had been able to grow behind protective trade barriers, although the Nordic

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<sup>1</sup> Kai Häggman, *Metsän tasavalta. Suomalainen metsäteollisuus politiikan ja markkinoiden ristiaallokossa 1920-1939* (Helsinki: Suomalaisen Kirjallisuuden Seura, 2006), 171.

<sup>2</sup> The industrialists tended to claim that customers *in general* supported the existence of the cartels. This is doubtful, but there is evidence that at least some of them did so.

producers, which benefited from important natural advantages such as extensive raw material resources and cheap hydropower, were believed to be more competitive. While the Nordic producers were naturally interested in increasing their market shares in previously protected markets when the trade barriers started to come down, they were even more interested in protecting their profitability and were therefore usually unwilling to start price wars in European markets. Hence, the Nordic producers were willing to adopt a “live and let live” policy towards their Western European competitors as long as the Nordic companies could gradually increase their market shares. The Nordics argued that because of the strong growth in consumption, there was room for both themselves and their competitors.

For several decades, the Nordic cartels tried to regulate export prices and promote stability. By combining forces, they could also strengthen their bargaining position vis-à-vis the highly competitive Canadian and US producers, who tended to become more interested in European markets whenever there was a recession in the North American market. The Nordic cartels formed close links with their European and North American competitors, and sometimes managed to agree with them on common prices and even on production cuts. During the 1960s, the representatives of Nordic and Western European industries even tried to set up an extensive international paper cartel, that would have covered most or all of non-communist Europe. This plan failed, yet a more limited, but regular co-operation between Nordic and Western European producers continued for at least two decades. The Nordic and Canadian producers of pulp and newsprint negotiated with each other regularly from the 1950s onwards up to at least to the mid-1970s. These Trans-Atlantic negotiations had substantial impact on the world markets, since most of the important exporters were represented.<sup>3</sup>

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<sup>3</sup> Niklas Jensen-Eriksen, *Läpimurto. Metsäteollisuus kasvun, integraation ja kylmän sodan Euroopassa 1950-1973. Metsäteollisuuden maa 4* (Helsinki: Suomen Kirjallisuuden Seura. Forthcoming in November 2007).

**Table 1: The world's largest producers and exporters of paper and board 1989**

Producers			Exporters		
Rank	Country	Production 1000 tons	Rank	Country	Exports 1000 tons
1	USA	69 514	1	Canada	11 284
2	Japan	26 809	2	Finland	7 396
3	Canada	16 555	3	Sweden	6 435
4	China	15 336	4	USA	5 046
5	West Germany	12 610	5	West Germany	4 429
6	Soviet Union	10 654	6	France	1 970
7	Finland	8 752	7	The Netherlands	1 895
8	Sweden	8 362	8	Austria	1 812
9	France	6 754	9	Norway	1 465
10	Italy	5 555	10	Italy	1 199

Source: Avain Suomen metsäteollisuuteen (Helsinki: Suomen Metsäteollisuuden Keskusliitto 1992), 6.

**Table 2: The world's largest producers and exporters of pulp 1989**

Producers			Exporters		
Rank	Country	Production 1000 tons	Rank	Country	Exports 1000 tons
1	USA	56 225	1	Canada	8 241
2	Canada	23 593	2	USA	5 635
3	Soviet Union	11 326	3	Sweden	2 913
4	Japan	10 409	4	Finland	1 653
5	Sweden	10 052	5	Soviet Union	1 020
6	Finland	9 118	6	Portugal	995
7	Brazil	4 304	7	Brazil	975
8	West Germany	3 078	8	Norway	636
9	Norway	2 224	9	New Zealand	568
10	France	2 135	10	Spain	553

Source: Avain Suomen metsäteollisuuteen (Helsinki: Suomen Metsäteollisuuden Keskusliitto 1992), 7.

The treaty of Rome (1957), which gave birth to the European Economic Community, contained strict regulations against cartels and other restrictive practices. Although the Nordic paper-producing countries of Sweden and Norway did not join the European Union before 1995 (Norway is still not a member, but it did join the wider European Economic Area), the activities of the Nordic countries, and even more their negotiations with the Western European producers influenced trade within the Common market. One can therefore assume, that the setting up of EEC threatened the existence of the European pulp and paper cartels. But how did the industrialists react to the anti-cartel legislation? Were the cartels disbanded or did they find a way to adapt to the new situation? Was the EEC/EC a real threat to the cartels or merely a theoretical one? In the following pages I present some preliminary results of my ongoing research project.

This paper is going to be based mainly on Nordic, in particular Finnish, government and business documents, as well as on published works and interviews. The classified documents of Nordic woodworking companies and cartels are a particularly rich source for anyone interested in the negotiations between European pulp and paper producers. Most other European governments gradually adopted a hostile attitude towards cartels and other restrictive practices during the post-war era. Those cartels that did continue to exist naturally preferred not to produce incriminating evidence of their activities. Therefore only little written evidence on their internal negotiations has survived. In contrast, for a long time the Nordic governments took in general a positive view on the activities of the paper and pulp cartels, and therefore there was little need for extreme secrecy. Many Nordic paper cartels had administrative headquarters, which circulated protocols and annual reports to their members. In addition, many members produced detailed memorandums of their own. Hence, a wealth of documentation on their activities has survived. Finnish sources are especially rich, because the country was particularly dependent on the exports of woodworking products, and the Finnish governments believed that the national export cartels were crucial to the development of the country's economy.

