Reports of Cases

JUDGMENT OF THE GENERAL COURT (Ninth Chamber)

27 November 2014*

(Competition — Agreements, decisions and concerted practices — Market in power transformers — Decision finding an infringement of Article 81 EC and Article 53 of the EEA Agreement — Market-sharing agreement — 2002 Commission Leniency Notice — Immunity from fines — Legitimate expectations — Obligation to state reasons)

In Case T-521/09,

Alstom Grid SAS, formerly Areva T&D SAS, established in Paris (France), represented initially by A. Schild, C. Simphal and E. Estellon, and subsequently by J. Derenne, A. Müller-Rappard and M. Domecq, lawyers,

applicant,

v

European Commission, represented initially by A. Bouquet, N. von Lingen and K. Mojzesowicz, and subsequently by A. Bouquet, K. Mojzesowicz and P. Van Nuffel, acting as Agents,

defendant,

APPLICATION for the annulment of Commission Decision C(2009) 7601 final of 7 October 2009 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39.129 — Power Transformers),

THE GENERAL COURT (Ninth Chamber),

composed of D. Gratsias, acting President, O. Czúcz (Rapporteur) and I. Labucka, Judges,

Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 21 May 2014,

gives the following

* Language of the case: French.

Judgment

Background to the dispute and the contested decision

1 The sector to which this case relates is that of power transformers, auto transformers and shunt reactors with a voltage range of 380 kV and above. A power transformer is a major electrical component the function of which is to reduce or increase the voltage in an electrical circuit. Power transformers are sold as stand-alone equipment or as part of turnkey power substations.

2 During the period relevant to this case, that is to say from 9 June 1999 to 15 May 2003, the applicant, then called Alstom T&D SA, was active in the field of power transformers. Throughout that period, the manufacturing company Alstom held 100% of the capital of Alstom France SA (renamed Alstom Holdings in August 1999), which, in turn, held 100% of the applicant's capital.

3 After the sale of the Alstom Group's power transformer production business to the Areva Group, the applicant was transferred in 2004 to the Areva Group, controlled by Areva SA, and was then renamed Areva T&D SA.

4 On 11 and 12 May 2004, the Commission of the European Communities carried out inspections in connection with case COMP/38.899 — Gas Insulated Switchgear, in particular at the premises of Hitachi Ltd, where it seized copies of documents.

5 On 9 September 2004, Hitachi submitted an application for immunity under the Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3, 'the Leniency Notice') with regard to gas insulated switchgear ('GIS'). To support that application, it supplied, in particular, copies of documents which the Commission had found at its premises during the abovementioned inspections.

6 On 22 September 2004, Areva submitted a first application for immunity. That first application for immunity related mainly to anticompetitive practices involving several Member States of the European Union (in particular Belgium, Germany, France, the Netherlands and Austria). Areva also referred in that document to the 'Aero Club', an international cartel in the power transformer sector. It indicated the names of European and Japanese undertakings which had participated in the cartel and the way the cartel functioned. It also stated that those practices had ceased in 1998-1999. On 7 December 2005, the Commission rejected the first application for immunity, stating that it did not consider that it fulfilled the conditions laid down in paragraph 8(a) or (b) of the 2002 Leniency Notice.

7 On 15 January 2005, Areva submitted a second application for immunity. It included mainly information on possible anticompetitive practices affecting the German and French power transformer markets, at the same time pointing out the differences between that first suspected cartel and the cartel in relation to which the Commission had carried out investigations in the GIS case. Areva withdrew that application for immunity on 21 September 2006.

8 On 2 May 2006, Areva submitted a further application for immunity, concerning a suspected cartel affecting Germany and France. It supplemented the information provided on 8 September 2006 by once more submitting information on anticompetitive practices relating to Germany and France and stating that the other countries concerned by those practices were Belgium, the Netherlands and Austria. In that context, it also referred to a 'Gentlemen's Agreement' which, according to it, affected the European 'non-home markets', that is to say European markets in which the European producers did not have a production unit, such as Spain or Italy. Finally, it indicated that the 'Gentlemen's Agreement' had ceased in 1997 or 1998. On 10 October 2006, Areva stated that the 'Gentlemen's Agreement' appeared merely to involve unilateral conduct and denied that those practices were

anticompetitive. By letter of 31 October 2006, the Commission granted Areva conditional immunity concerning a 'suspected cartel in the power transformer sector in Germany, Austria, France and the Netherlands'.

9 On 7 and 8 February 2007, the Commission carried out inspections at the premises of companies in Germany, Austria and France.

10 On 7 February 2007, the Siemens Group filed an application for immunity. On 15 February 2007, Siemens supplemented that application by providing evidence relating to a verbal cartel in the power transformers sector, referred to as a 'Gentlemen's Agreement (GA)' under which European producers were required not to sell their products in Japan and Japanese producers were required not to sell theirs on the European market. On 6 December 2007, the Commission granted Siemens conditional immunity under paragraph 8(b) of the 2002 Leniency Notice for having been the first undertaking to have given it evidence enabling it to find an infringement of Article 81 EC in relation to that cartel.

11 On 14 March 2007, the Commission sent a questionnaire to the applicant and to other undertakings. The applicant replied on 27 March 2007.

12 On 29 March 2007, a meeting was held with representatives of the applicant, during which the Commission produced certain documents and asked questions about them.

13 On 1 June 2007, the Hitachi Group submitted a further application for leniency, which it supplemented on 1 August 2007.

14 On 18 July 2007, the Fuji Group lodged an application for leniency in relation to a cartel between European and Japanese power transformer producers.

15 On 20 August 2007, the Commission informed Areva orally that it was considering dealing only with the cartel between the European and Japanese producers and not the cartels concerning certain Member States for which the applicant had obtained conditional immunity. Furthermore, the Commission informed it that the conditional immunity that it had granted covered only the cartels concerning certain home markets and did not cover the one between European and Japanese producers with regard to which Areva had not lodged an application for leniency.

