JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

27 October 2010 *

In Case T-24/05,

Alliance One International, Inc., formerly Standard Commercial Corp., established in Danville, Virginia (United States),

Standard Commercial Tobacco Co., Inc., established in Wilson, North Carolina (United States),

Trans-Continental Leaf Tobacco Corp. Ltd, established in Vaduz (Liechtenstein),

represented initially by M. Odriozola Alén, M. Marañon Hermoso and A. Emch, and subsequently by M. Odriozola Alén, M. Barrantes Díaz and A. João Vide, lawyers,

applicants,

* Language of the case: English.

European Commission, represented by F. Castillo de la Torre and É. Gippini Fournier, acting as Agents,

defendant,

Application for the annulment of Commission Decision C (2004) 4030 final of 20 October 2004 relating to a proceeding under Article 81(1) [EC] (Case COMP/C.38.238/B.2 — Raw tobacco — Spain),

THE GENERAL COURT (Fourth Chamber),

composed of O. Czúcz, President, I. Labucka and K. O'Higgins (Rapporteur), Judges,

Registrar: C. Kantza, Administrator,

having regard to the written procedure and further to the hearing on 17 June 2009,

gives the following

Judgment

Background to the dispute

1. *Applicants and administrative procedure*

1 World Wide Tobacco España, SA ('WWTE') is one of four undertakings established in Spain and engaged in the first processing of raw tobacco ('the processors' or 'the Spanish processors').

2 The three other Spanish processors are Compañia española de tabaco en rama, SA ('Cetarsa'), Agroexpansión, SA, and Tabacos Españoles, SL ('Taes').

3 Between 1995 and 5 May 1998, two-thirds of the capital of WWTE was held by Trans-Continental Leaf Tobacco Corp. Ltd ('TCLT'), a wholly-owned subsidiary of Standard Commercial Tobacco Co., Inc. ('SCTC'), which is itself a wholly-owned subsidiary

of the American multinational Standard Commercial Corp. ('SCC'). The remaining third was held by the chairman of WWTE and two members of his family.

4 On 5 May 1998, TCLT increased its holding in WWTE to 86.94%, the remainder of the shares being held in the form of own shares by WWTE (9.73%) and by a natural person (3.33%). In October 1998, WWTE acquired that person's shares and SCC acquired a direct holding of 0.04% in WWTE. In May 1999, TCLT and SCC increased their holding in WWTE to 89.64% and 0.05%, respectively, the remainder being held in the form of own shares by WWTE.

5 SCC, SCTC and TCLT are the applicants in the present case. The group of companies to which the applicants belong will be referred to in this judgment as 'the Standard group'.

6 On 3 and 4 October 2001, the Commission of the European Communities (now 'the European Commission'; 'the Commission'), possessing information that the Spanish processors and the Spanish producers of raw tobacco had infringed Article 81 EC, carried out inspections pursuant to Article 14 of Council Regulation No 17 of 6 February 1962, First regulation implementing Articles [81 EC] and [82 EC] (OJ 1962, English Special Edition, Series I, 1959-62, p. 87) at the premises of three of those processors, namely Cetarsa, Agroexpansión and WWTE, and at the premises of the Asociación Nacional de Empresas Transformadoras de Tabaco ('Anetab').

7 The Commission also carried out inspections at the premises of Tobacco House AISBL and the European Federation of Tobacco Processors on 3 October 2001 and at those of the Federación nacional de cultivadores de tabaco ('FNCT') on 5 October 2001.

8 In the course of January and February 2002, the processors and Anetab provided the Commission with certain information. The Commission then sent the processors, Anetab and FNCT a number of requests for information on the basis of Article 11 of Regulation No 17. It also requested information from the Spanish Ministry of Agriculture, Fisheries and Food concerning the Spanish rules governing agricultural products.

9 On 11 December 2003, the Commission initiated the procedure which gave rise to the present case and adopted a statement of objections, which it addressed to 20 undertakings or associations, including the Spanish processors, Anetab, FNCT, the applicants and Deltafina SpA. Deltafina is an Italian company whose main activities are the first processing of raw tobacco in Italy and the marketing of processed tobacco. It belongs to the same group of companies as Taes, the ultimate head of that group being the US company, Universal Corp.

10 The undertakings and associations in question had access to the Commission's investigation file in the form of a copy on CD ROM which had been sent to them. They submitted written observations in response to the Commission's objections.

11 A hearing took place on 29 March 2004.

12 After consulting the Advisory Committee on Restrictive Practices and Monopolies and in the light of the final report of the Hearing Officer, the Commission adopted, on 20 October 2004, Decision C (2004) 4030 final relating to a proceeding under Article 81(1) [EC] (Case COMP/C.38.238/B.2 — Raw tobacco — Spain) ('the contested decision'), a summary of which was published in the *Official Journal of the European Union* of 19 April 2007 (OJ 2007 L 102, p. 14).

2. *Contested decision*

13 The contested decision relates to two horizontal cartels entered into and implemented on the Spanish raw tobacco market.

14 The object of the first cartel, which involved the processors and Deltafina, was to fix each year, over the period from 1996 to 2001, the (maximum) average delivery price for each variety and grade of raw tobacco and to share out the quantities of each variety of raw tobacco that each of the processors could purchase from the producers (see, in particular, recitals 74 to 76 and 276 of the contested decision). Between 1999 and 2001, the processors and Deltafina also agreed among themselves price brackets per quality grade for each raw tobacco variety mentioned in the schedules annexed to the 'cultivation contracts', as well as 'additional conditions', namely the average minimum price per producer and the average minimum price per producer group (see, in particular, recitals 77 to 83 and 276 of the contested decision).

15 The cartel described at paragraph 14 will be referred to in this judgment as 'the processors' cartel'.

16 The second cartel identified in the contested decision involved the three agricultural unions in Spain — the Asociación agraria de jóvenes agricultores ('the ASAJA'), the Unión de pequeños agricultores ('the UPA') and the Coordinadora de organizaciones de agricultores y ganaderos ('the COAG') — as well as the Confederación de cooperativas agrarias de España ('the CCAE'). The object of that cartel was to fix each year, over the period from 1996 to 2001, the price brackets per quality grade for each raw tobacco variety mentioned in the schedules annexed to the 'cultivation contracts', as well as the 'additional conditions' applicable (see, in particular, recitals 77 to 83 and 277 of the contested decision).

17 The cartel described at paragraph 16 will be referred to in this judgment as 'the cartel of the producers' representatives'.

18 In the contested decision, the Commission found that each of those cartels constituted a single and continuous infringement of Article 81(1) EC (see, in particular, recitals 275 to 277 of the contested decision).

19 In Article 1 of that decision, the Commission attributed liability for the processors' cartel to the Spanish processors, Deltafina, Dimon Inc. — the parent company of the group to which Agroexpansión belongs — and to the applicants, and liability for the cartel of the producers' representatives to the ASAJA, the UPA, the COAG and the CCAE (collectively,'the producers' representatives').

20 In Article 2 of the contested decision, the Commission ordered those undertakings and the producers' representatives to bring immediately to an end the infringements referred to in Article 1, if they had not already done so, and to refrain from repeating any restrictive practice having the same or similar object or effect.

21 The following fines were imposed in Article 3 of the contested decision:

— Deltafina: EUR 11 880 000;

— Cetarsa: EUR 3 631 500;

— WWTE: EUR 1 822 500;

— Agroexpansión: EUR 2 592 000;

— Taes: EUR 108 000;

— the ASAJA: EUR 1 000;

— the UPA: EUR 1 000;

— the COAG: EUR 1 000;

— the CCAE: EUR 1 000.

22 Under Article 3 of the contested decision, the applicants are jointly and severally liable for payment of the fine imposed on WWTE, and Dimon for payment of the fine imposed on Agroexpansión.

3. *Addressees of the contested decision*

23 Section 2.4 of the contested decision deals with the question of the addressees (recitals 357 to 400 of the contested decision).

24 First of all, the Commission states in that section that it has been shown that the Spanish processors and Deltafina participated directly in the processors'cartel and the ASAJA, the UPA, the COAG and the CCAE in the cartel of the producers' representatives and, accordingly, each of those undertakings and associations'is required to assume responsibility for the infringement, and [the contested decision] is, therefore, addressed to each of them' (recitals 357 and 358 of the contested decision). In recitals 359 to 369 of that decision, the Commission specifically assesses Deltafina's role in the processors' cartel.

25 The Commission then examines the question of attributing the unlawful conduct of a subsidiary to a parent company, and observes that, here, that question arises in three cases, namely that of Agroexpansión, WWTE and Taes (recitals 370 to 400 of the contested decision).

26 In that respect, in the first place, the Commission recalls the principles which in its view are applicable in this area (recitals 371 to 374 of the contested decision).

27 In particular, it states as follows:

— in order to determine whether a parent company is to be regarded as liable for the unlawful conduct of its subsidiary, it needs to be established that the subsidiary 'does not decide independently upon its own conduct on the market, but carried

out, in all material respects, the instructions given to it by the parent company' (Case 48/69 *Imperial Chemical Industries* v *Commission* [1972] ECR 619, paragraphs 132 and 133);

— according to settled case-law, where the subsidiary is wholly owned by the parent company, it can legitimately be assumed that the parent company in fact exercises decisive influence over its subsidiary's conduct (Case 107/82 *AEG-Telefunken* v *Commission* [1983] ECR 3151, paragraph 50; Case C-286/98 P *Stora Kopparbergs Bergslags* v *Commission* [2000] ECR I-9925, paragraph 29; Joined Cases T-305/94 to T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 *Limburgse Vinyl Maatschappij and Others* v *Commission* ('PVC II') [1999] ECR II-931, paragraphs 961 and 984);

— such an assumption can be further strengthened by 'specific factors arising in individual cases';

— in the case of subsidiaries which are not wholly owned, the Court of Justice has ruled that a parent company can influence its subsidiary's policy if it holds the majority of the capital of that subsidiary at the time when the infringement is committed (*Imperial Chemical Industries* v *Commission*, paragraph 136) or where it is 'constantly' informed about the subsidiary's practices and directly determines its conduct (*AEG-Telefunken* v *Commission*, paragraph 52);

— according to settled case-law, the term 'undertaking' must be understood in competition law as designating an economic unit for the purposes of the subject-matter of the agreement in question even if in law that economic unit consists

of several persons, natural or legal (Case T-9/99 *HFB and Others* v *Commission* [2002] ECR II-1487, paragraph 66, referring to Case 170/83 *Hydrotherm Gerätebau* [1984] ECR 2999, paragraph 11).

28 In the second place, before considering in greater detail the case of Agroexpansión and that of WWTE, the Commission states in recital 375 of the contested decision as follows:

'In the present case, three of the four Spanish processors of raw tobacco are controlled (to the extent of 100 % or 90 %) by US multinationals. There are other factual elements that confirm the presumption that the conduct of Agroexpansión and WWTE has to be ascribed to their respective parent companies. In these cases, the two companies — the parent company and the subsidiary — must be regarded as being jointly responsible for the infringements established in [the contested d]ecision.'