## EEC and the competition in paper

The representatives of six Western European powers (France, West Germany, Italy, the Netherlands, Belgium and Luxemburg) signed a Treaty of Rome on 25 March 1957 that set up the European Economic Community. Drafters of the treaty were trying to create a common market by removing trade barriers, such as tariffs, between member states. According to classic doctrine of free trade, this would improve efficiency and allow countries to specialise in those fields of production where their industries were most competitive. Removal of public barriers of trade would not, however, have desired positive effects, if the companies would be able to erect barriers of trade of their own. Instead of trying to adapt to a new situation by improving efficiency, reducing prices or investing in R&D, they could try to limit competition by concluding new formal agreements or informal ‘gentlemen’s agreements’ with their competitors. Therefore, Article 85(1) of the treaty of Rome prohibited a wide range of collusive agreements, including price-fixing and market-sharing agreements that could have a negative impact on trade between member states. Article 85(2) declared that such agreements would not be enforceable by the courts.<sup>4</sup> Activities of the Western European and Nordic paper producers proved that the fears of the drafters of Treaty of Rome had been justified, at least as far as trade in paper was concerned.

When “the Six” set up set up the EEC, seven other countries, including the UK, Sweden and Norway, responded by founding the European Free Trade Association in 1959-1960. Finland became an associate member in 1961. The EEC paper industry had reason to be happy about this state of affairs. The Common Tariff of the EEC would now protect the industry of Six from the Nordic producers. However, the situation seemed to change already in 1961, when the UK applied for EEC membership. Norway followed the British example, and Sweden applied for associate membership.<sup>5</sup> Finland adopted a ‘wait and see’ policy, but since the UK was Finland’s most important customer, it was crucial for the

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<sup>4</sup> Michelle Cini and Lee McGowan, *Competition policy in the European union* (New York; Houndmills, Basingstoke, Hampshire and London: St. Martin’s Press, Inc.; Macmillan Press Ltd., 1998), 11-12,60-61; D.L. McLachlan and D. Swann, ‘Competition Policy in the Common Market,’ *The Economic Journal* 73, no. 289 (1963), 54-59; In addition, article 86 prohibited the abuse of domination position with the common market.

<sup>5</sup> Karlsson, Birgit. *Att handla neutralt. Sverige och den ekonomiska integrationen i Västeuropa 1948-1972*. Rapport från Ekonomisk-historiska institutionen, Handelshögskolan vid Göteborgs universitet nr 16, Göteborg, 2001, 60.

Finns to find some way of making sure that Finnish paper and board gained as free access to the UK market as Swedish or Norwegian paper did.<sup>6</sup>

The paper industry of Six was shocked. They refused to believe that the Nordics had indeed accepted a “live and let live” –principle and were concerned that the protective tariffs they had limited imports might soon disappear. The Nordic producers, on the other hand, were afraid that the EEC producers might be able to persuade the EEC and its member states to maintain tariffs on imports of paper. Holger Nystén, the managing director of the second department of Finpap, the Finnish paper export cartel, recognised that these mutual fears had created an exceptional ‘window of opportunity’: it was now for the first time possible to create a large paper cartel, which would cover most of the non-communist Europe, including the EEC, the UK and the Nordic countries. In a meeting held in the Netherlands, Nystén and his associates described his plan to a group of French, German, Belgian, Dutch and Austrian industrialists.<sup>7</sup> Yet, the negotiations eventually failed because of mutual distrust and differing interests. The British membership in the EEC was blocked by the French president, General de Gaulle, in 1963.

More limited co-operation between producers did continue and in fact it became more extensively than before. In the spring of 1962, the paper producers of the EEC set up an alliance of their own, so that they would be able to speak with one voice to the Nordic producers and to the EEC Commission. This alliance was originally known simply as ‘the Club’,<sup>8</sup> but it later assumed the name Confédération Européenne de l’Industries de Pâtes, Papiers et Cartons (CEPAC). This trade association and its subsections negotiated regularly with the Nordic exports cartels about paper prices from the early 1960s to the early 1980s. The parties often failed to reach a compromise, mainly because the representatives of CEPAC claimed that the Nordic cartels’ prices were too low. In addition, all European producers were not represented in these negotiations, and therefore they could and did undercut prices. Some of the individual members of CEPAC or the Nordic cartels did so secretly as

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<sup>6</sup> Archives of the Finnish Forest Industries Federation (FFIF). NK01.01. EEC/Suomi/Yleinen 1961-1971. A memo by Holger Nystén, 18 September 1961; Paavonen, Tapani. ‘From Isolation to the Core: Finland’s Position towards European Integration, 1960–95’. *Journal of European Integration history* 7 (2001), 61.

<sup>7</sup> Suomen Elinkeinoelämän Keskusarkisto, Mikkeli, Finland (The Central Archives for Finnish Business Records, ELKA). G.A. Serlachius, pääkonttori. R. Erik Serlachiuksen asiakirjat. File 5448. A memo by Holger Nystén 18 September 1961.

