Reports of Cases

JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

15 July 2015*

(Competition — Agreements, decisions and concerted practices — European market for prestressing steel — Quota fixing and price fixing, market sharing and the exchange of commercially sensitive information — Decision finding an infringement of Article 101 TFEU — Maximum amount of 10% of turnover — Relevant turnover — Cooperation during the administrative procedure — 2006 Guidelines on the method of setting fines)

In Case T-391/10,

Nedri Spanstaal BV, established in Venlo (Netherlands), represented initially by M. Slotboom and B. Haan, and subsequently by M. Slotboom, lawyers,

applicant,

v

European Commission, represented by P. Van Nuffel, S. Noë and V. Bottka, acting as Agents,

defendant,

APPLICATION for annulment of Commission Decision C(2010) 4387 final of 30 June 2010 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case COMP/38344 — Prestressing Steel), as amended by Commission Decision C(2010) 6676 final of 30 September 2010 and Commission Decision C(2011) 2269 final of 4 April 2011,

THE GENERAL COURT (Sixth Chamber),

composed of S. Frimodt Nielsen (Rapporteur), President, F. Dehousse and A.M. Collins, Judges,

Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 27 June 2014,

gives the following

* Language of the case: Dutch.

Judgment

Subject-matter of the dispute

1 The present action has been brought against Commission Decision C(2010) 4387 final of 30 June 2010 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case COMP/38344 — Prestressing Steel), imposing penalties on a cartel between suppliers of prestressing steel ('PS') who took part in quota-fixing, customer-sharing, price-fixing and the exchange of commercially sensitive information relating to price, volume and customers at European, regional and national levels.

2 The initial decision was addressed by the European Commission to:

— ArcelorMittal SA,

— ArcelorMittal Wire France SA,

— ArcelorMittal Fontaine SA,

— ArcelorMittal Verderio Srl,

— Emesa-Trefilería, SA ('Emesa'),

— Industrias Galycas SA ('Galycas'),

— ArcelorMittal España, SA,

— Trenzas y Cables de Acero PSC, SL ('Tycsa'),

— Trefilerías Quijano SA ('TQ'),

— Moreda-Riviere Trefilerías, SA ('MRT'),

— Global Steel Wire, SA ('GSW'),

— Socitrel — Sociedade Industrial de Trefilaria, SA ('Socitrel'),

— Companhia Previdente — Sociedade de Controle de Participações Financeiras, SA ('Companhia Previdente'),

— voestalpine Austria Draht GmbH ('Austria Draht'),

— voestalpine AG,

— Fapricela Indústria de Trefilaria, SA ('Fapricela'),

— Proderac — Productos Derivados del Acero, SA ('Proderac'),

— Westfälische Drahtindustrie GmbH ('WDI'),

— Westfälische Drahtindustrie Verwaltungsgesellschaft GmbH & Co. KG ('WDV'),

— Pampus Industriebeteiligungen GmbH & Co. KG ('Pampus'),

— Nedri Spanstaal BV (‘Nedri’), the applicant,

— Hit Groep BV,

— DWK Drahtwerk Köln GmbH, Saarstahl AG (together ‘DWK’),

— Ovako Hjulsbro AB,

— Ovako Dalwire Oy AB,

— Ovako Bright Bar AB,

— Rautaruukki Oyj,

— Italcables SpA (‘ITC’),

— Antonini SpA,

— Redaelli Tecna SpA (‘Redaelli’),

— CB Trafilati Acciai SpA (‘CB’),

— ITAS — Industria Trafileria Applicazioni Speciali SpA (‘Itas’),

— Siderurgica Latina Martin SpA (‘SLM’),

— ORI Martin SA,

— Emme Holding SpA, formerly and then again called Trafileria Meridionali SpA (‘Trame’)

3 The initial decision was twice amended by the Commission.

4 First, on 30 September 2010 the Commission adopted Decision C(2010) 6676 final amending the initial decision (‘the first amending decision’). In essence, the first amending decision had the effect of reducing the amount of the fines imposed on the following companies: ArcelorMittal Verderio, ArcelorMittal Fontaine and ArcelorMittal Wire France, ArcelorMittal España, WDI and WDV.