16 On 30 September 2008, the Commission decided to initiate against the addressees of the contested decision a procedure concerning the power transformer market.

17 On 19 November 2008, before sending out its statement of objections, the Commission sent a letter to Areva in which it detailed the chronology of its applications for leniency and reminded it that it had informed it on 20 August 2007 that it had reached the conclusion that the cartels affecting certain Member States (in particular Germany), on the one hand, and the cartel between European and Japanese power transformer producers, on the other, constituted two separate infringements and that it intended pursuing only the suspected cartel between European and Japanese power transformer producers and not the suspected cartel in Germany. It also informed the applicant that the evidence relating to the cartel between European and Japanese power transformer producers did not represent significant added value and that it did not intend granting it a reduction of the fine in that regard under the 2002 Leniency Notice.

18 The statement of objections was adopted on 20 November 2008. The applicant replied to it on 20 January 2009. The hearing was held on 17 February 2009.

19 On 7 October 2009, the Commission adopted its decision C(2009) 7601 final relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement, Case COMP/39.129 — Power Transformers ('the contested decision'), in which it found that Alstom and the applicant had infringed

Article 81 EC and Article 53 of the Agreement on the European Economic Area ('the EEA Agreement') and imposed a fine of EUR 16.5 million on Alstom, with joint and several liability attaching to the applicant in the sum of EUR 13.53 million.

20 In that decision, the Commission found that the applicant had participated, at least from 9 June 1999 to 15 May 2003, in the Gentlemen's Agreement, an unlawful agreement covering the entire European Economic Area and made orally between European and Japanese power transformer producers whereby they respected each other's home markets and refrained from selling in those markets.

21 With regard to the organisation of the Gentlemen's Agreement, the Commission considered that the participating undertakings fell into two groups, one European and one Japanese; that each group was required to appoint an undertaking to act as secretary and that, throughout the infringement, Siemens had acted as secretary for the European group and Hitachi as secretary for the Japanese group. It also found that the market-sharing agreement had been supplemented by an agreement for the notification of calls for tenders (projects) deriving from the territory of the other group and that those projects had to be notified to the secretary of the other group in order to be reassigned.

22 The contested decision concerns the market in power transformers, sold either as stand-alone equipment or as part of turnkey projects, but excludes power transformers sold as part of GIS-based substations, the sales of which had already been subject to Commission Decision C(2006) 6762 final of 24 January 2007 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement, (Case COMP/F/38.899 — Gas Insulated Switchgear) (summary published in OJ 2008 C 5, p. 7).

23 In the contested decision, the Commission distinguished between the Gentlemen's Agreement and, in particular, two other cartels, namely, first, cartels concerning home markets, in particular the German market, and, second, the 'Aero Club', an international cartel which ended in 1997 or 1998. The infringement found in the contested decision relates only to the Gentlemen's Agreement and not to the other two cartels.

24 Under the 2002 Leniency Notice, the Commission granted immunity from fines to Siemens AG and Siemens Aktiengesellschaft Österreich and a reduction of 40% of the fine imposed on Fuji Electronics Holdings Co. Ltd.

25 On the other hand, the Commission did not grant any immunity or reduction of fines to the applicant. However, in recital 274 to the contested decision, it granted it a reduction of 18% for effective cooperation outside the scope of the 2002 Leniency Notice. The difference between the fine imposed on Alstom and that imposed on the applicant is therefore accounted for by the fact that Alstom was not granted any reduction of its fine.

Procedure and forms of order sought

26 By application lodged at the Registry of the Court of First Instance on 21 December 2009, the applicant, known as Areva T&D SAS as a result of a change to its statutes, brought the present action.

27 Following its takeover by Alstom in January 2010, the applicant decided to change its business name to Alstom Grid SAS.

28 The Judge-Rapporteur having been prevented from sitting, the present case was reassigned to a new Judge-Rapporteur.

29 Upon hearing the report of the Judge-Rapporteur, on 9 November 2012, the General Court (Third Chamber) decided, as a measure of organisation of procedure under Article 64 of the Rules of Procedure of the General Court, to address questions to the parties and to ask the Commission to produce documents. Within the time-limit set, the parties answered the questions and the Commission partially complied with the request for the production of documents. On 7 March 2013, the applicant submitted its observations concerning the documents and the observations made by the Commission.

30 By order of the President of the Third Chamber of 9 April 2013, the Court suspended the procedure in the present case pending a decision of the Court of Justice bringing the proceedings to a close in Case C-231/11 P *Commission* v *Siemens Österreich and Others*.

31 The composition of the chambers having been changed, the Judge-Rapporteur was assigned to the Ninth Chamber, to which the present case was accordingly allocated.

32 Following the Court of Justice's delivery of its judgments of 10 April 2014 in C*ommission* v *Siemens Österreich and Others* (C-231/11 P to C-233/11 P, ECR, EU:C:2014:256), and *Areva* v *Commission* (C-247/11 P and C-253/11 P, ECR, EU:C:2014:257), the General Court (Ninth Chamber) decided to open the oral procedure.

33 By letter of 14 May 2014, the applicant withdrew a number of pleas relied on in support of its application, the Court taking note.

34 The parties presented oral argument and replied to the questions put by the Court at the hearing on 21 May 2014.

35 The applicant claims that the Court should:

— annul the contested decision in so far as it concerns the applicant;

— order the Commission to pay the costs.