<sup>8</sup> UPM-Kymmenen Valkeakosken keskusarkisto. Finpap. Minutes 1962. Minutes of the meeting of the Presidium, 28 August 1962.

well, when it suited their business interests. Nevertheless, records suggest that the CEPAC-Nordic negotiations did limit competition in the European markets at least to some degree.<sup>9</sup>

The Western European producers felt originally that they had little to fear from competition authorities. The national legislation of the member states did not at this time pose a serious threat to the existence of cartels. Existing rules were weak, except in the case of West Germany, and some countries had no legislation dealing with restrictive practices.<sup>10</sup> Furthermore, it took some time before the Article 85 became a real threat to cartels operating within the EEC area. In the beginning, there were no detailed instructions on how it should be implemented, and drafting instructions that would be acceptable to all member states, proved to be difficult. After intense debates, the Council of Ministers finally reached an agreement that was published as Regulation 17. It entered into force in March 1962. The responsibility for the administration and implementation of the competition policy was given to the EEC Commission, or more specially to the Directorate-General IV (DGIV). During the following years, DGIV had to deal with a number of practical problems, which naturally hindered its ability to challenge those companies that were unwilling to notify the Commission of their agreements with other companies and unwilling to abandon their previous efforts to limit competition. The Commission did receive over 35,000 notifications of bilateral or multilateral agreements, but most of these were vertical agreements of minor importance. Nevertheless, the Commission had to find ways of dealing effectively with the large flow of notifications, and it eventually started to grant 'block exemptions' to various types of agreements that were deemed to be acceptable.<sup>11</sup>

According to Cini and McGowan '[t]he first fifteen years of the EC's competition policy were characterised by the cumulative and incremental development of a coherent set of policy priorities. There were to provide the Commission with a solid foundation upon which to build an activist

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<sup>9</sup> Toivo Nordberg, *Vuosisata paperiteollisuutta III. Yhtyneet Paperitehtaat Osakeyhtiö 1952-1969. Juuso Waldenin aikaan* (Valkeakoski: UPM-Kymmene Oyj, 1998), 316; ELKA. G.A. Serlachius, pääkonttori. Scanorganisaatiot. Andreas Diesenin asiakirjat. Files 5613-5614; UPM-Kymmenen Valkeakosken keskusarkisto. Finnrap. Holger Nystén: Reseraporter & promemorier. 'Muistiinpanoja Amsterdamissa 5.9.63 käydyistä keskusteluista, jotka koskivat EEC-teollisuutta. Puupitoinen painopaperi.' 6 September 1963; Scanfin, annual report for 1974. Scanfin vuosikertomukset 1940-83; Scangreaseproof, annual reports 1969-1982. Scangreaseproof vuosikertomukset 1954-82.

<sup>10</sup> Cini and McGowan, *Competition policy*, 18-19; Neil Rollings, 'British Industry and European Integration, 1961-73: From First Applications to Final Membership,' *Business and Economic History* 27, no. 2 (1998), 452.

<sup>11</sup> McLachlan and Swann, 'Competition Policy,' 68-69; Cini and McGowan, *Competition policy*, 19-21; Lee McGowan, 'At the Commission's discretion: cartelbusting and fining infringements under the EU's restrictive practices policy,' *Public Administration* 78, no. 3 (2000), 642.



policy:<sup>12</sup> During this time period, the Commission was not able to pose a threat to the cartels the paper producers had created or those they were trying to create. However, this was not the only reason why the paper industry was confident that the EEC or its member countries would not challenge their agreements. During the 1960s and 1970s, the representatives of the Commission took surprisingly benevolent attitude towards these negotiations, of which they had at least some knowledge,<sup>13</sup> and sometimes they themselves even urged the Nordic and Western European producers to conclude agreements that would limit competition.

The question of prospective tariff reductions in the Kennedy Round (1964-1967) of GATT trade negotiations was a case in point. The Nordic industry hoped that the EEC common tariffs on various types of paper would be reduced, while the paper industry of the Six naturally opposed this and started to campaign against tariff reductions. It was hard for the EEC Commission to reject demands for continued tariff protection, in particular because the French and Italian governments were supporting their domestic producers.<sup>14</sup> On the other hand, if the paper sector would be excluded from tariff reductions, the Nordic governments would most likely be unwilling to grant substantial tariff reductions for the exports of EEC. The Commission could neither completely reject nor accept demands for tariff reductions. How could this dilemma be solved? The answer, according to the Direction Générale du Marché Interieur of the Commission, (DGIII) was inter-industry negotiations. In the spring of 1964 several representatives of the commission suggested unofficially to the Nordic governments and Nordic industrial associations that the Nordic and EEC producers would try reach an understanding of their own about 'protective measures' that would limit competition within the EEC.<sup>15</sup> Neither the Nordic nor the EEC industries were particularly interested in making concrete proposals.<sup>16</sup> Despite of this, the Commission continued to urge the producers to start negotiations. A high-ranking

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<sup>12</sup> Cini and McGowan, *Competition policy*, 21-22.