29 In recital 376 of the contested decision, the Commission went on to state:

'On the other hand, following the issuing of the Statement of Objections and the hearing of the parties, it has become apparent that the evidence in the file could not warrant a similar conclusion in respect of Universal['s] … and Universal Leaf [Tobacco Co. Inc.'s] shareholdings in Taes and Deltafina. In fact, apart from the corporate link between the parents and their subsidiaries, there is no indication in the file of any material involvement of Universal … and Universal Leaf in the facts which are being considered in [the contested d]ecision. It would therefore not be appropriate to address them a decision in this case. The same conclusion would apply, *a fortiori*, to Intabex [Netherlands BV] in so far as its 100 % shareholding in Agroexpansión was purely financial.'

30 In recitals 377 to 386 of the contested decision, the Commission considers the case of Agroexpansión. It observes inter alia that, since the second half of 1997, that company has been wholly controlled by Dimon through the latter's wholly-owned subsidiary, Intabex Netherlands BV ('Intabex'). The Commission concludes from this that it can legitimately be assumed that, at least from that date, Dimon exercised decisive influence over the conduct of Agroexpansión. The Commission adds that other facts in its file — which it describes in recitals 379 and 380 of the contested decision — confirm that presumption. Furthermore, the Commission rejects certain arguments put forward by Dimon in its reply to the statement of objections, such as the claim that the Commission breached the principle of non-discrimination by holding Dimon liable for the unlawful conduct of its subsidiary, whereas the Commission did not hold the parent company of Cetarsa, namely Sociedad Estatal de Participaciones Industriales ('Sepi'), liable for the unlawful conduct of its subsidiary. As justification for that difference in treatment, the Commission relies on the fact that, contrary to the assertions allegedly made by Dimon, '[the Commission's] file does not contain any direct communication between Cetarsa and Sepi in relation to the subject matter of this case'; that'the interest of Sepi in Cetarsa appears to be eminently financial, not unlike the link between Intabex and Agroexpansión'; that'Cetarsa (unlike Agroexpansión) concentrates within itself all the tobacco processing business of the Sepi group and, for the same reason, appears to be operated as a separate business'; and, lastly, that'Cetarsa is not fully owned by Sepi' (recital 384 of the contested decision).

31 The Commission concludes from the factors set out in paragraph 30 above that Dimon 'must be held jointly responsible together with Agroexpansión for the latter's conduct as established by [the contested decision] for the period from the second half of 1997 until 10 August 2001' (recital 386 of the contested decision).

32 In recitals 387 to 400 of the contested decision the Commission considers the case of WWTE.

33 It considers that a distinction must be made between two periods, the first from 1995 to May 1998, and the second from May 1998 to the date of the contested decision.

34 With regard to the first period, the Commission first of all makes the following findings in recitals 388 to 390 of the contested decision:

— two-thirds of WWTE's capital was held by SCC through TCLT, which was a subsidiary of SCTC;

— the rest of WWTE's capital was held by three natural persons, namely the chairman of WWTE and two members of his family;

— decisions at the general meeting of WWTE's shareholders required shareholders representing at least 75 % of the capital to vote in favour;

— the board of directors of WWTE consisted of four members appointed by the general meeting;

— two of those members, including the chairman, who had a preferential vote, represented the minority shareholders;

— of the other two members, one was the vice-president of SCC responsible for the group's activities in Europe, Mr V.;

— decisions of the WWTE board of directors were approved by a simple majority.

35 In recital 391 of the contested decision, the Commission concludes from the foregoing circumstances that, during the first period, WWTE was jointly controlled by SCC (through SCTC and TCLT) and by the chairman of WWTE and his family.

36 Then, in the same recital, the Commission sets out a number of particulars from its file which, it claims, show that, during the same period, SCC 'and/or its subsidiaries' exercised effective influence over the conduct of WWTE in Spain.

37 Lastly, in recital 392 of the contested decision, the Commission states that, in the light of those particulars, 'it has to be concluded that between 1996 and May 1998, when SCC controlled (through its subsidiaries TCLT and SCTC) only two-thirds of WWTE's capital, it had nonetheless set in place certain mechanisms which, considered together, enabled it to keep track of the activities of its subsidiary in Spain and thus to exert effective control over the latter's commercial policy'.

38 With regard to the second period, the Commission sets out in recitals 393 to 398 of the contested decision a number of factors which, it claims, demonstrate that, either directly or through SCTC and TCLT, SCC had exclusive control of WWTE after May 1998 and exercised decisive influence over its commercial policy. Those factors are the following:

— in May 1998, TCLT increased its holding in WWTE to 86.94 %, the remainder of the capital being held in the form of own shares by WWTE (9.73 %) and by a natural person (3.33 %);

— in October 1998, WWTE acquired that person's shares and SCC acquired a direct holding of 0.04 % in WWTE;

— in May 1999, TCLT and SCC increased their holding in WWTE to 89.64 % and to 0.05 %, respectively;

— the voting rules for WWTE's general meetings were not changed, so that, after May 1998, SCC controlled the adoption of decisions at those general meetings;

— the two members of WWTE's board of directors representing the minority shareholders resigned and were replaced by two new members appointed by the general meeting;

— after May 1998, decisions of the WWTE board of directors required the favourable vote of three of the four members of the board;

— after 1998, Mr V. had a role in the conclusion of cultivation contracts between WWTE and the producer groups;

— WWTE's 'Manual of internal control procedures and systems' dated 2000 ('the WWTE manual') mentions that 'the chairman, together with the purchasing director, is directly responsible for the contracting process, subject to prior authorisation from the parent company, which approves the budget for each marketing year in March.'

39 In recital 399 of the contested decision, the Commission states that '[t]he arguments which SCC has deployed in its reply to the Statement of Objections do not warrant any different conclusion in this respect'. In particular, according to the Commission, 'the existence of a dedicated local management running its Spanish subsidiary does not disprove that SCC was exercising decisive influence over the same subsidiary'.

40 In the light of those various factors, the Commission finds in recital 400 of the contested decision that, at least since 1996, 'SCC and/or its subsidiaries SCTC and TCLT' exercised decisive influence over WWTE's commercial policy and that they must therefore be held jointly and severally liable for WWTE's practices and be included among the addressees of the contested decision.

Procedure and forms of order sought

41 The applicants brought the present action by application lodged at the Registry of the Court on 21 January 2005.

42 On the same day WWTE brought an action for a reduction in the fine imposed on it by the contested decision (Case T-37/05).

43 On 22 January 2005, Agroexpansión also brought an action for a reduction in the fine imposed on it by the contested decision (Case T-38/05).

44 On 28 January 2005, Dimon brought an action for the partial annulment of the contested decision or, alternatively, for a reduction in the fine imposed on it by the contested decision (Case T-41/05).

45 By letter lodged at the Registry of the Court on 1 August 2005, the applicants applied for the present case to be joined with Cases T-37/05, T-38/05 and T-41/05.

46 By letter lodged at the Registry of the Court on 7 September 2005, the Commission informed the Court that it considered that joinder of the four cases would not enable the procedure to be significantly more effective and that it would leave it to the Court to decide whether it was appropriate to grant the application for joinder.

47 The Court did not grant the application for joinder.

48 Upon hearing the report of the Judge-Rapporteur, the Court (Fourth Chamber) decided to open the oral procedure and, by way of measures of organisation of procedure under Article 64 of its Rules of Procedure, requested the Commission to lodge a document and to reply to certain questions. The Commission acceded to those requests within the prescribed period.

49 At the hearing on 17 June 2009, the parties presented oral argument and answered the questions put to them by the Court.

50 The applicants claim that the Court should:

— annul the contested decision in so far as it relates to the applicants;

— order the Commission to pay the costs.

51 The Commission contends that the Court should:

— dismiss the action;

— order the applicants to pay the costs.

Law

52 The applicants put forward two pleas in law in support of the action. The first plea is in two parts. The first part alleges infringement of Article 81(1) EC and Article 23(2) 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 second part, put forward in the alternative, alleges failure to state insufficient reasons for the decision. The second plea alleges a breach of the principle of equal treatment. Since those two pleas are closely connected, it is appropriate to consider them together.

1. *Arguments of the parties*

53 By the first part of the first plea, the applicants claim that the Commission misapplied Article 81(1) EC and Article 23(2) of Regulation No 1/2003 in holding them liable for the infringement committed by WWTE.

54 They submit that, according to the case-law and the Commission's decision-making practice, two cumulative conditions must be fulfilled for an undertaking to be held liable for an infringement committed by another: the first undertaking must not only be in a position to exercise decisive influence over the conduct of the second, but it must also have actually used that influence.

55 With regard to the first condition, the applicants submit that, during the period prior to May 1998, TCLT was not in a position to exercise decisive influence over WWTE's commercial policy and did not have power to direct the conduct of WWTE to the extent of depriving it of any real independence in determining its own course of action on the market. They maintain that the Commission was therefore wrong to attribute to TCLT — and, by extension, to SCTC and SCC — the infringement committed by WWTE during that period.

56 In support of their claims, the applicants rely inter alia on the fact that SCTC and SCC held only an indirect interest in WWTE; that WWTE was jointly controlled by (i) TCLT and (ii) the chairman of WWTE and his family; and that the 'particulars in the file' to which the Commission refers in recital 391 of the contested decision do not prove that the applicants were able to exercise decisive influence over WWTE.

57 The applicants submit that the concept of 'joint control', as used in Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ 2004 L 24, p. 1), does not mean the power to exercise decisive influence. On this point, first, they argue that that regulation cannot be applied by analogy to the present case. Second, they argue that, even if there were any guidance to be found in that regulation, the concept of 'sole control' — not that of 'joint control' — would be appropriate for the purposes of defining what is meant by '[being in a] position to exert a decisive influence on the subsidiary's commercial policy'.

58 As regards the period subsequent to May 1998, the applicants recognise that they were in a position to exercise decisive influence over WWTE.

59 With regard to the second condition, the applicants submit, in the first place, that, for that condition to be fulfilled, the parent company must have given its subsidiary direct instructions to commit the infringement, or the parent company itself must have participated in the infringement directly. In support of that claim, they rely inter alia on the Commission's finding in recital 376 of the contested decision that 'apart from the corporate link between the parents and their subsidiaries, there is no indication in the file of any material involvement of Universal … and Universal Leaf in the facts which are being considered in [the contested d]ecision'.

60 According to the applicants, the Commission erred in claiming that, in order to establish the actual exercise of decisive influence, it is sufficient to prove that the subsidiary does not have complete independence in determining its course of action in the market, and a specific connection with the unlawful conduct is not necessary. First, they argue that the Commission's position is not supported by the case-law on which it relies. Second, they state that that influence must relate to the 'commercial policy with respect to the infringement'. In fact, in the present case, the infringement

was committed on the raw tobacco purchasing market, that is to say, on a market on which WWTE enjoyed complete independence and which did not form part of its 'sales or commercial policy'. Likewise, the applicants criticise the fact that the evidence on which the Commission relies relates only to finances and tobacco sales, and not to purchases of raw tobacco.