5 The first amending decision was addressed to all the addressees of the initial decision.

6 Second, on 4 April 2011 the Commission adopted Decision C(2011) 2269 final amending the initial decision (‘the second amending decision). In essence, the second amending decision had, in particular, the effect of reducing the amount of the fines imposed on the following companies: first, ArcelorMittal, ArcelorMittal Verderio, ArcelorMittal Fontaine and ArcelorMittal Wire France; and, second, SLM and Ori Martin. Only those companies were addressees of the second amending decision.

7 Where appropriate, on the Court’s initiative, all the companies which had brought an action against the initial decision were notified of the second amending decision.

8 Nedri was questioned by the Court as to the consequences that might be drawn from those amendments of the initial decision for the content of its initial argument and had the opportunity to amend its pleas in law and the form of order sought in order to take account of those possible consequences.

9 Thus, the initial decision, as amended by the first and second amending decisions, constitutes, for the purposes of the present action, 'the contested decision'.

10 Twenty eight actions were brought against the initial decision, the first amending decision, the second amending decision or letters sent by the Commission following requests from certain addressees of the initial decision seeking a reappraisal of their ability to pay (Cases T-385/10 *ArcelorMittal Wire France and Others* v *Commission*; T-388/10 *Productos Derivados del Acero* v *Commission*; T-389/10 *SLM* v *Commission*; T-391/10 *Nedri Spanstaal* v *Commission*; T-393/10 *Westfälische Drahtindustrie and Others* v *Commission*; T-398/10 *Fapricela* v *Commission*; T-399/10 *ArcelorMittal España* v *Commission*; T-406/10 *Emesa-Trefilería and Industrias Galycas* v *Commission*; T-413/10 *Socitrel* v *Commission*; T-414/10 *Companhia Previdente* v *Commission*; T-418/10 *voestalpine and voestalpine Wire Rod Austria* v *Commission*; T-419/10 *Ori Martin* v *Commission*; T-422/10 *Trafilerie Meridionali* v *Commission*; T-423/10 *Redaelli Tecna* v *Commission*; T-426/10 *Moreda-Riviere Trefilerías* v *Commission*; T-427/10 *Trefilerías Quijano* v *Commission*; T-428/10 *Trenzas y Cables de Acero* v *Commission*; T-429/10 *Global Steel Wire* v *Commission*; T-436/10 *Hit Groep* v *Commission*; T-575/10 *Moreda-Riviere Trefilerías* v *Commission*; T-576/10 *Trefilerías Quijano* v *Commission*; T-577/10 *Trenzas y Cables de Acero* v *Commission*; T-578/10 *Global Steel Wire* v *Commission*; T-438/12 *Global Steel Wire* v *Commission*; T-439/12 *Trefilerías Quijano* v *Commission*; T-440/12 *Moreda-Riviere Trefilerías* v *Commission*; T-441/12 *Trenzas y Cables de Acero* v *Commission*; and T-409/13 *Companhia Previdente and Socitrel* v *Commission*).

Background to the dispute

The sector to which the proceedings relate

Product

11 The cartel in respect of which the Commission imposed sanctions concerned PS. That expression refers to metal wires and strands made of wire rod and, in particular, (a) steel used for prestressed concrete, which is used in making balconies, foundation piles and pipes, and (b) steel used for post-tensioned concrete, which is used in structural engineering, underground engineering and bridge-building (contested decision, recital 2).

12 The PS product range includes several types of single wires (for example smooth, bright or galvanised wires, indented wires and ribbed wires) and several types of strands (for example, bright, indented, polythene-coated or metallic coated). PS strands are composed of three or seven wires. PS is sold in several diameters. However, special strands, that is to say, galvanised or sheathed — greased or waxed –, and stays, that is to say, galvanised, coated strand and galvanised wire used in bridge-building, were not taken into consideration by the Commission (contested decision, recitals 3 and 4).