<sup>13</sup> FFIF. NH05.01. EEC, kilpailupolitiikka, kilpailulainsäädäntö 1963-1984. Finnish Embassy to EC, Brussels, to Ministry for Foreign Affairs of Finland, 12 January 1967.

<sup>14</sup> Kansallisarkisto, Helsinki (Finnish National Archives, KA). Personal archives of Ahti Karjalainen. File 32. Niilo Pusa, Stockholm, to Ministry for Foreign Affairs of Finland, 24 April 1964.

<sup>15</sup> KA. Personal archives of Ahti Karjalainen. File 32. Niilo Pusa, Stockholm, to Ministry for Foreign Affairs of Finland, 24 April 1964; a memo by Klaus A. Sahlgren, 13 April 1964; FIFF. NH05.01. EEC, kilpailupolitiikka, kilpailulainsäädäntö 1963-1984. Finnish Embassy to EC, Brussels, to Ministry for Foreign Affairs of Finland, 12 January 1967.

<sup>16</sup> KA. Personal archives of Ahti Karjalainen. File 32. A memo by Klaus A. Sahlgren, 13 April 1964; FFIF. NN04.11. GATT kierrokset. Pohjoismaiden neuvottelut. Puunjalostus 1964-1965 "P.M. keskusteluista Brysselissä 15-17 syyskuuta 1964." Aarne Castrén, 17 September 1964.

official of the Commission even offered to lead a delegation of businessmen that would come to Finland to negotiate with the Finnish producers.<sup>17</sup> By the summer of 1964 it had, however, become clear that producers of the Six were not going to give in.<sup>18</sup> The EEC eventually offered moderate tariff concessions for foreign suppliers of paper.

During the early 1970s, the Commission faced a very similar dilemma than in 1964. When the United Kingdom launched its third attempt to join the Common Market, the EEC started to negotiate on free trade agreements with Sweden and Finland and eventually also with Norway, which had applied for full membership but whose voters had rejected it in a referendum. Once again, the paper industry of the Six reacted to prospect of free trade with horror and disgust. It feared that it would be unable to compete with the Nordic industry in an open market and demanded that the paper sector should be excluded from the free trade agreements. The EEC was unwilling to do this, because the Nordic countries would never accept such a solution. Therefore the representatives of the Commission once again unofficially suggested that the Nordic trade associations and the trade associations of the Six would settle their differences in intra-industry meetings. The French government made similar suggestions. The Nordic industry were unwilling to conclude agreements with their competitors, but meetings did nevertheless did take place in 1971-1972, although these did not lead to any concrete results.<sup>19</sup> Since 'industrial diplomacy' did not lead to desired results, the EEC decided to protect its industry with other measures. The tariffs on paper were eventually removed at a slower pace than in the case of most other industrial products. It was also decided that there should be a system of 'indicative platforms': if paper imports reached a certain level, the duty could revert to the original level, which in most paper grades was 12 per cent.<sup>20</sup>

Why did the representatives of the Commission adopt such a positive attitude towards the negotiations between producers of paper? The Treaty of Rome did not prohibit all cartels and other agreements

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<sup>17</sup> KA. Personal archives of Ahti Karjalainen. File 32. A memo by Klaus A. Sahlgren, 20 May 1964.

<sup>18</sup> KA. Personal archives of Ahti Karjalainen. File 32. Niilo Pusa, Stockholm, to Ministry for Foreign Affairs of Finland, 27 August 1964.

<sup>19</sup> FFIF. NK01.01.4. EEC/Suomi/EEC-neuvottelut metsäteollisuuden kannalta 1961-1973. 'P.M. Suomi-EEC. Puunjalostussektorin ongelmat' 1 June 1971; The annual report of the Central Association of Finnish Woodworking Industries 1971, 37-38.

<sup>20</sup> FFIF. NK01.01.4. EEC/Suomi/EEC-neuvottelut metsäteollisuuden kannalta 1961-1973. 'Neuvottelutulos EEC:n kanssa puunjalostusteollisuuden osalta'. 20 September 1973.

between companies. According to Article 85(3), a collusive agreement could be exempted, if it ‘contributes to improving the production or distribution of goods or [promotes] technical and economic progress.’<sup>21</sup> On the other hand, the restrictions should not eliminate competition in respect of ‘substantial portion’ of trade, and they should leave ‘a fair share’ of the profits to customers.<sup>22</sup> The proposed agreements would limit competition and the activities of the efficient Nordic producers and it is hard to see how this could ‘promote technical or economic progress’ or ‘improve production’, and it is even more difficult to see how the customers would benefit for these arrangements, which was an essential condition for an exemption. In fact, one could expect that the arrangements would help inefficient producers to survive, reduce their willingness to improve efficiency, and keep prices at a high level.<sup>23</sup>

The internal contradictions in the EEC policy were partly a result of bureaucratic politics. While the DGIV tried to promote competition within the community, the industrial and trade policy directorates took a more positive attitude towards cartels.<sup>24</sup> More importantly, the industrial sections of the Commission and the governments of some member states, in particular France and Italy, were willing to ignore the rules of Article 85 because in many occasions the restrictive practices seemed like a convenient way of solving certain potential or actual political and economic problems.<sup>25</sup> Free competition could lead to an increase in unemployment within the EEC, when Nordic producers would be able to strengthen their presence in the EEC market. Furthermore, the Commission and the governments of the member states were under constant pressure from the paper industry of the Six. In the end, the EEC assumed a very pragmatic attitude towards inter-industry negotiations regardless of whether they would be compatible with the anti-cartel provisions of the treaty of Rome, or not. Similar attitude was evident during the 1980s, when CEPAC complained bitterly about new Nordic

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<sup>21</sup> Cini and McGowan, *Competition policy*, 65.