61 In the second place, the applicants claim that, in the case of a vertically-integrated group of companies, liability for the unlawful conduct of a subsidiary cannot be automatically attributed to the group's head company. It can be attributed only to the parent company which gave the instructions to the subsidiary concerned or which directed the subsidiary's conduct in all material respects.

62 In the third place, the applicants submit that the Commission has the burden of proving that they gave instructions to WWTE. They argue that it cannot be presumed that a company with a 100 % shareholding in another company in fact exercises decisive influence over that company's commercial policy. In particular, the applicants state that in *AEG* v *Commission* and *PVC II*, paragraph 27 above, the Community judicature did not confine itself to relying on such a presumption, but also thoroughly investigated the parent company's participation in the infringement.

63 In any case, according to the applicants, the Commission did not rely on the above presumption either in the statement of objections or in the contested decision. Consequently, it cannot rely on that presumption for the first time in the defence. The applicants add that, in recitals 18 and 376 of the contested decision, the Commission states that, even in the case of a 100 % holding in a subsidiary, the Commission must provide additional evidence in order to be able to hold the parent company liable for the conduct of its subsidiary.

64 Furthermore, the applicants stress that the Commission must prove that each of them in fact exercised decisive influence. In that context, they submit in particular that the Commission cannot claim that Mr V. 'performed duties at group management level within the … group' within the meaning of paragraph 37 of the judgment in Case T-31/99 *ABB Asea Brown Boveri* v *Commission* [2002] ECR II-1881. According to the applicants, Mr V. was never an officer appointed by SCC, so he cannot be regarded as a 'senior manager', as referred to in that judgment; nor was he the person responsible for the Standard group's overall activities in a given country or region or responsible within the group for the worldwide commercial management of all undertakings active in the sector concerned. The applicants explain that Mr V. had a representative role in Europe for Standard Commercial Tobacco Services Ltd ('SCTL'), but his powers derived from his presence on the boards of local affiliates, including WWTE, and not from authority conferred on him by SCC. His duties were limited to coordinating the sale of processed tobacco through the Standard group's international sales network.

65 In the fourth place, the applicants consider the period before May 1998. They submit that the Commission has not produced sufficient evidence to show that, during that period, any of them gave instructions to WWTE to behave anti-competitively. In particular, the documents mentioned in recital 391 of the contested decision do not constitute sufficient proof in that respect.

66 On that point, first, the applicants argue that the Commission has not produced any evidence, or put forward any arguments, relating to TCLT. They observe in particular that TCLT is a company with no activity of its own, and that its interest in WWTE is purely financial.

67 Second, the applicants argue that Mr V. worked for SCTL, and not for SCC. They add that the Commission's allegation that he assumed general responsibility for the Standard group's activities in Europe and acted as SCC's representative is very general, and therefore devoid of any substance. In any case, those circumstances do not prove that SCTC gave WWTE direct instructions to behave anti-competitively.

68 Third, the applicants maintain that the Commission's statement that Mr V. was 'responsible for relaying between WWTE and its parent companies' (recital 391 of the contested decision) is also very general, and therefore devoid of any substance. They claim inter alia that the Commission did not prove that'relaying'included giving instructions to WWTE.

69 Fourth, the applicants argue that the minutes of the WWTE board meeting of 25 and 26 March 1996, mentioned in recital 391 of the contested decision, refer only to SCTC, which means that the Commission's arguments on that basis cannot relate to SCC or TCLT. SCTC adds that the minutes do not prove that it gave instructions to WWTE to behave anti-competitively. SCTC was consulted, and was to give its authorisation, only with regard to matters unrelated to the purchase of raw tobacco, such as sales of processed tobacco and extraordinary expenditure.

70 Fifth, TCLT argues that the Commission did not claim that TCLT was affected by any of the faxes mentioned in recital 391 of the contested decision. SCC maintains that the faxes were sent to an employee of a company attached to SCTC and not to itself. The reference in some of the faxes to the name 'Standard Commercial UK' is an error on the part of the sender because SCC has no representative in the United Kingdom. The reference in SCC's annual reports to Mr V. as vice-president of SCC is likewise

erroneous. According to SCTC, the faxes in question merely indicate that Mr V. may have been informed of WWTE's conduct and it cannot be inferred from this that SCTC gave instructions to WWTE to act anti-competitively.

71 In the fifth place, the applicants consider the period after May 1998. They submit that the Commission failed to produce sufficient evidence to prove that, during that period, any of them gave instructions to WWTE to act anti-competitively.

72 In that connection, first, they argue that the findings in recitals 396 and 398 of the contested decision refer solely to SCTC.

73 Second, the applicants criticise the Commission's findings in recital 398 and in footnote 313 of the contested decision. First of all, they maintain that the 'long-term Spanish supply contracts' mentioned in the footnote are not related to the infringements and therefore they cannot serve to prove that any of them instructed WWTE to behave anti-competitively. Next, they claim that the Commission cannot find support for its arguments in the WWTE manual. In this respect, they claim that that manual does not provide sufficient evidence that SCTC gave instructions to WWTE to infringe the competition rules, and that the manual'provides for authorisation by SCTC prior to starting the contracting process', which means, in practice, that it'authorises the quantity of tobacco purchases to be made in Spain'. They explain that this authorisation is given in the framework of the approval of the yearly budget, and that it is not an authorisation to buy at a given price or to set the price by means of a given method or formula. Within the limit of expenditure authorised by SCTC, WWTE'had complete autonomy to operate an independent purchasing policy'. They

add that the manual dates from 2000 and, accordingly, it cannot be used to establish that SCTC exercised decisive influence over WWTE from May 1998.

74 In the sixth place, the applicants submit that they demonstrated to the requisite legal standard that, at the time when the infringement of Article 81(1) EC was committed, WWTE acted autonomously on the market, and not on their instructions.

75 On that point, first, they observe that the Commission does not deny that WWTE has a dedicated local management.

76 Second, they rely on the fact that WWTE had its own assets and its own employees.

77 Third, they repeat that SCTC participated in the marketing and sale of processed tobacco, whereas WWTE alone was responsible for the purchasing of raw tobacco.

78 Fourth, the applicants state that the Standard group has a decentralised structure and that 'the Spanish tobacco market is highly insignificant within the group's overall activities'.

79 Fifth, in the reply, the applicants observe that TCLT had only financial assets, engaged in no operations and had no employees. The applicants state that TCLT purchased processed tobacco from WWTE only 'formally' and 'in order to register profit in the

WWTE books', and that SCTC had no interest in WWTE's purchasing policy, which in essence was exclusively the responsibility of WWTE's chairman.

80 The applicants conclude that the Commission has not sufficiently proved that any of the applicants gave instructions to WWTE to behave anti-competitively. Accordingly, the Commission misapplied Article 81(1) EC and Article 23(2) of Regulation No 1/2003.

81 In the second part of the first plea, relied upon in the alternative, the applicants claim that the Commission failed to comply with Article 253 EC in that it failed to state sufficient reasons for finding the applicants jointly and severally liable for WWTE's conduct.

82 As regards the second plea, in the first place, the applicants state that the Commission used two different tests to find that Universal, Universal Leaf Tobacco Co. Inc. ('Universal Leaf') and Sepi were not liable for the unlawful conduct of their respective subsidiaries: thus, the Commission established whether its file contained (i) an 'indication... of any material involvement of Universal and Universal Leaf in the facts which are being considered in [the contested decision]' (recital 376 of the contested decision) and (ii)'any direct communication between Cetarsa and Sepi in relation to the subject matter of this case' (recital 384 of the contested decision).

83 However, according to the applicants, the Commission produced no evidence either of any material involvement by SCC, SCTC or TCLT in WWTE's infringement, or of the slightest direct communication between any of those companies and WWTE on the subject-matter of this case.

84 In the second place, the applicants submit that the Commission also treated Intabex more favourably than TCLT. They criticise the fact that TCLT, but not Intabex, was included among the addressees of the contested decision and held liable for its subsidiary's infringement, when its interest in its subsidiary is purely financial and the Commission had produced no evidence of TCLT's material involvement in the conduct alleged against WWTE.

85 The applicants consider it irrelevant that, in its reply to the statement of objections, TCLT did not mention that its interest in WWTE was purely financial. The applicants argue that the Commission has the burden of proving that TCLT could be held liable. They maintain, moreover, that the Commission cannot succeed in arguing that TCLT was WWTE's main customer from 1996 to 1999. First, the purchases were made solely for fiscal reasons and, in practice, TCLT took no delivery of tobacco. Second, the Commission did not adduce that argument in the contested decision.

86 In the third place, the applicants state that they are not seeking to take advantage of an unlawful act committed in favour of a third party. More precisely, they are not claiming that the Commission's failure to attribute liability to Universal, Universal Leaf, Sepi or Intabex, or to address the contested decision to those companies, is unlawful. They argue that, if the Commission considers, on the basis of a particular criterion, that an undertaking should not be an addressee of the decision, it must apply the same criterion in a non-discriminatory manner to all the other undertakings concerned.

87 As regards the first plea, the Commission contends that it must be rejected as unfounded.

88 In the first place, the Commission agrees with the applicants' view that, for a parent company to be held liable for the behaviour of one of its subsidiaries, it must, first, be in a position to exercise decisive influence over the commercial conduct of that subsidiary and, also, it must actually have exercised that influence.

89 With regard to the first of those conditions, the Commission states that it was precisely defined by the legislature in Regulation No 139/2004. The Commission refers more specifically to Article 3(2) and (3) of that regulation. Moreover, it rejects the applicants' claim that an influence is 'decisive' only if it is 'exclusive' (see paragraph 57 above).

90 With regard to the second of the conditions referred to in paragraph 88 above, the Commission disputes the applicants' claim that, for that condition to be met, the parent company must have instructed the subsidiary to infringe Article 81 EC or must itself have participated directly in the infringement. The Commission maintains that, in defining this condition, the case-law constantly refers to the subsidiary's lack of independence in determining its course of action in the market, and it does so without establishing a specific connection with the unlawful conduct.

91 The Commission contends that the evidence which may establish effective exercise of control over the subsidiary's policy includes the fact that the parent company is represented on its subsidiary's board. It adds that a subsidiary is less likely to be autonomous where it is active on the same market as the parent or on a closely related market. Apart from those general factors, certain specific circumstances may help to demonstrate that the parent is involved in its subsidiary's commercial policy or that it has set up mechanisms enabling it to supervise the activities of the subsidiary.

92 The Commission adds that the case-law has recognised that, where a subsidiary is wholly owned by its parent company, the parent is presumed to have exercised its power to influence the conduct of its subsidiary. The parent company can rebut that presumption by adducing evidence showing that its subsidiary in fact acts autonomously on that market.