36 The Commission contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

37 The parties do not seek any change in the amount of the fine imposed in the contested decision.

Law

38 The application in the present action was based on four pleas in law. However, as noted in paragraph 33 above, the applicant withdrew some of those pleas, namely the first part of the first plea, alleging breach of the obligation to state reasons as regards the delegation, by the Commission, of its power to impose penalties, the second plea, alleging infringement of Article 81(1) EC and, in particular, of the rules concerning the imputability of infringements of competition law, and the third plea, alleging infringement of Article 81(1) EC and, in particular, of the rules concerning joint and several liability.

39 Therefore, it is appropriate to examine only the remaining part of the first plea, alleging an insufficient statement of reasons for the addition of a supplementary condition to the conditions imposed by the 2002 Leniency Notice, and the fourth plea in law, alleging breach of the principle of the protection of legitimate expectations and of the principle of legal certainty, and non-compliance with the rules imposed by that notice.

40 The Court considers that it is appropriate to examine the fourth plea before the remaining part of the first plea.

The fourth plea: non-compliance with the rules laid down by the 2002 Leniency Notice

41 The fourth plea is twofold, alleging, first, non-compliance by the Commission with paragraphs 8(a), 9 and 11 of the 2002 Leniency Notice and, second, breach of the principle of the protection of legitimate expectations and of the principle of legal certainty.

The first part of the fourth plea: non-compliance with paragraphs 8(a), 9 and 11 of the 2002 Leniency Notice

42 The applicant maintains that the Commission should have granted it immunity under paragraphs 8(a), 9 and 11 of the 2002 Leniency Notice. In that context, it submits, primarily, that, contrary to the Commission's finding, it satisfied the requirements imposed by those paragraphs. In the alternative, it contends that the immunity from fines provided for in those paragraphs must be granted where, as in this case, there is a clear and certain causal link between an application for immunity and the adoption of a decision finding an infringement.

– The complaint that paragraphs 8(a), 9 and 11 of the 2002 Leniency Notice were not complied with

43 The applicant considers that, contrary to the Commission's finding in the contested decision, it fulfilled the conditions laid down by paragraphs 8(a), 9 and 11 of the 2002 Leniency Notice. Therefore, the Commission should have granted it immunity from fines with regard to its participation in the Gentlemen's Agreement.

44 As a preliminary point, it must be borne in mind that, by adopting the 2002 Leniency Notice, the Commission created legitimate aspirations, a fact which it moreover recognised in paragraph 29 of that notice. Having regard to the legitimate expectations that the undertakings wishing to cooperate with the Commission may educe from that notice, the Commission was therefore obliged to comply. Thus, in the event of the Commission's not complying with the guidelines imposed by that notice, it would be in breach of the principle of the protection of legitimate expectations (judgments of 18 June 2008 in *Hoechst* v *Commission*, T-410/03, ECR, EU:T:2008:211, paragraph 510, and of 13 July 2011 in *Kone and Others* v *Commission*, T-151/07, ECR, EU:T:2011:365, paragraph 127).

45 In the present case, the applicant claims that, contrary to the Commission's finding in recital 314 to the contested decision, the conditions laid down in paragraphs 8(a), 9 and 11 of the 2002 Leniency Notice for the grant of immunity from fines were fulfilled in this case.

46 As regards paragraph 8(a) and paragraph 9 of the 2002 Leniency Notice, it should be borne in mind that they require, first, that an undertaking be the first to provide evidence to the Commission such as to enable it to adopt a decision ordering inspections concerning a suspected cartel affecting the European Community and, second, that the Commission did not, when that evidence was disclosed, have sufficient information to adopt a decision ordering inspections concerning the suspected cartel.

47 The applicant maintains that it provided information to the Commission which would have enabled it to adopt decisions ordering inspections at a time when it did not yet have sufficient evidence concerning the power transformer sector. In fact, it was only thanks to the information which it disclosed to the Commission that the latter had been able to conduct its inspections in February 2007.

48 The Commission contests those arguments.

49 In that connection, it must be noted that the Commission received the first application for immunity from the applicant on 22 September 2004. However, on 11 and 12 May 2004, that is to say before that date, the Commission had already carried out inspections in the GIS case and had seized documents at Hitachi's premises.

50 The applicant claims that those documents did not enable the Commission to undertake inspections. None of those documents would have enabled it to detect or demonstrate the existence of any cartel between the European and Japanese producers concerning power transformers.

51 It is therefore necessary to consider whether the documents which the Commission seized during inspections at Hitachi's premises on 11 and 12 May 2004, which it has produced to the Court at the latter's request (see paragraph 29 above), would have enabled it to adopt a decision ordering inspections concerning the Gentlemen's Agreement, namely a cartel between European and Japanese power transformer producers providing for respect of the home markets of each of them and forbearance from making sales there.

52 In that context, first, it must be borne in mind that, in order to be able to adopt a decision ordering inspections under Article 20(4) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 [EC] and 82 [EC] (OJ 2003 L 1, p. 1), the Commission must refer to factual circumstances capable of justifying them (see, by analogy, the judgment of 26 June 1980 in *National Panasonic* v *Commission*, 136/79, ECR, EU:C:1980:169, paragraphs 26 and 27).

53 Second, it must be noted that in order to justify inspections, it is not necessary for the documents seized by the Commission to be of such a kind as to establish beyond reasonable doubt the existence of the infringement found in the contested decision. That standard of proof is required for Commission decisions in which it finds the existence of an infringement and imposes fines. On the other hand, in order to adopt an inspection decision within the meaning of Article 20(4) of Regulation No 1/2003, it is sufficient that it is in possession of information and evidence providing reasonable grounds for suspecting an infringement (see the judgment of 8 March 2007 in *France Télécom* v *Commission*, T-340/04, ECR, EU:T:2007:81, paragraph 53 and the case-law cited).