<sup>22</sup> McLachlan and Swann, ‘Competition Policy,’ 57; ‘Profit’ was defined in very broad terms. In addition to reduction of prices, it could mean improvements of quality or other benefits customers might get. *Ibid.*, 60.

<sup>23</sup> Compare with OECD, *Competition and Trade Policies. Their Interaction* (Paris: Organisation for Economic Co-operation and Development, 1984), 100.

<sup>24</sup> FFIF. NH05.01. EEC, kilpailupolitiikka, kilpailulainsäädäntö 1963-1984. The Central Association of Finnish Woodworking Industries to Ministry for Foreign Affairs of Finland, 24 January 1967; Interview of Jorma Keino, 3 November 2004.

<sup>25</sup> Compare with Harm G. Schröter, ‘Cartelization and Decartelization in Europe, 1870 - 1995: Rise and Decline of an Economic Institution,’ *The Journal of European Economic History* 25, no. 1 (1996), 150-151.

investments. In response, the EEC commission suggested that industrialist could settle these differences themselves without outside interference.<sup>26</sup>

The willingness of the EEC Commission (or a part of it) to support restrictive business practises in paper industry is not totally exceptional. During the late 1970s and 1980s, the Commission accepted that industries suffering from permanent overcapacity could form ‘crisis cartels’ in order to ease the restructuring of production.<sup>27</sup> During the same decades, EEC countries and other industrialised countries also persuaded frequently exporting countries to ‘voluntary’ limit exports. These ‘Voluntary Export Restrictions’ (VERs) were often implemented by private actors,<sup>28</sup> and could therefore ‘resemble restrictive practices such as cartels’<sup>29</sup> and ‘produce cartel-like effects’<sup>30</sup>, as the OECD pointed out. If they were based on formal agreements between two governments, they were called ‘Orderly Marketing Agreements’ (OMAs). Often, however, the governments only ‘encouraged’ private companies to act. While Article 85 did not apply to OMAs, the Commission stated publicly in 1972 that the competition regulations would apply to ‘private’ VERs.<sup>31</sup> They were similar to those arrangements that the Commission was trying to encourage the Nordic producers to adopt, and it is therefore unlikely that the latter would have been compatible with the EEC competition law either.

### **The transformation of Nordic cartels**

Although the signing of treaty of Rome (1957) was in theory a key event in the history of the European anti-cartel legislation, the web of restrictive practices in the paper trade continued to grow during the late 1950s and 1960s. It was not before the end of the 1960s that the industrialists had to for the first time consider whether or not they should seriously change their behaviour. The cartel authorities of the EEC and West Germany now began to study competitive conditions in paper markets. Although these

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<sup>26</sup> FFIF. The annual report of the Central Association of the Finnish Forest Industries 1986, 14.

<sup>27</sup> D. G. Goyder, *EC Competition Law*, Third ed., *Oxford EC law library* (Oxford: Oxford University Press, 1998), 170-172; R.B. Bouterse, *Competition and Integration, What Goals Count? EEC Competition Law and Goals of Industrial, Monetary, and Cultural Policy* (Deventer Boston: Kluwer Law and Taxation, 1994), 60-68.

<sup>28</sup> OECD, *Competition and Trade Policies*, 11-12, 16-17, 49-56.

<sup>29</sup> *Ibid.*, 49.

<sup>30</sup> *Ibid.*, 16.

<sup>31</sup> Goyder, *EC Competition Law*, 556-557.

studies did not yet create substantial problems for Nordic producers, they responded to the increase in pressure by modifying the institutional structure of co-operation.

In the beginning of the 1970s most Scan organisations modified their statutes and removed articles that clearly violated EEC cartel legislation. Some formally decided to abandon common price policy in the EEC markets. Often these changes were merely cosmetic. For example, in 1971 the members of Scannevs decided not to renew their annual formal agreement of “extended co-operation”, but instead to draft a confidential memo, which contained similar clauses about co-operation.<sup>32</sup> The “price committees” of Scansulfit were renamed “working committees”, but it is likely that the topics of discussions did not change. In 1973, the oldest and best known of the joint Nordic cartels, Scankraft, became “an institute”, whose official task was to promote the sale of Nordic kraft paper by gathering information, doing research and collecting statistics.<sup>33</sup> In practise Scankraft continued to operate as an old-fashioned cartel, whose members negotiated on price levels, joint production cuts and market developments.<sup>34</sup>

Transformation of Scan organisations reflected wider changes in the Nordic and European paper cartels. Formal associations were replaced with less formal but at least as effective informal cartels. The available evidence on new cartels is regrettably but understandably not easy to find, but previously classified business documents and interviews of retired business executives suggest that this process started in the pulp industry in the 1960s and spread later to the paper industry. Many Nordic woodworking companies were involved in both fields, and it was therefore easy to adopt successful methods of co-operation from one to another.