93 The Commission states that that presumption applies both in cases where the parent company has a direct 100 % shareholding in its subsidiary and in cases where it has such a shareholding only indirectly.

94 In the second place, the Commission considers the period before May 1998.

95 In this respect, first, it contends that, in recitals 388, 390 and 391 of the contested decision, it sufficiently established that the applicants were in a position to exercise decisive influence on WWTE during that period.

96 Second, the Commission contends that recital 391 of the contested decision refers to several facts which show that WWTE's parent companies had put in place appropriate mechanisms to enable them actually to exercise decisive influence over its commercial conduct. The Commission states, in that regard, that the de facto exercise of decisive influence provides the best possible objective test that the parent company was in a position to exercise such influence in the first place.

97 As regards those facts, the Commission first of all focuses on Mr V.'s role and responsibilities within the Standard group. The Commission argues in particular that

the fact that Mr V. was not employed by SCC, SCTC or TCLT and did not hold a position as a corporate officer in any of those companies does not provide support for the applicants' arguments. What matters is only whether Mr V.'performed duties at... group management level'(*Asea Brown Boveri* v *Commission*, paragraph 64 above, paragraph 37).

98 Next, the Commission refers to the minutes of the WWTE board meeting of 25 and 26 March 1996.

99 In addition, the Commission argues that the correspondence mentioned in recital 391 of the contested decision shows that the chairman of WWTE kept Mr V. informed not only of WWTE's tobacco purchasing activities, but also of agreements on prices and quantities concluded with other processors.

100 Third, the Commission contends that the fact that TCLT is the only company within the Standard group which has a direct shareholding in WWTE does not mean that SCC and SCTC could not exercise decisive influence over WWTE. The Commission argues that several facts show a connection between WWTE and the applicants. On that point, the Commission notes in particular that TCLT had appointed two of the four members of the WWTE board and was WWTE's main customer from 1996 to 1999; that SCTC is active in the sector of processing and marketing tobacco and has been WWTE's main customer since 2000; and that the vice-president of SCC responsible for activities in the tobacco sector in Europe is a member of WWTE's board. The Commission observes that, in that group, each company plays a specific role: WWTE purchases raw tobacco in Spain and processes it; its production is then purchased directly by TCLT and SCTC; TCLT and SCTC market that production through the sales network of SCC, which coordinates the roles of the various operating companies of the group.

101 The Commission concludes from the foregoing that it did not err in law in finding that, in the period before May 1998, WWTE formed an economic unit with the Standard group and that the applicants had to be declared jointly and severally liable for payment of the fine.

102 In the third place, the Commission considers the period after May 1998.

103 In that connection, first, it observes that the applicants do not deny that, during that period, they were in a position to exercise decisive influence over WWTE.

104 Second, the Commission states that the Standard group has had sole control of WWTE since May 1998 and has held its entire capital since October 1998. The Commission considers that it could therefore legitimately presume that the applicants exercised decisive influence over the commercial policy of their subsidiary.

105 The Commission rejects the applicants' claim that, in the contested decision, it did not use that presumption to hold them liable for WWTE's unlawful conduct. In particular, the Commission rejects the applicants' interpretation of recital 376 of the contested decision (see paragraph 59 above), asserting that it is clear from that recital and from recital 18 that 'the reason for the Commission not to address [the decision] to Intabex and Universal was to be found in their observations in reply to the statement of objections and at the hearing, which were sufficient to reverse any assumption of effective exercise of control based on their shareholding'. The Commission states that it could not rely on that presumption in the case of Taes since its parent companies — Universal and Universal Leaf — held only 90 % of its capital. With respect to Deltafina,

which was 100% controlled by Universal and Universal Leaf, the Commission submits that the latter companies succeeded in rebutting the presumption and that the applicants never claimed that its file contained anything to show that those parent companies exercised decisive influence over the conduct of that subsidiary.

106 Third, the Commission adds that, in recitals 395 to 398 of the contested decision, it referred to additional factors supporting its conclusion that the applicants in fact exercised decisive influence over WWTE's commercial policy.

107 The Commission relies inter alia on certain passages in a memorandum from the executive committee of SCTC to Mr V. concerning 'long-term Spanish supply contracts' (recital 396 and footnote 313 of the contested decision).

108 Another factor relied upon by the Commission is the fact, mentioned in recital 398 and in footnote 314 of the contested decision, that WWTE's annual budget is approved by its board of directors 'subject to the amendments suggested by the parent company'.

109 Furthermore, the Commission refers to its findings concerning the WWTE manual in recital 398 of the contested decision. The Commission notes in particular that the applicants admit that SCTC had to approve the budget for buying tobacco before WWTE's chairman started any contracting process.

110 The Commission adds that its file contains numerous other examples showing that the applicants exercised decisive influence over WWTE.

111 Fourth, the Commission contends that the factors relied on by the applicants, as set out in paragraphs 75 to 79 above, do not demonstrate to the requisite legal standard that WWTE acted autonomously on the market.

112 As regards the second plea, the Commission denies that it failed to comply with the principle of equal treatment.

113 To begin with, the Commission observes that, according to the case-law, respect for the principle of equal treatment must be reconciled with the principle of legality, according to which a person may not rely, in support of his claim, on an unlawful act committed in favour of a third party. The Commission maintains that, accordingly, even on the assumption that the situation of some of the undertakings to whom the decision was not addressed was similar to that of the applicants, this would not be relevant in assessing the applicants' liability.

114 Next, in the first place, the Commission contends that the applicants' situation is different from that of Universal, Universal Leaf and Sepi and that, accordingly, there can be no question of a breach of the principle of equal treatment. In particular, referring to recitals 18, 375, 376, 384 and 385 of the contested decision, the Commission states that it was not in possession of sufficient evidence to conclude that the commercial behaviour of Taes, Deltafina and Cetarsa was not autonomous vis-à-vis their respective parent companies.

115 With regard, first, to Taes and Deltafina, the Commission observes that it originally addressed the statement of objections not only to those companies, but also to their two parent companies. However, in their reply to the statement of objections and during the hearing, the parent companies adduced 'detailed and convincing' arguments which led the Commission to conclude that they did not, respectively, form an economic unit with Taes and Deltafina.

116 The Commission argues that the passage in recital 376 of the contested decision relied on by the applicants (see paragraphs 59 and 82 above) must be read 'against … recital 18 and against the decision as a whole'. The Commission stresses that nowhere in the contested decision does it state that, for a parent company to be held liable for an infringement by its subsidiary, it is necessary to prove the parent's 'material involvement' in the infringement. By referring, in recital 376 of the contested decision, to the absence of 'material involvement... in the facts which are being considered in this Decision', the Commission was indicating 'the absence of material facts proving the exercise of decisive influence'. By contrast, such material facts are present in the case of the applicants.

117 More specifically, as regards Deltafina, the Commission submits that, in recital 376 of the contested decision, it was simply attempting to state that Universal and Universal Leaf had adduced arguments showing the commercial autonomy of their subsidiary and had therefore 'rebutted the presumption'. It observes that 'the wording [of that recital] may be unsatisfactory', but it could not have led the applicants to believe that the Commission would be able to hold Universal and Universal Leaf liable for Deltafina's conduct only if it had adduced proof of their direct involvement in the infringement.

118 When asked by the Court, by way of measures of organisation of procedure (see paragraph 48 above), to supply further details concerning the 'detailed and convincing' arguments referred to in paragraph 115 above, the Commission conceded however that, contrary to its statements in its pleadings, it was not the fact that, during the

administrative procedure, Universal and Universal Leaf had succeeded in rebutting the presumption arising from the 100 % ownership of Deltafina's shares that had led it not to hold them liable for Deltafina's unlawful conduct. It stated that an abundant body of case-law now exists to support its argument that 100 % ownership of a subsidiary is, 'alone and in itself', sufficient to support a presumption that the parent company in fact exercises decisive influence over the conduct of that subsidiary. However, at the time of the adoption of the decision, it was the Commission's policy to 'make cautious use of this presumption, and to support its findings of liability for parent companies, whenever possible, on a dual basis: relying on the presumption for wholly-owned subsidiaries and rebutting any attempt to reverse the presumption by establishing specifically the effective exercise of decisive influence on the basis of additional evidence'. The Commission added that, as there was nothing specific in its file to show that Universal and Universal Leaf had actually exercised such influence over Deltafina's commercial behaviour, it decided not to hold them liable for Deltafina's infringement. The Commission stated that, in Deltafina's case, it was even less inclined to rely on that presumption, given that Deltafina was not active on the market for the purchase and first processing of raw tobacco in Spain.

119 Second, with regard to Cetarsa, the Commission notes that that company belongs to Sepi, a State holding company which is active in Spain's ongoing privatisation of government-subsidised industrial companies and subject to the authority of the Spanish Minister for Economy and Finance. The Commission claims that there was nothing in its file to indicate that Cetarsa was not completely autonomous in determining its commercial behaviour, referring in that regard to the findings in recital 384 of the contested decision (see paragraph 30 above). It adds that that recital cannot be interpreted as meaning that the reason why Sepi was not found liable for Cetarsa's behaviour was that there was no evidence of direct communication between Sepi and

Cetarsa. The Commission observes that, in that recital, it is replying to specific arguments put forward by Dimon during the administrative procedure and it therefore focuses on the differences between Dimon and Sepi.

120 In the second place, the Commission asserts that TCLT's situation differed from that of Intabex.

121 The Commission states that, in the contested decision, it found that Intabex, in its reply to the statement of objections, had proved that, owing to the purely financial nature of its interest in Agroexpansión, it was not in a position to exercise any decisive influence whatsoever over its subsidiary. By contrast, TCLT, in its reply to the statement of objections, made no submissions to that effect. The Commission adds that, in any case, TCLT was WWTE's main customer from 1996 to 1999 and was therefore in a different situation from that of Intabex.

2. *Findings of the Court*

Preliminary observations on the attributability to the parent company of the unlawful conduct of a subsidiary

122 It should be observed that Community competition law refers to the activities of 'undertakings' (Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and Others* v *Commission* [2004] ECR I-123, paragraph 59) and that the concept of an undertaking covers any entity

engaged in an economic activity, regardless of its legal status and the way in which it is financed (Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others* v *Commission* [2005] ECR I-5425, paragraph 112).

123 The case-law has also specified that, in the same context, the concept of an undertaking must be understood as designating an economic unit even if in law that economic unit consists of several persons, natural or legal (Case C-217/05 *Confederación Española de Empresarios de Estaciones de Servicio* [2006] ECR I-11987, paragraph 40, and Case T-325/01 *DaimlerChrysler* v *Commission* [2005] ECR II-3319, paragraph 85).

124 Where such an economic entity infringes the rules of competition, it falls to that entity, in accordance with the principle of personal responsibility, to answer for that infringement (see, to that effect, Case C-49/92 P *Commission* v *Anic Partecipazioni* [1999] ECR I-4125, paragraph 145; Case C-279/98 P *Cascades* v *Commission* [2000] ECR I-9693, paragraph 78; and Case C-280/06 *ETI and Others* [2007] ECR I-10893, paragraph 39).