54 Third, it must be borne in mind that, in particular in the case of unlawful cartels, the various grounds must be assessed not in isolation but as a whole and they must be capable of reinforcing each other (see, by analogy, the judgments of 14 July 1972 in *Imperial Chemical Industries* v *Commission*, 48/69, ECR, EU:C:1972:70, paragraph 68, and of 8 July 2004 in *JFE Engineering* v *Commission*, T-67/00, T-68/00, T-71/00 and T-78/00, ECR, EU:T:2004:221, paragraph 275).

55 In the present case, it is therefore necessary to consider whether, on the basis of the content of the documents which the Commission had seized at the premises of Hitachi, appraised as a whole, it had sufficient information to adopt a decision ordering an inspection concerning an anticompetitive cartel between European and Japanese power transformer producers in accordance with the principles referred to above.

56 As regards the documents which the Commission produced to the Court in response to the latter's request to produce the documents which it had seized during the inspection carried out at Hitachi's premises on 11 and 12 May 2004, it must, first of all, be noted that, in the documents which the

Commission has marked 'NB 2', 'NB 4', 'FP 4' and 'FP 5', reference is made to meetings involving the 'AC' and the 'GA'. It is also apparent from those documents that codes (for example, 'TA', 'TB', 'TS', 'TT' and 'TX(B)', 'T2', 'T3', 'T4', 'T5' and also 'E' and 'J') had been used to designate undertakings or groups of undertakings taking part in those meetings. Since, on the one hand, those acronyms and codes had not been used in connection with the GIS cartel and, second, it could be inferred from the position of the persons mentioned in the document marked 'FP4' that the 'AC' and 'GA' meetings concerned power transformers, it must be concluded that the Commission had information and grounds enabling it to suspect the existence of meetings between power transformer producers.

57 Next, it must be observed that the documents seized at Hitachi's premises enabled the Commission to identify at least some of the undertakings and some of their representatives who took part in those meetings. First, the names of certain persons taking part in those meetings are indicated in the document marked 'FP 4' and, with the aid of other documents, such as the one marked 'FPB 200', the Commission was able to determine, for some of them, the undertakings to which they belonged and which they represented at those meetings, namely the ABB, Alstom and VA-TECH groups. As regards the names of two persons mentioned in the document marked 'FP 4' which could not be linked to the abovementioned undertakings, it must be concluded that, having regard to the fact that, first, the documents marked 'NB 6', 'NB 8' and 'KC 10' referred to a meeting held in the conference room of a factory belonging to one of the participating undertakings in Nuremberg (Germany), and, second, that an important Siemens facility was located in that town, the Commission had information and grounds enabling it to suspect that Siemens representatives had also taken part in those meetings. Second, the Commission rightly refers to the fact that it seized documents at Hitachi's premises enabling it to suspect that that undertaking had also taken part in meetings concerning power transformers. Third, in the document marked 'FP 5', reference is made to the setting up of two joint undertakings between undertakings referred to by the codes 'T2', 'T3', on the one hand, and 'T4' and 'T5', on the other. As the Commission properly concludes, it was able to infer, on the basis of information which was already publicly available at the time of the inspections at Hitachi, that a joint enterprise was set up between Fuji and Hitachi, on the one hand, and between Toshiba and another Japanese undertaking, on the other. Therefore, particularly on the basis of that document, it could also entertain suspicions as to the participation of the Hitachi, Fuji and Toshiba groups in the meetings.

58 Moreover, it must be observed that, in particular, the content of the document marked 'FP 4' was informative regarding the anticompetitive nature of the agreement and the organisation of the meetings. In fact, it is clear from that document that a 'GA' had to be observed between undertakings located in 'E' or 'J' and that there had been two meetings each year. That document also gave indications as to the period during which the meetings took place. It can also be inferred from the document marked 'KC 10' that the meetings concerned discussions and exchanges of information between participants regarding power transformer projects.

59 Therefore, looked at as a whole, the documents seized by the Commission during inspections at Hitachi enabled it to suspect the existence of an anticompetitive cartel between European and Japanese power transformer producers and to adopt a decision ordering an inspection in that regard.

60 None of the arguments put forward by the applicant is capable of detracting from that assessment.

61 In the first place, the complaint concerning the illegibility of the document marked 'FP 7' must be rejected. In that connection, it must be inferred in the first place that, as is apparent from the considerations set out in paragraphs 56 to 58 above, even if that document had not been taken into account, the Commission would have had sufficient information to suspect the existence of an anticompetitive cartel between European and Japanese power transformer producers. The complaint alleging illegibility of the document marked 'FP 7' must thus be rejected as irrelevant. Next, it must be observed that, contrary to the applicant's contention, even if the document is difficult to read, it is not impossible to read, a fact moreover confirmed by the applicant itself, which gives the reasons for which

its content does not enable the reader to detect the existence of an anticompetitive cartel. In any event, it must be observed that the content of that document is partially reproduced in recital 99 to the contested decision.

62 In the second place, the applicant submits that some of the documents produced by the Commission at the Court's request bear the date 1 June 2007 and cannot therefore be documents seized by it at the inspection carried out at the Hitachi premises on 11 and 12 May 2004. At the hearing, in response to a question from the Court, the applicant made it clear that it was only contesting the fact that the documents provided by the Commission bearing the date 1 June 2007 and certain translations had been seized by the latter during the inspection at the Hitachi premises on 11 and 12 May 2004, but that, on the other hand, it did not deny that the other documents provided by the Commission at the Court's request had been seized during that inspection.

63 In that regard, it must be pointed out that, in fact, some of the documents which the Commission produced to the Court bear the date 1 June 2007. However, being documents which were taken into account in paragraphs 56 to 58 above, it must be concluded that some of them do not bear the date 1 June 2007 and that, for the rest, in so far as that date is indicated in the other documents, the documents concerned consist, first, of an original version drafted partly or fully in Japanese and, second, a translation into English of that original version. It must be noted that the date 1 June 2007 is indicated only in the English translations.