The old cartels had had strict statutes, formal decision-making bodies, regular staff, and sometimes strict sanctions against those who violated their rules. These traditional organisations were sometimes

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<sup>32</sup> Jensen-Eriksen, *Läpimurto*; UPM-Kymmenen Valkeakosken keskusarkisto. Finnmap. ”The impact of EEC Antitrust Law on the Activities of the Scan Organisations.” Per A. Kjellson, Clifford-Turner & Co. 20.4.1971. Af Laki-asiat. EC Finnmap, Deringer etc.

<sup>33</sup> UPM-Kymmenen Valkeakosken keskusarkisto. Finnmap. Scansulfitin vuosikertomukset 1970-1971. Scansulfit vuosikertomuksia 1965-1982; Scankraft. Skandinaviska Kraftpappersinstitutet. Förvaltningsberättelse 1973. Scankraft vuosikertomuksia 1957-77.

<sup>34</sup> UPM-Kymmenen Valkeakosken keskusarkisto. Finnmap. Scankraft. Skandinaviska Kraftpappersinstitutet. Förvaltningsberättelse 1973. Scankraft vuosikertomuksia 1957-77. Suomen Paperitehtaitten Yhdistys – Finnmap, pöytäkirjat. Voimapaperijaos, työvaliokunta, meetings 29.3.1977, 29.8.1978, 26.10.1978, 20.3.1979; Voimapaperijaos, meetings 2.3.1984; 3.5.1984.

called “German-type” cartels, not only because of strong German traditions in this field but also because the Nordics had originally borrowed their models of co-operation from their German competitors. The new cartels lacked most of the formal characteristics of their predecessors’, but were instead based on informal and active links between the members. They would regularly exchange information about prices and market trends and try to agree on common price levels for various products. Formal agreements were believed not to be necessary, because strong links, mutual trust, and exchange of information and views created strong ties, and sometimes even “a highly developed rapport which enable everyone to arrive at the same figure independently.”<sup>35</sup>

Improvement of telecommunications process made co-operation much easier than before. The managers could easily phone a colleague or send him a telex message about changes in prices. Social events had an important role in the operation and formation of cartels. Business leaders got to know each other and to exchange views freely in a relaxed atmosphere. “It can be fairly stated that when two or three newsprint executives are gathered together (often in an expensive hotel for their annual conference), they are unable to resist the temptation of bewailing the ruinously low prices which so often appear to prevail,” the *Financial Times* wrote in 1980.<sup>36</sup> As late as during the 1990s, the EEC competition authorities uncovered an extensive international paperboard cartel, whose meetings had been disguised as social gatherings of industry leaders.<sup>37</sup>

As one can expect, the transformation of cartels was to a large degree a result of the pressure from the cartel authorities. The managers came to recognise that instead of concluding formal written agreements, they could rely on informal verbal agreements. Some industrialist in other fields had made the same observation.<sup>38</sup> New cartels produced much less incriminating information about their activities than their predecessors. This may be one reason why some of the extensive EEC anti-cartel investigations failed to produce convincing evidence about co-operation. For example, the EEC authorities originally fined dozens of European and North American woodpulp producers about illegal co-operation that was said to have occurred between 1976 and 1981, but the European Court of Justice

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<sup>35</sup> “Newsprint cartel and the men from DG4”. *Financial Times* 2.7.1980

<sup>36</sup> “Newsprint cartel and the men from DG4”. *Financial Times* 2.7.1980

<sup>37</sup> Cini and McGowan, *Competition policy*, 77.

<sup>38</sup> Kurt Rudolf Mirow and Harry Maurer, *Webs of Power. International Cartels and the World Economy* (Boston: Houghton Mifflin Company, 1982), 31-32.

eventually annulled the principal findings of this case and cited lack of evidence as one reason for this decision.<sup>39</sup> In the late 1970s, the EEC began to investigate the marketing of Scandinavian newsprint within the Community, but this case was soon settled, because the authorities could not prove their claims.<sup>40</sup> Confidential business documents indicate that there had in fact been extensive co-operation between Nordic producers and between them and the Canadians.<sup>41</sup>

Yet, I would argue that the transformations of the cartels did not reflect only outside pressure. The traditional paper and pulp cartels had never functioned as effectively as their founders had hoped. The history of Scan organisations is a full of stories of internal divisions, quarrels and cheating. Paper markets retained their cyclical nature. Literature on international cartels suggests that “[i]n general, instability in the economic environment destabilizes cartels”.<sup>42</sup> Therefore it is not surprising that external shocks often effectively undermined paper and pulp cartels. When the demand declined strongly, or the production increased faster than demand, producers had to work hard to keep their associations alive. For example, in the early 1960s the whole system of Scan organisations was in danger because of overcapacity, caused mainly by a recent substantial increase in Finnish production.