125 The infringement of Community competition law must be attributed unequivocally to a legal person on whom fines may be imposed. For the purposes of applying and enforcing Commission competition law decisions, it is necessary to identify, as addressee, an entity having legal personality (see, to that effect, *PVC II,* paragraph 27 above, paragraph 978).

126 It is clear from settled case-law that the conduct of a subsidiary may be attributed to the parent company in particular where that subsidiary, despite having a separate legal personality, does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company (*Imperial Chemical Industries* v *Commission*, paragraph 27 above, paragraphs 132 and 133; Case 52/69 *Geigy* v *Commission* [1972] ECR 787, paragraph 44;

and Case 6/72 *Europemballage and Continental Can* v *Commission* [1973] ECR 215, paragraph 15), regard being had in particular to the economic, organisational and legal links between those two legal entities (see, by analogy, *Dansk Rørindustri and Others* v *Commission*, paragraph 122 above, paragraph 117, and *ETI and Others*, paragraph 124 above, paragraph 49).

127 In such a situation, the parent company and its subsidiary form a single economic unit and therefore form a single undertaking for the purposes of the case-law mentioned in paragraphs 122 and 123 above. As a consequence, it is not because of a relationship between the parent company and its subsidiary in instigating the infringement or, *a fortiori*, because the parent company is involved in the infringement, but because they constitute a single undertaking for the purposes of Article 81 EC that the Commission is able to address a decision imposing fines to the parent company (Case T-112/05 *Akzo Nobel and Others* v *Commission* [2007] ECR II-5049, paragraph 58).

128 It is also apparent from the case-law that the Commission cannot merely find that the parent company is in a position to exercise decisive influence over the conduct of its subsidiary, but must also check whether that influence was actually exercised (see, to that effect, *Imperial Chemical Industries* v *Commission*, paragraph 27 above, paragraph 137, and *AEG-Telefunken* v *Commission*, paragraph 27 above, paragraph 50).

129 In the specific case where a parent company has a 100 % shareholding in a subsidiary which has infringed the Community competition rules, the parent company is able to exercise decisive influence over the conduct of the subsidiary (see, to that effect, *Imperial Chemical Industries* v *Commission*, paragraph 27 above, paragraphs 136 and 137) and there is a rebuttable presumption that the parent company does in fact exercise decisive influence over the conduct of its subsidiary (see, to that effect, *AEG-Telefunken* v *Commission*, paragraph 27 above, paragraph 50, and *PVC II*, paragraph 27 above, paragraphs 961 and 984).

130 In those circumstances, it is sufficient for the Commission to prove that the subsidiary is wholly owned by the parent company in order to avail itself of the presumption that the parent exercises decisive influence over the commercial policy of the subsidiary. The Commission will be able to regard the parent company as jointly and severally liable for payment of the fine imposed on its subsidiary, unless the parent company, which has the burden of rebutting that presumption, adduces sufficient evidence to show that its subsidiary acts independently on the market (see, to that effect, *Stora Kopparbergs Bergslags* v *Commission*, paragraph 27 above, paragraph 29).

131 While it is true that at paragraphs 28 and 29 of *Stora Kopparbergs Bergslags* v *Commission*, paragraph 27 above, the Court of Justice referred, not only to the fact that the parent company owned 100 % of the capital of the subsidiary, but also to other circumstances, such as the fact that it was not disputed that the parent company exercised influence over the commercial policy of its subsidiary or that both companies were jointly represented during the administrative procedure, the fact remains that those circumstances were mentioned by the Court of Justice for the sole purpose of identifying all the elements on which the General Court had based its reasoning, and not to make the application of the presumption referred to in paragraph 129 above subject to the production of additional indicia relating to the actual exercise of influence by the parent company (Case T-69/04 *Schunk and Schunk Kohlenstoff-Technik* v *Commission* [2008] ECR II-2567, paragraph 57).

132 Lastly, it should be made clear that the presumption arising from 100 % ownership of the capital can apply not only in cases where there is a direct relationship between the parent company and its subsidiary, but also in cases such as the present one, where that relationship is indirect, through an intermediary subsidiary.

The tests used by the Commission in the contested decision in order to attribute liability to a parent company for the infringement on the part of its subsidiary

133 It is apparent from the contested decision that, in order to attribute liability to a parent company for the infringement on the part of its subsidiary and, accordingly, to include the parent company, along with the subsidiary, among the addressees of that decision and to declare it jointly and severally liable for payment of the fine imposed on that subsidiary, the Commission adopted the following reasoning.

134 The Commission took as its starting point the premiss that such attribution is possible where the parent company and its subsidiary form a single economic unit and, as a consequence, constitute a single undertaking for the purposes of Article 81 EC (see recital 374 of the contested decision).

135 The central feature on which the Commission relied in order to establish that the parent company and its subsidiary are in such a situation is the subsidiary's lack of independence in deciding upon its own conduct on the market (see recital 371 of the contested decision), since that lack of independence is the corollary of the exercise by the parent company of 'decisive influence' over the conduct of the subsidiary (see recitals 18, 372, 373, 378, 380, 381, 383, 391, 392, 397, 399, 400, 422 and 441 of the contested decision).

136 In this respect, the Commission considered that it was not sufficient merely to find that the parent company was able to exercise decisive influence over the conduct of its subsidiary: it also had to be shown that that influence had in fact been exercised (see, inter alia, recitals 18, 376, 384, 391, 392, 397, 399 and 400 of the contested decision).

137 Thus, in particular, it is apparent from recital 384 of the contested decision that, although the Commission considered that it was not appropriate to attribute liability to Sepi for the infringement committed by its subsidiary Cetarsa, despite the fact that it held nearly 80 % of Cetarsa's capital, that was because there was no firm evidence in its file that Cetarsa did not decide independently upon its own conduct on the market. Contrary to the assertions made by the applicants (see paragraph 82 above), the finding, in the same recital, that that file does not contain 'any direct communication between Cetarsa and Sepi in relation to the subject-matter of this case' cannot be interpreted as meaning that it was that factor in itself which led the Commission to find that Sepi was not liable. By that finding, the Commission sought above all to respond to a claim made by Dimon, in its reply to the statement of objections, that it was being discriminated against by comparison with Sepi since, although Sepi — like Dimon — had allegedly been fully apprised of the unlawful practices in question, it had not been held liable for the unlawful conduct of its subsidiary. Moreover, it should be added that, in recital 384 of the contested decision, the Commission puts forward three further considerations in order to distinguish Dimon's situation from Sepi's and to justify its decision not to hold Sepi liable.

138 Similarly, it is apparent from recital 18 of the contested decision that the reason that the Commission did not hold Universal or Universal Leaf, its wholly-owned subsidiary, liable for the unlawful conduct of Taes, in which Universal Leaf held a 90 % stake, is that the Commission did not have enough evidence that those companies did in fact exercise decisive influence over Taes.

139 The Commission sought to apply those same principles in the case of the applicants with respect to the period before May 1998. Thus, initially, the Commission sought to show that the applicants, together with WWTE's chairman and two members of his family, had joint control of WWTE, thus suggesting that the applicants were in a position to exercise decisive influence over the conduct of that company (see recitals

388 to 391 of the contested decision). The Commission then endeavoured to establish that the applicants in fact exercised such influence over WWTE's conduct (see recitals 391, 392 and 400 of the contested decision).

140 Moreover, the Commission observed that, in the specific case where a subsidiary is wholly owned by the parent company, it can be assumed, according to the case-law, that the parent company in fact exercises decisive influence over its subsidiary's conduct (see recital 372 of the contested decision).

141 However, in the present case, in order to attribute liability for the infringement on the part of subsidiaries to the parent companies, which found themselves in such a situation, the Commission chose not to rely on that presumption alone, but to base its findings also on evidence which is designed to establish that those parent companies in fact exercised decisive influence over their subsidiary and, accordingly, to support that presumption (see, inter alia, recitals 372, 375, 376 and 378 of the contested decision).

142 Thus, it is made expressly clear in recital 18 of the contested decision that, although the Commission did not hold Deltafina's ultimate and intermediate parent companies — Universal and Universal Leaf — liable for the unlawful conduct of their subsidiary, despite the fact that they controlled Deltafina 100 %, it was because the Commission did not have enough evidence that those companies in fact exercised decisive influence over that subsidiary. The passage from recital 376 of the contested decision relied on by the applicants should be understood in the same way (see paragraphs 59 and 82 above). It is true that that passage is drafted somewhat ambiguously. However, when read together with recital 18 of the decision and in the context of that decision, it cannot be interpreted as meaning that the reason that the Commission did not hold those two parent companies — or any other parent company — liable was their lack of involvement in the infringement.

143 Similarly, it is also made expressly clear in recital 18 of the contested decision that the reason that the Commission did not hold Agroexpansión's intermediate parent company — Intabex — liable for the unlawful conduct of its subsidiary, even though it controlled that subsidiary 100 %, is that there was not enough evidence that Intabex had in fact exercised decisive influence over that subsidiary, its involvement in the latter being purely financial (see also recital 376 of the contested decision).

144 By contrast, it is precisely the fact that there was such evidence in the case of Dimon, Agroexpansión's ultimate parent company, together with the fact that Dimon wholly owned Agroexpansión, which led the Commission to attribute liability for the infringement to that parent company (see, inter alia, recitals 375 and 378 to 380 of the contested decision).

145 The Commission sought to follow the same approach in the applicants' case, with respect to the period from May 1998 to the date of adoption of the contested decision. Thus, in order to declare the applicants liable for WWTE's unlawful conduct, it did not merely rely on the presumption arising from the fact that they held all — or, for a few months only, virtually all — WWTE's capital (see recitals 375 and 393 of the contested decision), but also took account of certain additional elements which demonstrate that they in fact exercised decisive influence over the conduct of that company (see recitals 375, 396 and 398 of the contested decision). The Commission added that the arguments adduced by SCC in its reply to the statement of objections in an attempt to show that WWTE was acting independently on the market were inconclusive (see recital 399 of the contested decision).

146 It should be pointed out that the Commission adopted that approach not only with the ultimate parent companies, but also with the intermediate parent companies, as is demonstrated — in respect of those intermediaries — by the cases of Universal Leaf, Intabex, SCTC and TCLT.

147 Lastly, it should be noted that, both in its reply to one of the written questions put to it by the Court and at the hearing, the Commission confirmed that, in the case of the subsidiaries which were 100 % controlled by their parent companies, it had chosen in the contested decision not to rely solely on the presumption referred to in paragraphs 129, 130 and 140 above in order to attribute to the parent companies liability for the infringement committed by those subsidiaries, but also to take account of additional evidence demonstrating the actual exercise of decisive influence. The Commission essentially put forward as justification for that approach the fact that, in the light of the relevant case-law as it stood at the time when the contested decision was adopted, it considered it more prudent to establish the liability of parent companies on that 'dual basis'.