64 Therefore, the fact that the date 1 June 2007 is indicated in the translations into English is not capable of undermining the finding that, following the inspection carried out at Hitachi's premises on 11 and 12 May 2004, the Commission already had information and evidence providing reasonable grounds, in particular in Japanese, enabling it to suspect the applicant's participation in an anticompetitive cartel between European and Japanese power transformer producers. Accordingly, this complaint must be rejected.

65 Third, it must be concluded that there is nothing to prevent documents drafted in Japanese from constituting information and evidence providing reasonable grounds for allowing the adoption of an inspection decision within the meaning of Article 20(4) of Regulation No 1/2003. In reply to a question put by the Court at the hearing, the applicant also made it clear that it did not dispute that point.

66 In the fourth place, the applicant submits that the Commission was not entitled to use the documents considered in paragraphs 56 to 58 above.

67 In this context it submits in the first place that, pursuant to Article 20(4) of Regulation No 1/2003, the Commission was not entitled to use documents seized during inspections at Hitachi's premises on 11 and 12 May 2004. It considers that the Commission should have limited its investigations to the sectors indicated in the decision ordering the inspection, namely shielded substations or gas insulated switching gear. However, those products, on the one hand, and the power transformers, on the other, are distinct products not ancillary to each other.

68 The Commission considers that those complaints are inadmissible, having been raised belatedly, and that, in any event, they are unfounded.

69 In that regard, it must be borne in mind that, whilst it is true that the case-law shows that information obtained during investigations must not be used for purposes other than those indicated in the decision under which the investigation is carried out (judgment of 17 October 1989 in *Dow Benelux* v *Commission*, 85/87, ECR, EU:C:1989:379, paragraph 17; see also, to that effect, the judgment of 14 November 2012 in *Nexans France and Nexans* v *Commission*, T-135/09, ECR, EU:T:2012:596, paragraph 64). That requirement is intended to protect both professional secrecy and the defence rights of undertakings. Those rights would be seriously endangered if, in the context of a decision

finding an infringement of Article 81 EC or 82 EC, the Commission could rely on evidence against undertakings which was obtained during an investigation but was not related to the subject-matter or purpose thereof (judgment of 6 September 2013 in *Deutsche Bahn and Others* v *Commission*, T-289/11, T-290/11 and T-521/11, ECR, EU:T:2013:404, paragraph 124).

70 However, as stated in paragraphs 52 to 55 above, for the purposes of applying paragraph 9 of the 2002 Leniency Notice, it is not necessary to consider whether the Commission already had sufficient evidence to establish the existence of an unlawful cartel in a decision finding the existence of an infringement and imposing a fine, but it is merely necessary to consider whether it had sufficient information to adopt an inspection decision within the meaning of Article 20(4) of Regulation No 1/2003.

71 Contrary to the applicant's view, even where documents concerning the Gentlemen's Agreement did not fall within the subject-matter of the decision ordering the inspection at the premises of Hitachi on 11 and 12 May 2004 (an assertion rejected by the Commission), the case-law mentioned in paragraph 69 above would not prevent the Commission from relying on its knowledge of the documents mentioned in paragraphs 56 to 58 above in order to adopt a new decision ordering inspections under Article 20(4) of Regulation No 1/2003.

72 As the Court has already had occasion to state, the fact that, in an inspection, the Commission had notice for the first time of documents indicating the existence of an infringement not falling within the subject-matter of the decision ordering an inspection does not confer upon those documents such absolute protection that they could not be legally called for and used as evidence. Were it otherwise, undertakings would have an incentive, when a first matter is investigated, to give all the documents providing evidence of another infringement, thereby forearming themselves against any prosecution in that respect. Such a solution would go beyond what is required to safeguard professional secrecy and the rights of the defence and would thus constitute an unjustified hindrance to the Commission in the accomplishment of its task of ensuring compliance with the competition rules in the common market (*Deutsche Bahn and Others* v *Commission*, cited in paragraph 69 above (EU:T:2013:404, paragraphs 125 to 127).

73 Therefore, contrary to the applicant's contention, following the inspections of 11 and 12 May 2004 at Hitachi's premises, the Commission could have relied on its knowledge of the documents mentioned in paragraphs 56 to 58 above to adopt a decision ordering inspections under Article 20(4) of Regulation No 1/2003 regarding a suspected anticompetitive cartel between European and Japanese power transformer producers.

74 Therefore, the allegation of infringement of Article 20(4) of Regulation No 1/2003 must be rejected, without there being any need to consider whether the Gentlemen's Agreement fell within the subject-matter of the decision to inspect Hitachi's premises on 11 and 12 May 2004.

75 In any event, it must be pointed out that the documents examined in paragraphs 56 to 58 above had also been submitted by Hitachi to support its application for leniency of 9 September 2004, and thus before the applicant's application for immunity. Admittedly, the applicant contends in that regard that Hitachi had limited the use of those documents to the investigation under way in the GIS cases. However, even if it is assumed that Hitachi wished and was able to limit the use of those documents, that would not conflict with the Commission's adopting an inspection decision regarding a suspected anticompetitive cartel between the European and Japanese power transformer producers in reliance on the knowledge which it already had of those documents.

76 Therefore, the complaint that the Commission was not entitled to rely on those documents must be rejected, without there being any need to examine the admissibility of that complaint.

77 In the fifth place, the applicant submits that, when it lodged its application for immunity, the Commission team in charge of the case had not yet acquired knowledge of the content of the documents which had been seized at Hitachi's premises on 11 and 12 May 2004. In that context, it contends that, even in the event that, when it had submitted its application for immunity, the Commission, as an institution, already possessed sufficient information to adopt an inspection decision concerning a suspected anticompetitive cartel between European and Japanese power transformer producers, the team in charge of the present case does not seem to have had knowledge of that information. That information was contained in another file, namely the GIS case file.