13 It is also stated in the contested decision that in many countries technical approval by national authorities is mandatory. The certification procedures take around six months (contested decision, recital 5).

The supply structure

14 Taken together, and according to the contested decision, the members of the cartel controlled around 80% of sales within the European Economic Area (EEA). In most countries several of the large producers were present along with some local producers. Most of those larger producers were part of metallurgical groups which also produced wire rod, a raw material of PS and its most important cost element. Whereas non-integrated companies were obliged to purchase their own raw materials on the

market, integrated undertakings generally relied on supplies within their group. Throughout the period of the cartel found in the contested decision, the industry reported substantial and lasting overcapacities of PS (contested decision, recitals 98 and 99).

15 In 2001, the value of PS sales in the EEA came to approximately EUR 365 million, for a total volume of around 600 000 tonnes for that year. Those sales were, for 20% to 25%, of PS wire and, for 75% to 80%, of PS strand, those averages being slightly different from country to country. Italy was the country with the highest consumption of PS (around 28% of PS sales within the EEA). Other large consuming countries were Spain (16%) and the Netherlands, France, Germany and Portugal (8% to 10% each) (contested decision, recital 100).

The demand structure

16 According to the contested decision, the demand structure for PS was very heterogeneous. Producers of prefabricated building materials and specialised engineering companies use PS, for example in constructions designed to stabilise buildings or bridges. The clientele consisted of a very small number of large customers — for example, Addtek International Oy AB ('Addtek'), which has since become Consolis Oy AB, which represented 5% to 10% of PS consumption within the European Union — and a large number of smaller customers.

17 Commercial habits varied from one Member State to another. PS producers and their customers often concluded six- or 12-month framework contracts. Thereafter, depending on demand, customers ordered tonnages within the volume agreed at the agreed price. Contracts were regularly extended following further negotiations (contested decision, recital 103).

Trade within the European Union and the EEA

18 As reported in the contested decision, sales volumes of PS during the period affected by the cartel show that trade between EU Member States was intensive. PS was produced and marketed throughout the EEA, including Norway (contested decision, recital 104).

Nedri and its parent company Hit Groep

19 Nedri is a producer of PS.

20 Nedri was controlled directly or indirectly by Hoogovens Groep BV from 1969 until 1994. Between 1 May 1987 and 28 February 1994 that control was exercised via Hoogovens Industriële Toeleveringsbedrijf BV, which held 100% of Nedri's shares.

21 On 28 February 1994, Hoogovens Groep sold Hoogovens Industriële Toeleveringsbedrijf BV, including its wholly-owned subsidiary Nedri, to three undertakings. Hoogovens Industriële Toeleveringsbedrijf's name was then changed to Hit Groep BV, which continued to own 100% of Nedri's shares.

22 Between 1 May 1994 and 31 December 1997, Nedri was a wholly-owned subsidiary of Nedri Draht Beteiligungs GmbH, which was itself owned as to 70% by Hit Groep and as to 30% by Thyssen Draht AG.

23 Between 1 January 1998 and 17 January 2002, Hit Groep again held 100% of Nedri's shares.

24 On 17 January 2002, Nedri was sold to Vadeho III BV.

25 Less than one month later, on 15 February 2002, Vadeho III sold 95% of its holding in Nedri's capital to private investors and the remaining 5% to members of Nedri's management. By an agreement of 6 May 2003, Nedri took over the PS business of WDI. Since 14 May 2003, WDI has held a 30% share of Nedri's capital and since 20 November 2006 Ovako Holdings BV, which is itself wholly owned by Pampus Stahlbeteiligungs GmbH, has held 70% of Nedri's capital.

26 Nedri's turnover for PS in 2001 within the EEA came to EUR 31 641 636. Its worldwide consolidated turnover in 2009 was EUR 67 420 000.