The second part of the first plea

148 It is appropriate first to consider the second part of the first plea, by which the applicants claim that the Commission did not provide an adequate statement of reasons for its decision to attribute to them liability for WWTE's anticompetitive conduct.

149 According to settled case-law, the statement of reasons required by Article 253 EC must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community Court to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see

Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63 and the case-law cited therein, and Case T-304/02 *Hoek Loos* v *Commission* [2006] ECR II-1887, paragraph 58).

150 It is also settled case-law that, where a decision taken in application of Article 81 EC relates to several addressees and raises a problem with regard to liability for the infringement, it must include an adequate statement of reasons with respect to each of the addressees, in particular those of them who, according to the decision, must bear the liability for the infringement (Case T-38/92 *AWS Benelux* v *Commission* [1994] ECR II-211, paragraph 26, and Case T-330/01 *Akzo Nobel* v *Commission* [2006] ECR II-3389, paragraph 93).

151 In the present case, it is apparent from the summary of the part of the contested decision relating to the addressees thereof, as set out in paragraphs 25 to 40 above, and from the findings made in paragraphs 133 to 146 above that, in that decision, the Commission provided an adequate statement of reasons as to why it had decided to attribute liability for WWTE's infringement to the applicants. The Commission thus set out, by reference to the case-law of the Court of Justice and the General Court, the principles that it intended to apply in order to establish those addressees. More specifically, as regards the applicants, the Commission distinguished two periods, the first from 1995 until May 1998, and the second from May 1998 until the date of adoption of the contested decision. With respect to the first period, the Commission found, after observing that WWTE had at that time been under the joint control of (i) the applicants and (ii) WWTE's chairman and two members of his family, that it was in possession of factual elements showing that the applicants in fact exercised decisive influence over the conduct of WWTE, and it set out those elements. As regards the second period, the Commission first observed that the applicants had held virtually all WWTE's capital (for several months) and subsequently held all WWTE's capital and, accordingly, had sole control of WWTE. The Commission then found that it was established that the applicants had in fact exercised decisive influence over WWTE's commercial policy, relying in this respect not only on the presumption arising from the ownership of all (or virtually all) of the subsidiary's capital, but also

on certain additional elements supporting that presumption. Lastly, the Commission found that none of the arguments adduced by SCC in its reply to the statement of objections supported a conclusion to the contrary.

152 The second part of the first plea must therefore be rejected as unfounded.

The lawfulness of the method applied by the Commission in the present case, and the second plea

153 It is necessary to assess, in the light of Article 81(1) EC and Article 23(2) of Regulation No 1/2003, the lawfulness of the method applied by the Commission in the present case — as described in paragraphs 134 to 136, 140, 141 and 146 above — in order to determine whether it was appropriate to attribute to the parent company liability for an infringement on the part of its subsidiary.

154 In that respect, it is sufficient to note that that method — without prejudice to the question as to whether it was correctly applied in the case of the applicants (which will be considered below) — is entirely consistent with the principles laid down in this area by the case-law and re-stated in paragraphs 122 to 132 above.

155 It is true that, this being the specific case where a parent company has a 100 % shareholding in a subsidiary which has infringed the Community competition rules, the Commission — in the interests of caution — did not rely solely on the presumption affirmed by the case-law (see paragraphs 129 and 130 above) in order to show that the parent company in fact exercised decisive influence over the commercial policy of the subsidiary, but also took into account other factual elements tending to confirm that such influence was actually exercised. However, by proceeding in that manner, the Commission — while observing fully the fundamental concept of 'economic unit' which underlies all the case-law concerning the attribution of liability for infringements to the legal persons which constitute a single undertaking — merely raised the standard of proof required for it to be satisfied that the condition relating to the actual exercise of decisive influence is fulfilled.

156 Lastly, it should be borne in mind that, where, in a case concerning an infringement involving several different undertakings, the Commission adopts, within the framework laid down by the case-law, a certain method for determining whether it is appropriate to attribute liability both to the subsidiaries which materially committed that infringement and to their parent companies, it must — save in specific circumstances — rely for those purposes on the same criteria in the case of all those undertakings.

157 The Commission is bound by the principle of equal treatment, which, according to settled case-law, requires that comparable situations must not be treated differently, and different situations must not be treated in the same way, unless such treatment is objectively justified (Case 106/83 *Sermide* [1984] ECR 4209, paragraph 28, and Case T-311/94 *BPB de Eendracht* v *Commission* [1998] ECR II-1129, paragraph 309).

158 Moreover, it is clear that the Commission shares that point of view when, in recital 384 of the contested decision, it states that 'the fact that the specific circumstances which may lead [the Commission] to hold a parent company liable for the behaviour

of its subsidiary may vary from one instance to the other cannot as such constitute a breach of the principle of non-discrimination, as long as the principles of liability are consistently applied'.

159 It is apparent from the findings made in paragraphs 137 to 139 and 142 to 145 above that, in the contested decision, the Commission applied the same principles to all the parent companies concerned for the purposes of determining whether to attribute liability to them for the infringement committed by their subsidiaries. Specifically, contrary to the assertions made by the applicants, it does not appear that the Commission treated their situation differently from that of Universal, Universal Leaf, Sepi or Intabex in this respect.

160 Accordingly, the second plea, alleging breach of the principle of equal treatment, must be rejected as unfounded.

The existence of a single economic unit between the applicants and WWTE

161 It remains to be examined whether the Commission correctly applied, to each of the applicants, the tests set out in paragraphs 134 to 136, 140, 141 and 146 above in order to conclude that there was a single economic unit between them and WWTE and, accordingly, to hold them jointly and severally liable for the infringement and for payment of the fine, and also to include them amongst the addressees of the contested decision. Depending on the outcome of that examination, it will then be necessary to ascertain whether the considerations put forward by the applicants, as set out in paragraphs 74 to 79 above, support their claim that WWTE acted independently on the market during the period covered by the infringement.

162 It is appropriate to distinguish, as the Commission did in the contested decision, two periods: the first from 13 March 1996, the date of the starting point of the processors' cartel, until 5 May 1998; and the second from 5 May 1998 until the date of adoption of the contested decision.

The period from 13 March 1996 until 5 May 1998

163 It is common ground and it is apparent from the documents in the file — and, in particular, from the information referred to in recitals 388 to 390 of the contested decision, as reproduced in paragraph 34 above — that, during the period from 13 March 1996 until 4 May 1998 inclusive, WWTE was jointly controlled by (i) SCC (through TCLT and SCTC) and (ii) WWTE's chairman and two members of his family.

164 Contrary to the submissions made by the applicants, such a situation in no way precludes the fulfilment of the condition concerning the possibility of exercising decisive influence over the conduct of a subsidiary (see paragraph 128 above). In particular, it is not necessary, in this regard, for the parent company to have sole control of its subsidiary.

165 Where an undertaking is under the joint control of two or more other undertakings or persons, those undertakings or persons are by definition able to exercise decisive influence over it. That is not enough, however, to enable them to be held liable for the infringement of the competition rules committed by the undertaking which they control jointly, because such liability also requires fulfilment of the condition concerning the actual exercise of decisive influence (see paragraph 128 above). If those conditions are fulfilled, it would be possible to hold the various undertakings or persons which exercise joint control liable for the unlawful conduct of their subsidiary, as the judgment in Case T-314/01 *Avebe* v *Commission* [2006] ECR II-3085 illustrates. In that

case, the General Court upheld a Commission decision attributing to two companies, each with a 50 % shareholding in a subsidiary and having joint management power in the commercial management of the subsidiary, liability for the unlawful conduct of that subsidiary. If it transpired that, in reality, only one of the undertakings or persons holding joint control in fact exercises decisive influence over the conduct of their subsidiary, or if other specific circumstances were to justify it, the Commission would be able to hold only that undertaking or person jointly and severally liable, with its subsidiary, for the infringement committed by the subsidiary.

166 In any event, as the Commission rightly states in its pleadings, if it were to be established in the present case that, from 13 March 1996 until 4 May 1998 inclusive, the applicants did in fact exercise decisive influence over the conduct of WWTE, that would necessarily imply that they were in a position to do so.

167 Accordingly, the principal question to resolve is whether the elements relied on by the Commission in the contested decision demonstrate to the requisite legal standard that the applicants did in fact exercise such influence during the relevant period.

168 In this respect, it is necessary at the outset to reject the argument, on which the applicants base a large part of their reasoning, that the Commission did not sufficiently demonstrate that they had given instructions to WWTE to commit the infringement or that they were directly involved in it.

169 As has already been stated in paragraph 127 above, it is not because of a relationship between the parent company and its subsidiary in instigating the infringement or, *a fortiori*, because the parent company is involved in the infringement, but because they constitute a single undertaking for the purposes of Article 81 EC that the Commission is able to address a decision imposing fines to the parent company. For the reasons set out in paragraph 142 above, that finding cannot be called in question by the passage from recital 376 of the contested decision relied on by the applicants (see paragraphs 59 and 82 above).

170 It is also necessary to reject the applicants' argument that the decisive influence that a parent company must exercise in order to have liability attributed to it for the infringement committed by its subsidiary must relate to activities which form part of the subsidiary's commercial policy *stricto sensu* and which, furthermore, are directly linked to that infringement, in this instance the purchase of raw tobacco (see paragraphs 60, 69, 73 and 77 above).

171 As has already been pointed out in paragraph 126 above, in order to determine whether a subsidiary decides independently upon its own conduct on the market, account must be taken of all the relevant factors relating to the economic, organisational and legal links between the subsidiary and the parent company, which may vary from case to case and which cannot, therefore, be exhaustively listed.

172 The factors on which the Commission relies in the contested decision in order to conclude that the applicants in fact exercised decisive influence during the relevant period over WWTE's conduct on the market are set out in recital 391 of that decision and can be divided into three separate categories.

— Mr V.'s duties within the Standard group

173 In the first place, the Commission relies on certain factors relating to Mr V.'s duties within the Standard group.

174 It should be noted that, as the applicants stated in reply to a request for information sent to them by the Commission during the administrative procedure and which they confirmed in their pleadings, Mr V. was — from the beginning of the period of the infringement, at least — one of the four members of the board of directors of WWTE. In the same reply, the applicants stated that, at various times over a period starting on 30 September 1989, Mr V. had also been a member of the board of directors of four other subsidiaries of the Standard group established in Italy and Greece. That information is entirely consistent with the applicants' statement, in their reply to the statement of objections and repeated in the reply, that Mr V. had a 'representative role in Europe' which took the form of his presence on the board of directors of those various subsidiaries and according to which he was responsible, in Europe, for '[coordinating] the sale of processed tobacco through SCC's international sales network'.