78 In that regard it must be borne in mind, first, that it is clear from paragraph 9 of the 2002 Leniency Notice that immunity under paragraph 8(a) and paragraph 11 of that notice cannot be granted unless 'the Commission' did not yet have sufficient information to adopt a decision ordering inspections. Paragraph 9 of the notice therefore refers not to such knowledge as a possible team responsible for the case might have but to knowledge which the Commission might have as an institution. Therefore, it must be held that, in the present case, the Commission did not exceed the limits by the text of paragraph 9 of the 2002 Leniency Notice.

79 Second, it must be noted that an approach whereby the decisive criterion was the extent of such knowledge as the members of a possible team responsible for the case might have when an application for immunity is lodged is hardly consistent with the spirit of the 2002 Leniency Notice and the aims that it pursues.

80 Such an approach would result in immunity under paragraphs 8(a), 9 and 11 having to be granted, even if it turned out that the information and evidence providing reasonable grounds which were already available to the Commission when the application for immunity was submitted would already have enabled it to adopt a decision ordering an inspection against the suspected cartel.

81 In this context, it must be borne in mind that the aim of the Commission leniency programme is not to make available to undertakings participating in secret cartels an opportunity to escape the pecuniary consequences of their responsibility, but to facilitate the detection of such practices and then, in the administrative procedure, to assist the Commission in its efforts to reconstruct relevant facts as far as possible. Accordingly, the benefits which may be obtained by undertakings participating in such practices cannot exceed the level that is necessary to ensure full effectiveness of the leniency programme and of the administrative procedure carried out by the Commission.

82 Therefore, immunity from fines is justified only by reference to the value of the cooperation of the undertaking seeking immunity. Thus, as the Commission properly observed in paragraph 6 of the 2002 Leniency Notice, collaboration of an undertaking which informs it of the existence of an unlawful cartel of which it did not yet have knowledge has an intrinsic value capable of justifying immunity from fines. On the other hand, cooperation by an undertaking which merely gives information about an unlawful cartel, of which it might suspect the existence on the basis of information and grounds already known to it, has no comparable intrinsic value. On the contrary, as is apparent from paragraph 8(b) of that notice, in the latter case immunity from fines is only justified where the undertaking does not limit itself to reporting the existence of the cartel, but also provides evidence enabling the Commission to establish its existence in a decision finding an infringement of Article 81 EC.

83 Accordingly, the complaint alleging lack of knowledge on the part of any Commission team responsible for the case concerning the existence of the Gentlemen's Agreement must be rejected.

84 In the sixth place, the applicant submits that the information on which the Commission could have relied was contained in the GIS case file. In that regard, it need merely be pointed out, in the first place, that, as stated in paragraphs 70 and 73 above, even in the hypothetical case of the subject-matter of the decision ordering inspections on the Hitachi premises on 11 and 12 May 2004

not covering the Gentlemen's Agreement, there is nothing to prevent the Commission from relying on those documents in order to adopt a fresh inspection decision. Next, as is apparent from paragraphs 78 and 79 above, the identification of the file that contained that information is not relevant to the application of paragraph 9 of the 2002 Leniency Notice.

85 In the seventh place, the applicant submits that the fact that Commission did not yet possess sufficient reliable information when its application for immunity was lodged is demonstrated by certain factors. First, the Commission did not undertake inspections in the power transformer sector until January 2007. Those inspections thus only occurred three years after the inspections in the GIS case and only after information on the power transformer sector had been disclosed to it in the context of its continuing cooperation. Second, during the period between the GIS inspections and the inspections concerning power transformers, only one other undertaking, ABB, had submitted applications for immunity. Those applications, which moreover would have been rejected by the Commission, were submitted after 22 December 2004, that is to say after its first application for immunity. Third, despite the fact that Hitachi had submitted an application for leniency, the Commission had not called for a translation of the documents in question from Japanese into English in order to ascertain their significance and did not renew contacts with Hitachi to call for explanations concerning the precise significance of the documents in question and the disclosure of further documentary proof or to ask it to submit further oral statements and additional documentary evidence. Fourth, on 6 December 2007, the Commission rejected Hitachi's application for leniency of 1 June 2007.

86 So far as those arguments are concerned, it need merely be pointed out that, as is apparent from paragraphs 56 to 58 above, the Commission already had information and evidence providing reasonable grounds enabling it to suspect the existence of a cartel between European and Japanese power transformer producers and that none of the arguments put forward by the applicant is capable of calling that finding in question. This complaint must therefore also be rejected.

87 Therefore, it must be concluded that none of the arguments put forward by the applicant is capable of calling in question the Commission's finding that the condition laid down in paragraph 9 of the 2002 Leniency Notice was not fulfilled. The present complaint must therefore be rejected, in so far as it relates to non-compliance with paragraph 9 of the 2002 Leniency Notice.

88 The arguments concerning non-compliance with paragraphs 8(a) and 11 of the 2002 Leniency Notice must also be rejected. In fact, immunity from fines under paragraphs 8(a), 9 and 11 can be granted only where all the conditions laid down in it are cumulatively fulfilled. The conditions laid down in paragraph 9 of that notice not having been fulfilled, the arguments concerning the other conditions must be regarded as irrelevant.

89 Therefore, the complaint of non-compliance with paragraphs 8(a), 9 and 11 of the 2002 Leniency Notice must be rejected in its entirety.

– The complaint alleging the existence of a causal link

90 In the alternative, the applicant contends that it should have been granted immunity under paragraphs 8(a), 9 and 11 of the 2002 Leniency Notice because a clear and certain causal link exists between its application for immunity, the inspections carried out by the Commission on 7 and 8 February 2007, Siemens's application for immunity of 7, 12 and 15 February 2007 and that of Fuji of 18 July 2007 and the adoption of the contested decision.