When it was difficult to fulfil order books, there was a strong incentive to cheat. When some companies decided to lower prices, they often did this by offering secret discounts to customers without informing other cartel members about these actions. When the other producers found out, they were understandingly annoyed and complained bitterly. Often there were so many rumours (some of them false) of unilateral actions circulating, that this created a widespread feeling of mistrust, and eroded the whole basis co-operation.<sup>43</sup>

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<sup>39</sup> “Court annuls Commission’s pulp fines.” *Financial Times* 6 April 1993; UPM-Kymmene Valkeakosken keskusarkisto. Finnrap. Af. Laki-asiat EC-Pulp Case 1993.” Judgement of the Court (Fifth Chamber) 31 March 1993.” Court of Justice of the European Communities.

<sup>40</sup> Sakari Heikkinen, *Paperia maailmalle. Suomen Paperitehtainten Yhdistys – Finnrap 1918–1996*. (Helsinki: Kustannusosakeyhtiö Otava, 2000), 436–437; “Newsprint cartel and the men from DG4”. *Financial Times* 2.7.1980.

<sup>41</sup> UPM-Kymmene Valkeakosken keskusarkisto. Finnrap. Scannewsia koskevia asiakirjoja 1976–81; Scannews. Kapasiteettkomitea 1973–78; Scannws-pöytäkirjoja 1972–76.

<sup>42</sup> Margaret C. Levenstein and Valerie Y. Suslow, *What Determines Cartel Success?*, University of Michigan Business School Working Paper No. 02-001, January 31, 2002, 11.

<sup>43</sup> Jensen-Eriksen, *Läpimurto*; UPM-Kymmene Valkeakosken keskusarkisto. Finnrap. Nordprintiä koskevia asiakirjoja 1976–81, 1990. “Tal hållet av bergsrådet Lars Mikander vid Scannews’ och Nordprints årsmötesmiddag den 5.3.1990 I Stockholm”.

In short, lack of trust often became a serious problem. The business leaders sometimes reacted to this problem by introducing strict sanctions. For example, during the early 1960s the members of Scankraft decided that a company that produced more than its quota had to pay a substantial fine to a common fund. The system had operated during the 1930s, but it had been abolished after the outbreak of the Second World War. The Swedish and Finnish woodpulp producers introduced a similar system in 1966. However, it was hard to persuade all members to accept the introduction of these kind of strict sanctions. Therefore many other associations, which were often in the brink of collapse, decided to loosen rules and give more independence to their members.<sup>44</sup>

Available, although somewhat fragmentary, evidence indicates that during the 1960s younger industrialists in particular started to argue that the old cartels were simply out of date. “The new men” labelled traditional cartels as “mistrust cartels”, and argued that these forms should be replaced with “trust cartels”. A new system, which gradually emerged, was based on strong personal ties between the top-level managers who got to know each other in face-to-face business meetings and social events.

Dissemination of information about production, sales and prices allowed the members of the cartel to monitor market trends and their competitors’ activities. Yet, it was trust, which was gradually built up during a time period of several years, which was crucial for the survival and success of the cartels. “Trust is the glue that binds couples, communities and countries,” Christopher R. Leslie has pointed out, and therefore he has underlined the significance of trust to cartels. “Without trust among the cartel members, many cartels will collapse under the weight of distrust, anticipated defections, and actual defections.”<sup>45</sup> “Old paper cartels” has resorted to sanctions and changes in regulations to overcome the problem of cheating, but the new cartels were based on a notion that trust could form a strong enough “glue” to make sure that cheating would not occur.

The industrialist tried to promote price stability, but as they knew well, empty order books might still force someone to lower prices regardless of the level of trust between members. However, this was no longer done secretly. If a producer felt compelled to cut prices, he would phone others in advance to tell about it. Other business leaders probably did not like the fact that he was cutting prices, but they

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<sup>44</sup> Jensen-Eriksen, *Läpimurto*.

<sup>45</sup> Christopher R. Leslie, ‘Trust, Distrust, and Antitrust,’ *Texas Law Review* 82, no. 3, (February 2004), 517,518-519.



respected the fact that he did not do it secretly. Hence, the price cuts no longer created similar mistrust between the industrialists, because it was not considered to be actual cheating since it did not happen secretly.

The changing attitude towards cartels became clear in 1965, when the Nordic producers decided to set up a new cartel to cover the rapidly expanding field of magazine printing paper. Instead of setting up a new Scan organisation, they founded a loose alliance known originally as “Helsinki Club”, and renamed Nordprint in May 1976. The “Club” was clearly a “Trust Cartel”. A memo written in 1973 argued that, “the co-operation was based on mutual trust,” and continued to underline that “the club” had no official statutes (these had originally been drafted but not formally ratified) formal price lists or even detailed statistics, yet the system worked well and the members believed that “the co-operation had had a very important factor in the efforts to raise prices to a proper level.”<sup>46</sup>

### **The end of the cartel era?**

During the 1980s and 1990s the gradual tightening of EC and national competition legislation forced the paper and pulp companies to abandon those forms of co-operation that were not compatible with the regulations. The remaining formal joint Nordic cartels, like the Scan organisations were formally disbanded or they were transformed to institutes that would gather statistics, do research or promote the consumption of particular goods.<sup>47</sup> However, the EC was still not fully committed to the new competition policies. In 1979, it launched an attack against Finnpap and its operations within the Common Market, but almost immediately after this process had began, some EC officials started to suggest that case should be quietly closed. After a ten-year-negotiation process, Finnpap was allowed

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<sup>46</sup> UPM-Kymmenen Valkeakosken keskusarkisto. Finnpap. Helsinki klubi 1973. ”Helsingforsblubbens verksamhetsformer”. 8.1.1973. Bilaga 1 to the meeting of the club on 12 January 1973.