175 It should also be noted that the applicants do not dispute the Commission's statement in recital 391 of the contested decision that Mr V. had 'general responsibility for the Standard group's activity in Europe'. They merely claim, first, that Mr V.'s situation is not comparable with that of the managers referred to by the General Court in *ABB Asea Brown Boveri* v *Commission*, paragraph 64 above, and that, accordingly, the Commission cannot find support for its argument in that judgment, and second, that that statement is very general and does not show that SCTC instructed WWTE to behave anti-competitively. It should be added that, in the application, the applicants themselves refer to Mr V. as the'manager for the group's activities in Europe'.

176 Nor do the applicants dispute in their pleadings the Commission's assertion — also made in recital 391 of the contested decision — that Mr V. acted as SCC's representative and was 'responsible for relaying between WWTE and its parent companies'. They merely claim once again that that assertion is very general and does not show that they instructed WWTE to behave anti-competitively.

177 It is true that Mr V. was not employed by any of the applicants — but by SCTL, a wholly-owned subsidiary of SCTC — and was not mentioned in the list of SCC's 'corporate directors' or'corporate officers' which SCC had sent to the Commission during the administrative procedure. However, the fact remains that his duties and responsibilities in the Standard group were at a very high level, in particular inasmuch as they concerned one of the two main areas of that group's activity and the whole of Europe.

178 The importance of Mr V.'s role in the Standard group is further underlined by the fact that, in SCC's annual reports from 1999 to 2001, he is identified as 'vice-president and regional manager — Europe' of the tobacco division of that company. The applicants' claim that that title did not exist in reality and had been given to him solely to improve his image is hardly credible.

179 In the light of those various factors, Mr V. could reasonably be regarded as being part of the Standard group's management. Accordingly, the Commission was fully entitled to take the view that there was a direct relationship between the ultimate parent company of that group, in this instance SCC, and Mr V.

180 That circumstance, in addition to the fact that Mr V. was one of the four members of WWTE's board of directors, is a strong indication that SCC in fact exercised decisive influence over WWTE's conduct on the market.

— The minutes of the WWTE board meeting of 25 and 26 March 1996

181 In the second place, the Commission relies on the minutes of the WWTE board meeting of 25 and 26 March 1996, which were written in both Spanish and English.

182 In this respect, it should be noted that it is apparent from certain passages of those minutes — set out in point 2, headed 'Board Meeting Procedure' — that, at the meeting in question, the two WWTE board members appointed by the Standard group stressed that WWTE could not act independently of SCTC. Thus, Mr V. pointed out that, although WWTE had its 'own identity/entity', it was 'also a subsidiary of SCTC' and should therefore 'fall in the line of the SCTC culture'. Mr. C. stated that 'even though all members of the [WWTE] Board [did] benefit from authorities and responsibilities, they [did] not have the freedom in all decisions but [had to] consult in many occasions with upper levels of SCTC'.

183 It emerges from other passages in the minutes that, on a whole series of issues and items of expenditure, WWTE had to consult SCTC or obtain its prior approval.

184 Thus, first, in point 3, headed 'Sales procedures', it is mentioned that 'no tobacco should be exported without having a form double-signed which format will be agreed upon after [the visit] of [Mr F., one of the persons invited to participate in the relevant WWTE board meeting] to Godalming [the location of SCTC's United Kingdom headquarters] this week' and that '[t]his form will have to be duly filled in by [Mr D., one of the WWTE board members], after checking all pertinent data with [Mr A.] in Godalming'.

185 Second, with respect to long-term financing, the minutes state as follows: 'At the moment we are stuck since we are not able to mortgage the assets due [to] SCTC instruction' It is also noted that Mr. F would go to Godalming in order to discuss that subject with Mr M, among others. It should be pointed out that, during the period covered by the infringement, Mr M. was one of the 'corporate officers' and vice-presidents of SCC as well as its treasurer.

186 Third, in a table in point 10 of the minutes, a series of investment projects are listed which require 'the final approval of SCTC'. As regards the most important project, namely the construction of a new warehouse, Mr V. and Mr M. stated that it 'may be very difficult to have SCTC approving this expense during this next fiscal year'. Also in point 10, it is stated that an investment relating to the transfer of 'pivots' from one area of the farm to another 'should most probably be approved by SCTC very quickly considering the immediate need of that project'.

187 The elements set out in paragraphs 182 to 186 above amount to strong evidence that SCTC in fact exercised decisive influence over WWTE's conduct on the market. The applicants' claim that it was only with regard to matters unrelated to the purchase of raw tobacco — such as sales of processed tobacco — that SCTC was consulted, and was to give its authorisation, is irrelevant for the reasons set out in paragraphs 170 and 171 above. Their claim that SCTC's prior approval was required only in the case of extraordinary expenditure has no basis in fact, since the table in point 10 of the minutes refers to investment projects ranging in cost from USD 1 220 to USD 1 056 911, amongst which are amounts as low as USD 4 800, USD 5 600 or USD 6 504.

188 The conclusion in paragraph 187 above is borne out by other information in those minutes. Thus, first, it is apparent from point 4 thereof that the 'code of conduct'

which the staff of SCTC had to follow was intended to apply also to the staff of WWTE, although, following certain objections raised by the chairman of WWTE, it had been decided to translate it from English into Spanish. Second, it is apparent from point 7 of those minutes that the WWTE board examined SCTC's economic and commercial situation.

189 It should also be pointed out that the minutes in question refer to the fact that the WWTE board drew up the raw tobacco buying strategy for the 1996 crop in Spain. In that context, reference is made expressly to the processors' cartel meeting of 13 March 1996 in Madrid as follows:

'Some days ago a meeting took place in Madrid attended by all the buying firms in an attempt to reach a number of agreements on the [19]96 crop contracting strategy. In a very tense atmosphere, the only verbal agreements reached were:

1. minimum price for FCV [flue cured Virginia] of ESP 3 per kg

2. average price objectives for each firm were revealed

Unfortunately no agreement was reached on the splitting of the Spanish tobaccos between the 4 purchasing companies.'

190 It appears, therefore, that the representatives of the Standard group who sat on the WWTE board were informed of the practices of the processors' cartel. Furthermore, as will be set out in greater detail in paragraphs 192 and 193 below, it is apparent from other material in the Commission's file that, apart from WWTE board meetings, Mr V. was also personally informed of certain aspects of that cartel. It is common ground that those representatives never raised any objections to those practices and that SCC — notwithstanding the risk of legal proceedings or claims for damages from third parties to which it was exposing itself by conducting itself in that manner — did not take any measures with respect to WWTE aimed at preventing its continuing involvement in the infringement. The Commission could reasonably infer from this that SCC tacitly approved of that involvement and find that such conduct amounted to additional evidence that SCC exercised decisive influence over the conduct of its subsidiary.

— The faxes from the chairman of WWTE to Mr V.

191 In the third place, the Commission relies on four faxes from WWTE's chairman, Mr S., to Mr V.

192 In the first of those faxes, dated 28 October 1996 and sent to SCTC for the attention of Mr V., Mr S. informed Mr V. inter alia of the result of tobacco purchases during the 1996 marketing year and of average prices paid by each of the Spanish processors, thus providing him with details on certain aspects of the processors'cartel. In the second fax, dated 6 October 1997 and sent to'Standard Commercial — UK'— it being highly likely that that reference must be understood as referring to SCTC, which had activities in the United Kingdom (see paragraph 184 above) and was the parent company of the company which employed Mr V. (see paragraph 177 above) — Mr S. gives detailed information on a meeting between WWTE, Cetarsa and Agroexpansión at the end of the previous September during which those companies agreed to exchange

information on prices and quantities of tobacco purchased. By the third fax, dated 8 October 1997 and sent to 'Standard Commercial — UK', Mr S. forwarded to Mr V. a copy of a letter that he sent on the same day to the chairman of Cetarsa and in which he complained about the fact that Cetarsa was not abiding by the price agreements entered into by the processors. Lastly, in the fourth fax, dated 10 October 1997 and sent to 'Standard Commercial — UK', Mr S. gives information on the quantities of raw tobacco purchased by the processors and on the prices paid.

193 For the reasons set out in paragraph 190 above, the fact — moreover, not contested by the applicants — that Mr V. was kept personally informed by the WWTE chairman of various aspects of the processors' cartel could reasonably be considered to be additional evidence that SCC exercised decisive influence over WWTE's conduct.

— Conclusion in relation to the period from 13 March 1996 until 5 May 1998

194 It is apparent from the considerations referred to in paragraphs 173 to 193 above that the Commission established to the requisite legal standard that, during the period from 13 March 1996 until 4 May 1998 inclusive, SCC and SCTC in fact exercised decisive influence over WWTE's conduct.

195 On the other hand, it must be stated that, as the applicants rightly point out, none of the material relied on by the Commission in the contested decision supports the conclusion that TCLT — which, according to the applicants, is a company with no activity

of its own and whose interest in WWTE is purely financial — in fact exercised decisive influence over WWTE's conduct on the market during that period. That material relates exclusively to SCC and SCTC.

196 The circumstance that TCLT was WWTE's main customer from 1996 to 1999 cannot be taken into account by this Court, since it was not until the defence that the Commission relied on this for the first time in an attempt to attribute liability to TCLT for the unlawful conduct of its subsidiary. Moreover, the minutes of the WWTE board meeting of 25 and 26 March 1996 show that it is only for purely accounting and fiscal reasons that purchases of tobacco processed by WWTE were attributed to TCLT: 'In the past [WWTE was invoicing those purchases to TCLT] in order to register profit in the WWTE books'. No processed tobacco was actually delivered to TCLT. In any event, although that circumstance may indicate that TCLT had an interest in WWTE's commercial policy, it is not sufficient, in itself, to establish that TCLT in fact exercised decisive influence over WWTE's conduct.

197 It follows that the Commission was not justified in attributing WWTE's unlawful conduct to TCLT for the period from 13 March 1996 until 4 May 1998 inclusive or, consequently, in holding it jointly and severally liable for payment of the fine in respect of that period.

The period from 5 May 1998 until the date of adoption of the contested decision

198 In the light of the factors referred to in recital 393 of the contested decision (see the first three indents of paragraph 38 above), it may be considered that the applicants held virtually all the capital of WWTE from 5 May 1998 until October 1998 and all that capital from October 1998 until the date of adoption of the contested decision.

199 To that must be added the fact that, after 5 May 1998, the applicants had the majority required for the adoption of decisions at the WWTE general meeting (recital 394 of the contested decision) and that the board of directors of WWTE included two new members, appointed by the WWTE general meeting as replacements for the members who represented the former minority shareholders.

200 In the light of the factors set out in paragraphs 198 and 199 above, it is clear that, after 5 May 1998, the applicants were in a position to exercise decisive influence over WWTE's conduct. Moreover, in their pleadings, the applicants expressly acknowledge that that was the case.

201 It is therefore necessary to examine whether, as regards the period from 5 May 1998 until the date of adoption of the contested decision, the Commission's contention that decisive influence must in fact have been exercised is borne out in the case of each of the applicants.