91 In that regard, it need only be pointed out in the first place that it is clear from paragraphs 8 to 11 of the 2002 Leniency Notice that, in the event of the Commission already having information and evidence providing reasonable grounds that might justify the adoption of an inspection decision, an undertaking can be granted immunity from fines only when it submits evidence enabling the Commission to find an infringement of Article 81 EC.

92 Next, it must be emphasised that the risk of a 'snowball' effect, that is to say a risk that an application for immunity from an undertaking concerning a cartel might trigger an investigatory measure by the Commission, which, in its turn, might trigger applications for immunity from other undertakings concerning the same sector, but relating to unlawful cartels separate from the one covered by the initial application for immunity, is an inherent feature of the Commission leniency programme. It encourages undertakings wishing to cooperate with it not to confine themselves to selective cooperation concerning one cartel alone but to cooperate fully with regard to all the cartels it knows about.

93 Therefore, even if it were assumed that the causal link between the applicant's application for immunity and the adoption of the contested decision is established, that would be not sufficient for it to be granted immunity from fines under the 2002 Leniency Notice.

94 Accordingly, the present complaint must be rejected in its entirety, as must therefore the part of the fourth plea alleging non-compliance with paragraphs 8(a), 9 and 11 of the 2002 Leniency Notice.

The second part of the fourth plea

95 The second part of the fourth plea alleges, first, breach of the principle of the protection of legitimate expectations and, second, breach of the principle of legal certainty, through failure to comply with paragraph 23(b) of the 2002 Leniency Notice.

– The plea alleging breach of the principle of the protection of legitimate expectations

96 The applicant submits that the Commission breached the principle of the protection of legitimate expectations. The Commission's conduct during a major part of the administrative procedure also legitimately gave it the impression that it would benefit from immunity from fines if it continued to cooperate with it. In that context, the applicant refers to the Commission's letter dated 31 October 2006 and refers to the fact that, first, on 7 and 8 February 2007, the Commission did not carry out any inspection at its premises and, second, it sent it the questionnaire of 14 March 2007 merely for information purposes. By thus treating it differently from the other undertakings, the Commission caused it to entertain a well-founded hope that it would enjoy immunity from fines.

97 The Commission contests those arguments.

98 As stated in paragraph 44 above, the 2002 Leniency Notice may give rise to legitimate expectations on the part of undertakings wishing to cooperate with the Commission. Therefore, it is necessary to consider whether the circumstances relied upon by the applicant were sufficient to cause it to entertain legitimate expectations concerning immunity from fines for its participation in the Gentlemen's Agreement.

99 In that context, first, the applicant refers to the Commission's letter of 31 October 2006. In that letter, the Commission confined itself to granting it conditional immunity for 'a suspected cartel in the power transformer sector in Germany, [in] Austria and [in] the Netherlands'. On the other hand, in the contested decision, the Commission penalised the applicant for its participation in the Gentlemen's

Agreement and, therefore, for its participation in a cartel between European and Japanese power transformer producers designed to ensure respect for the home markets of each of them and forbearance from making sales there.

100 As regards the relationship between the Gentlemen's Agreement, on the one hand, and cartels covering home markets, for which the applicant was granted conditional immunity, on the other, it must be pointed out that, in recitals 155 to 161 to the contested decision, the Commission found that they were separate infringements. It must therefore be held that, the applicant has not put to the Court any argument specifically designed to call in question that distinction drawn by the Commission. Admittedly, in this context, the applicant again submits that there was a causal link between its application for immunity, the inspections ordered by the Commission, the applications for immunity from Siemens and Fuji and the adoption of the contested decision. However, it must be pointed out that that argument, which has already been rejected in paragraph 91 above, is not such as to cast any doubt on the distinction drawn by the Commission between the cartels.

101 Therefore, the Commission's letter of 31 October 2006, by which the applicant was granted conditional immunity for the cartels covering home markets, is not a basis for causing it to entertain any legitimate expectation concerning immunity from fines for its participation in the Gentlemen's Agreement, which was a separate cartel.

102 Second, the applicant maintains that on 7 and 8 February 2007 the Commission did not carry out inspections at its premises, whereas it carried out inspections at the premises of other undertakings.

103 In that regard it must be borne in mind in the first place that the Commission is entitled in each case to choose, from among the means available to it for carrying out investigations, those which seem to it to be the most conducive to obtaining information from the undertakings implicated in a suspected cartel and that it enjoys, in doing so, considerable room for manoeuvre.

104 Next, as regards the complaint alleging difference of treatment as between the applicant and other undertakings, it must be pointed out that the inspections of 7 and 8 February 2007 may indeed have been concerned with cartels covering power transformers that they were cartels covering home markets. However, since the inspections concerned cartels regarding which the applicant was already cooperating with the Commission, the Commission cannot be criticised for failing to carry out an inspection at the applicant's premises.

105 Moreover, it must be noted that, contrary to the applicant's contention, the mere fact that the applicant was granted conditional immunity regarding its participation in cartels covering home markets does not mean that it should be granted immunity for all and any infringements that may be subsequently established in the power transformer sector. In fact, as stated in paragraph 92 above, the risk of a 'snowball' effect is an intrinsic feature of the Commission's leniency programme. The fact that the applicant may have cooperated with the Commission concerning a cartel affecting the power transformer sector does not therefore mean that it can entertain legitimate expectations of immunity from fines for all the cartels affecting that sector.

106 Therefore, the complaint concerning failure to carry out inspections at the applicant's premises must be rejected.

107 Third, contrary to the applicant's contention, it cannot be inferred from the documents which it produced to the Court that the Commission's questionnaire of 14 March 2007 was sent to it only for information purposes. On the contrary, it is clear that that questionnaire contained questions addressed directly to Areva.