<sup>47</sup> UPM-Kymmenen Valkeakosken keskusarkisto. Finnpap. Nordprintiä koskevia asiakirjoja 1976-81, 1990. “Tal hållet av bergsrådet Lars Mikander vid Scannevs’ och Nordprints årsmötesmiddag den 5.3.1990 i Stockholm”; Scangreaseproof vuosikertomuksia 1954-82. Scangreaseproof, annual report 1982; Sinikka Laiho, *Vuosisata Suomen kartonkiteollisuuden sillanrakentajana. Suomen Puuhiomoyhdistys 1893–1942. Suomen Kartonkiyhdistys – Finnboard 1943–1996*. (Espoo: Metsä-Serla Oyj, 1998), 126.

to continue its operations as long as it made some superficially important but in practise insignificant changes to its statues.<sup>48</sup>

The tightening of restrictive practices legislation did not, however, necessary always increase competition in the European markets, since it promoted the consolidation of industry. Co-operation had helped the survival of uncompetitive and small producers, which could not have defended their market shares in open, unrestricted competition. The competition legislation was one, although not the only one, reason behind the consolidation process that swept through the European pulp and paper industry during the 1980s and 1990s. However, the cause-effect process was in fact a two-way street. Consolidation also promoted decartelisation. For example, when the size of the Finnish companies grew, they felt that they no longer needed to be members of national export associations like Finnpap and Fincell. The large Finnish companies resigned one by one and during the 1990s these associations, whom even the Finnish authorities had now started to harass, were disbanded.

In some ways, consolidation made tacit co-operation even easier than before. The number of companies operating in the global markets declined drastically. Hence, few managers could form an effective “conspiracy” if they were willing to do so. One could argue that they had even stronger motives to co-operate than before, because the size and cost of individual paper machines increased substantially during the last few decades of the 20<sup>th</sup> century. Decline in market prices could seriously hamper the profitability of a company than had just expanded its production by building a new expensive factory. Furthermore, the culture of co-operation that had for decades characterised the industry did not suddenly disappear just because the competition policies were tightened. Executives that had worked for decades in the pulp and paper industry had usually grown to appreciate the benefits of co-operation. Senior managers could assume that their competitors, whom they personally knew well, shared the desire to avoid “cut-throat competition”. If there were doubts about the attitude of a particular manager, others could have a discreet word with him in some social function to ascertain whether or not he “understood the need to stabilise the markets”.

When all companies shared the desire to avoid competition, there was not necessarily any need for continuous contacts. Trust could keep co-operation alive even when tightening of legislation made

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<sup>48</sup> Heikkinen, *Paperia maailmalle*, 440-441.

direct contacts between executives and the exchange of information impossible. The companies would just simply refrain from offensive actions in market places and follow the lead of market leaders when making decisions about prices. Best cartels were so effectively disguised, that their members could argue that they were not cartels at all.

On the other hand, there is also strong evidence that legislation started to become an effective deterrent during the 1990s and therefore had a real impact on the company actions. The fact that managers could get prison sentences in the United States made an impact even on the non-American executives, whose companies often had US subsidiaries. New corporate amnesty or leniency programs could also effectively undermine the trust that still formed a crucial part of co-operation.<sup>49</sup> The first firm that decided to co-operate with the authorities could get an amnesty, which meant that individual members now had a strong incentive to defect. This fact, and the inflow of new young managers as well as older executives who had worked previously for industries where co-operation had not been so widespread, gradually eroded the culture of co-operation than had dominated the pulp and paper industry throughout the 20<sup>th</sup> century.

Nevertheless, the case of paper and pulp cartels proves that cartels could survive for decades after the anti-cartel legislation had been introduced. Between the early 1960s and early 1980s the co-operation and links between European paper producers were probably more extensive than ever before or since. The case of paper industry also indicates that the EEC authorities and much more many national governments were much less willing to attack cartels than the Treaty of Rome would lead one to expect. Some of them felt that cartels were still useful tools that could be used to promote important goals like the survival domestic producers in the tightening international competition and the promotion of high employment. The companies, in turn, were not willing to abandon their restrictive business practices, but rather decided to “go underground” and formulate forms of co-operation that would be less easy to detect. It was not before the late 1980s, that the EC legislation started to become a real obstacle to the operation of pulp and paper cartels and eventually forced the producers, as far as we know, to abandon previous modes of co-operation.

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<sup>49</sup> Leslie, ‘Trust, Distrust, and Antitrust,’ 519.

However, changes in European cartel structure did not reflect only changes in legislation but also changing business strategies. “Trust cartels” replaced old formal “mistrust cartels” partly because many industrialists believed that new cartels would operate more effectively. It is hard to measure the effectiveness accurately, but it is striking that it is much more difficult to find evidence of bitter internal disputes in regards to the new cartels than the old ones. Yet, this could only reflect the fact there is in general less evidence about the new cartels.