202 In this respect, it should be recalled that, after taking a different view in its pleadings (see paragraph 105 above), the Commission conceded, following a written question put to it by this Court, that, in the contested decision, in the case of the subsidiaries

wholly owned by their parent companies, it chose not to rely on the presumption referred to in paragraphs 129, 130 and 140 in order to attribute to them liability for the infringement committed by those subsidiaries, but also took account of additional evidence demonstrating that decisive influence was in fact exercised (see paragraphs 118 and 147 above). It is apparent from various recitals of the contested decision that that is indeed the approach which the Commission sought to follow in the present case (see paragraphs 141 to 145 above).

203 It is therefore necessary to ascertain whether the factors relied on by the Commission in the contested decision establish to the requisite legal standard that, during the relevant period, the applicants in fact exercised decisive influence over the conduct of WWTE. Those factors are set out in recitals 396 and 398, and footnotes 313 and 314, of the contested decision.

— Mr V.'s role in the conclusion of the cultivation contracts

204 The first factor relied on by the Commission is the fact, mentioned in recital 396 of the contested decision, that, after 1998, Mr V. '[had] a role in the conclusion of cultivation contracts concluded by WWTE with the producer groups'. Footnote 313 of the contested decision refers in this respect to a memorandum from the executive committee of SCTC to Mr V. concerning 'long-term Spanish supply contracts' dating from the beginning of 1998.

205 It must be stated that the object of that memorandum is in fact to authorise Mr V. — referred to in his capacity as 'Regional Manager Europe' — to 'enter into supply contracts with growers to deliver tobaccos to [WWTE]'. That document gives very precise instructions as to the conditions in which Mr V. could conclude those contracts and, in particular, on volumes of purchase, purchase prices, quality bonuses and advances which could be granted to producers and on 'guarantees for advances' which could be obtained from producers.

206 Apart from the fact that that memorandum contradicts the applicants' assertion that Mr. V. dealt exclusively with sales of processed tobacco, it clearly shows that SCTC had an active role in WWTE's raw tobacco purchasing policy and, therefore, that it in fact exercised decisive influence over WWTE's conduct on the market.

207 That memorandum also makes it possible to establish that SCC in fact exercised such influence. In this respect, first, it should be noted that the memorandum had to be signed by Mr H., who was President and Chief Executive Officer of that company, and Mr C., who was one of the three members of its Executive Committee. Second, Mr V. — on whom the power to conclude certain raw tobacco supply contracts had thus been conferred — was still, at that time, both a member of the WWTE board and directly connected with SCC, of which he was one of the vice-presidents (see paragraphs 174 to 179 above).

208 Those findings cannot be called in question by the applicants' argument that the infringements which are the subject of the contested decision related only to the cultivation contracts of one year's duration, while the contracts referred to in the 1998 memorandum of the SCTC Executive Committee were of three years' duration or more. Attribution to the parent company of the unlawful conduct of a subsidiary does

not require proof that the parent company influences its subsidiary's policy in the specific area in which the infringement occurred (see paragraphs 170 and 171 above).

209 For the same reasons as those set out in paragraphs 168 and 169 above, the applicants' argument that the long-term Spanish supply contracts do not show that they had instructed WWTE to commit the infringement is likewise irrelevant.

— The WWTE manual

210 The second factor relied on by the Commission is the fact, set out in recital 398 of the contested decision, that the WWTE manual provides that 'the chairman, together with the purchasing director, is directly responsible for the contracting process, subject to prior authorisation from the parent company, which approves the budget for each marketing year in March'.

211 In this respect, it must be stated that, according to the explanations given by the applicants themselves, pursuant to that provision of the manual, it is for SCTC to authorise — as part of the process for approving WWTE's annual budget and prior to the launch of the contracting process — the maximum quantities of raw tobacco which WWTE could purchase in Spain (see paragraph 73 above). In other words, SCTC is required to approve the budget for purchasing raw tobacco before the chairman of WWTE can start the contracting process. That circumstance clearly confirms that SCTC in fact exercised decisive influence over WWTE's conduct on the market.

212 As regards the applicants' argument that the WWTE manual has no evidential value in respect of the period from 5 May 1998 until 2000, since it dates only from 2000, it is sufficient to point out that that manual constitutes evidence in addition to the memorandum from the SCTC executive committee to Mr V., mentioned in paragraph 204 above, which already establishes WWTE's lack of commercial independence from 1998 onwards (see paragraphs 206 and 207 above).

213 Lastly, as regards the applicants' argument that the WWTE manual does not provide sufficient evidence that SCTC gave instructions to WWTE to behave anti-competitively, it must be rejected for the same reasons as those set out in paragraphs 168 and 169 above.

— The minutes of the WWTE board meeting of 20 January 2000

214 The third factor relied on by the Commission in the contested decision is the fact, mentioned in footnote 314 thereof, that it is apparent from the minutes of the WWTE board meeting of 20 January 2000 that the business plan for the tax year 2001 was approved 'subject to the amendments suggested by the parent company', namely, according to information provided by the applicants themselves, SCTC.

215 That factor confirms that SCTC in fact exercised decisive influence over WWTE's conduct.

216 It should be noted that the minutes referred to in paragraph 214 above contain other indications that WWTE's commercial policy was being supervised by some of its parent companies. Thus, it is stated therein that 'Mr [V.] [had] confirmed that he would take care of sending the Crop Plan to Wilson [namely, the location of the headquarters of SCC and SCTC] and trust[ed] that it [would] be approved in March'.

— Conclusion in relation to the period from 5 May 1998 until the date of adoption of the contested decision

217 It is apparent from all the factors mentioned in paragraphs 204 to 216 above, taken together with SCC's and SCTC's ownership during the relevant period of, initially, virtually all the capital of WWTE and, subsequently, all the capital of WWTE that the Commission established to the requisite legal standard that, during that period, SCC and SCTC in fact exercised decisive influence over WWTE's conduct.

218 On the other hand, it must be stated that, as the applicants rightly point out, none of the material relied on by the Commission in the contested decision supports the conclusion that TCLT in fact exercised such influence during the period from 5 May 1998 until the date of adoption of the contested decision. In this respect, the Commission cannot rely on the mere fact that TCLT held all the capital of WWTE, since TCLT would then be discriminated against by comparison with Intabex (see paragraph 143 above) and by comparison with Universal and Universal Leaf (see paragraph 142 above).

219 It follows that the Commission was not justified in attributing WWTE's unlawful conduct to TCLT in respect of the period referred to in paragraph 218 above or, therefore, in holding it jointly and severally liable for payment of the fine in respect of that period.

The arguments adduced by the applicants to show that WWTE acted independently on the market during the period covered by the infringement

220 The applicants claim that the elements set out in paragraphs 75 to 79 above show that, during the period covered by the infringement, WWTE was 'largely' autonomous vis-à-vis SCTC and enjoyed 'virtually full' autonomy vis-à-vis SCC and TCLT.

221 Since it has been held that TCLT could not be held liable for WWTE's unlawful conduct (see paragraphs 195 to 197, 218 and 219 above), it is no longer necessary to examine this question in so far as it relates to TCLT.

222 In the first place, it should be pointed out that the fact that a subsidiary has a dedicated local management and its own resources does not prove, in itself, that that company decides upon its conduct on the market independently of its parent companies. Thus, in the present case, although, admittedly, WWTE was in such a situation, the fact remains that it was required to obtain SCTC's opinion or prior approval on a whole series of issues and items of expenditure (see paragraphs 183 to 187 above). Moreover, its chairman could not initiate the contracting process for the purchase of raw tobacco before SCTC had approved the relevant budget (see paragraphs 210 and 211 above). Furthermore, SCC and SCTC had an active role in its raw tobacco buying strategy (see paragraphs 204 to 207 above).

223 In the second place, as regards the claim that purchases of raw tobacco were exclusively the responsibility of WWTE, it should be pointed out that, as the applicants themselves recognise and as has already been stated in paragraphs 210 and 211 above, SCTC was required to approve the budget for purchasing raw tobacco before the contracting process was initiated. It is clear, therefore, that WWTE was not independent in terms of purchasing raw tobacco. In any event, a subsidiary's independence cannot

be assessed solely by reference to the product market on which the infringement was committed.

224 In the third place, for the same reasons as those stated in paragraphs 222 and 223 above, the applicants cannot usefully rely on the fact that the Standard group has a decentralised structure. The applicants' claim that WWTE's activities are highly insignificant within the Standard group's overall activities does not in itself prove that SCC and SCTC allowed WWTE to decide independently upon its conduct on the market.

225 It follows from the foregoing that the elements put forward by the applicants do not establish that WWTE acted independently on the market during the period covered by the infringement.

Conclusion

226 It follows from all the foregoing that the Commission was fully entitled to attribute liability for WWTE's infringement to SCC and SCTC and, accordingly, to hold them jointly and severally liable for payment of the fine and include them among the addressees of the contested decision.

227 However, the Commission was not justified in reaching the same conclusion in respect of TCLT in relation to any of the period covered by the infringement.

228 Accordingly, the contested decision must be annulled in so far as it relates to TCLT.

229 That partial annulment has no effect on the amount of the fine for which SCC and SCTC remain jointly and severally liable. In particular, contrary to the assertions made by the applicants in the reply, such annulment has no effect on the multiplier of 1.5 applied by the Commission to the starting amount of the fine determined for WWTE in order to ensure that the fine has sufficient deterrent effect (recital 423 of the contested decision), since that multiplier was set in the light of the total turnover of SCC, which is the head of the economic unit to which WWTE belongs. Nor, contrary again to the assertions made by the applicants in the reply, does that partial annulment have any effect on the increase of 50 % which was applied, in respect of the duration of the infringement, to the starting amount of the fine imposed on WWTE (recitals 432 and 433 of the contested decision). The fact that TCLT cannot be held liable for the infringement has no effect on the duration of the infringement.

Costs

230 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. Under the first subparagraph of Article 87(3) of those rules, the Court may, where each party succeeds on some and fails on other heads, order costs to be shared.

231 In the present case, as the action has been partly successful, the Court will make an equitable assessment of the case in holding that the applicants are to bear two-thirds of their own costs and to pay two-thirds of the costs incurred by the Commission, and that the Commission is to bear one-third of its own costs and to pay one-third of those incurred by the applicants.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. **Annuls Commission Decision C (2004) 4030 final of 20 October 2004 relating to a proceeding under Article 81(1) [EC] (Case COMP/C.38.238/B.2 — Raw tobacco — Spain) in so far as it relates to Trans-Continental Leaf Tobacco Corp. Ltd.;**

2. **Dismisses the action as to the remainder;**

3. **Orders Alliance One International, Inc., Standard Commercial Tobacco Co., Inc. and Trans-Continental Leaf Tobacco to bear two-thirds of their own costs and to pay two-thirds of the costs incurred by the European Commission, and the European Commission to bear one-third of its own costs and to pay one-third of those incurred by the applicants.**

Czúcz Labucka O'Higgins

Delivered in open court in Luxembourg on 27 October 2010.

[Signatures]

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