108 Fourth, and in any event, it must be noted that it is clear in particular from recital 315 to the contested decision that the Commission regularly informed the applicant of its status regarding immunity and that the applicant has not put forward any argument to rebut that finding.

109 It follows that the complaint alleging breach of the principle of the protection of legitimate expectations must also be rejected.

– The complaint alleging infringement of paragraph 23(b), third subparagraph, of the 2002 Leniency Notice and breach of the principle of legal certainty

110 The applicant submits that the Commission did not comply with paragraph 23(b), third subparagraph, of the 2002 Leniency Notice and thus breached the principle of legal certainty. That paragraph of that notice requires the Commission not to use information provided by an undertaking in connection with a request for leniency against that undertaking. In this case, it was because the applicant knew itself to be covered by that guarantee that it had decided to provide the Commission with information on anticompetitive practices in the power transformer sector.

111 In that connection, it must be borne in mind that, according to paragraph 23(b), third subparagraph, of that notice, 'if an undertaking provides evidence relating to facts previously unknown to the Commission which have a direct bearing on the gravity or duration of the suspected cartel, the Commission will not take these elements into account when setting any fine to be imposed on the undertaking which provided this evidence'.

112 Paragraph 23(b), third subparagraph, is concerned with specific circumstances surrounding an undertaking not benefiting from immunity from a fine but only a reduction thereof. In fact, by providing additional evidence concerning a cartel, such an undertaking runs the risk of disclosing information liable to affect the gravity or duration of such infringement as may be established by the Commission, with consequent aggravation of the penalties imposed for its participation in that cartel. In order to encourage all undertakings to cooperate fully, even those which are not granted immunity from fines, paragraph 23(b), third subparagraph, of the 2002 Leniency Notice provides for 'partial immunity' in respect of such evidence.

113 In the present case the applicant does not in any way explain how it provided, in relation to the Gentlemen's Agreement, factual evidence previously unknown to the Commission and having a direct impact on the gravity or duration of the suspected cartel.

114 In so far as the applicant, by invoking paragraph 23(b), third subparagraph, of the 2002 Leniency Notice, is attempting once more to claim that there is a causal link between its application for immunity, the inspections ordered by the Commission on 7 and 8 February 2007, Siemens's application for immunity of 7, 12 and 15 February 2007 and that submitted by Fuji on 18 July 2007 and the adoption of the contested decision, it need merely be pointed out that that paragraph of the 2002 Leniency Notice certainly does not aim to take account of any such causal link. On the contrary, as stated in paragraph 92 above, the risk that an application for immunity might trigger a 'snowball' effect is an intrinsic feature of the 2002 Leniency Notice.

115 It follows that the complaint alleging infringement of paragraph 23(b), third subparagraph, of the 2002 Leniency Notice and breach of the principle of legal certainty must also be rejected.

116 Therefore, the second part of the fourth plea must also be rejected, as must, therefore, the fourth plea in its entirety.

The remaining part of the first plea, alleging breach of the obligation to state reasons

117 The remaining part of the first plea alleges breach of the obligation to state reasons. The applicant submits that the Commission did not give sufficient reasons for its imposing a condition for entitlement to immunity from fines additional to those imposed by paragraphs 8(a), 9 and 11 of the 2002 Leniency Notice.

118 In that regard, it must be borne in mind that, although under Article 253 EC the Commission is required to state the factual matters justifying the adoption of a decision, together with the considerations which have led to its adopting it, that article does not require the Commission to discuss all the matters of fact and of law which may have been raised during the administrative proceedings (judgment of 11 July 1985 in *Remia and Others* v *Commission*, 42/84, ECR, EU:C:1985:327, paragraph 26).

119 At most, the Commission is under an obligation, under Article 253 EC, to reply specifically only to the applicants' primary allegations made in the course of the administrative proceedings (judgment of 30 September 2003 in *Atlantic Container Line and Others* v *Commission*, T-191/98 and T-212/98 to T-214/98, ECR, EU:T:2003:245, paragraph 575).

120 The purpose of the obligation to state the reasons on which an individual decision is based is not only to enable the Court to review the legality of the decision but also to provide the person concerned with sufficient information to make it possible to ascertain whether the decision is vitiated by a defect which may permit its legality to be contested (judgments of 2 October 2003 in *Corus UK* v *Commission*, C-199/99 P, ECR, EU:C:2003:531, paragraph 145, and of 28 June 2005 in *Dansk Rørindustri and Others* v *Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, ECR, EU:C:2005:408, paragraph 462).

121 In the present case it must first be emphasised that the present part of the first plea is based on an incorrect premise. Contrary to the applicant's contention, the Commission did not add a further condition to those imposed by paragraphs 8(a), 9 and 11 of the 2002 Leniency Notice. In fact, it is clear from paragraph 9 thereof that the Commission does not grant immunity from fines for a suspected cartel in cases where, when an application for immunity is made, it already has sufficient information to adopt an inspection decision.

122 Next, it must be noted that, in recitals 312 to 322 and 269 to 274 to the contested decision, the Commission adequately set out the reasons for which it had decided not to grant immunity from fines to the applicant regarding the Gentlemen's Agreement. It is also clear from the arguments relied on by the applicant before the Court that it was fully apprised of the reasons for which the Commission did not grant it immunity from fines with regard to the Gentlemen's Agreement, which gave it an opportunity to contest the validity thereof.

123 Therefore, the remaining part of the first plea must be rejected.

124 None of the pleas in law put forward by the applicant being well founded, the application must be dismissed in its entirety.

Costs

125 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful and the Commission has applied for costs, the applicant must be ordered to pay the costs.

On those grounds,

THE GENERAL COURT (Ninth Chamber)

hereby:

1. Dismisses the action;

2. Orders Alstom Grid SAS to pay the costs.

Gratsias Czúcz Labucka

Delivered in open court in Luxembourg on 27 November 2014.

[Signatures]