Administrative procedure

27 On 9 January 2002, the Bundeskartellamt (the German competition authority) sent the Commission documents relating to a case before the German local labour court concerning the dismissal of a former WDI employee. That employee asserted that he had been involved in an infringement of Article 101 TFEU concerning PS. In that context, he provided an account of the undertakings involved and first information about the infringement (contested decision, recital 105).

First leniency application and immunity granted to DWK

28 On 18 June 2002, DWK submitted a statement to the Commission relating to an infringement of Article 101 TFEU concerning PS, which involved DWK and other undertakings. In that context, DWK made clear that it expected to benefit from the Commission Notice of 19 February 2002 on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3; 'the Leniency Notice') (contested decision, recital 106).

29 On 3 July 2002, representatives of DWK met the Commission and the leniency programme was discussed. On 19 July 2002, the Commission granted DWK conditional immunity under point 8(b) of the Leniency Notice, since it was the first to submit evidence which would enable the Commission to find an infringement of Article 101 TFEU in connection with an alleged EU-wide cartel of PS producers (contested decision, recital 107).

Inspections and requests for information

30 On 19 and 20 September 2002, the Commission conducted inspections at the premises of, among others, WDI, DWK, Tycsa, Nedri, ITC, Redaelli, Itas, SLM and Edilsider (the company belonging to a sales agent of Tréfileurope Italia Srl, which subsequently became ArcelorMittal Verderio), together with their respective subsidiaries, in accordance with Article 14(2) or (3) of Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles [101 TFEU] and [102 TFEU] (OJ, English Special Edition 1959-1962, p. 87) (contested decision, recital 108).

31 Beginning on 19 September 2002, the Commission sent a number of requests for information, pursuant to Article 11 of Regulation No 17 and Article 18 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003 L 1, p. 1), to the undertakings to which the initial decision had been addressed, their parent companies, other undertakings, certain individuals (a retired employee of Redaelli, and subsequently its commercial adviser, and a sales agent of Tréfileurope via Edilsider) and certain trade associations (contested decision, recital 109).

32 On 7 and 8 June 2006, the Commission conducted an inspection pursuant to Article 20 of Regulation No 1/2003 at the premises ('studio') of a family member of a former employee of Redaelli (contested decision, recital 114).

Other leniency applications and the Commission's replies

33 Some of the addressees of the contested decision, such as ITC, Nedri, SLM, Redaelli and WDI, submitted official leniency applications pursuant to the Leniency Notice. Tycsa confirmed the existence of the anti-competitive arrangements, but did not apply for leniency (contested decision, recital 110).

34 ITC applied for leniency on 21 September 2002, submitting contemporaneous evidence concerning the meetings held between PS producers between 1979 and 2002. On 11 November 2002 it also submitted a corporate statement. On 10 January 2003 the Commission granted ITC a provisional reduction of fines in the order of 30% to 50%, on condition that it continued to satisfy the conditions laid down in paragraph 21 of the Leniency Notice (contested decision, recital 111).

35 On 17 October 2002, Tycsa replied to a request for information, acknowledging the facts and providing self-incriminating evidence. On 21 October 2002, in reply to a request for information, Redaelli submitted self-incriminating evidence and on 20 March 2003 it submitted a formal application to benefit from the Leniency Notice. On 23 October 2002, in reply to a request for information, Nedri submitted evidence, at the same time requesting to benefit from the Leniency Notice. On 30 October 2002, while replying to a request for information, SLM applied for a reduction of fines. On 4 November 2002, and subsequently on 6 March 2003 and 11 June 2003, Tréfileurope submitted self-incriminating information in reply to a request for information and also a corporate statement seeking to benefit from the Leniency Notice. On 17 March 2004, Galycas, replied to a request for information, acknowledging the facts and making certain incriminating statements. On 17 March 2004, WDI submitted a corporate statement seeking to benefit from the Leniency Notice. On 28 June 2007, in the course of other contacts with the Commission, ArcelorMittal submitted an application for leniency, containing mainly the contemporaneous handwritten notes of a former employee of Emesa, covering the period 1992 to 2002 (contested decision, recital 112).

36 Following the leniency applications, the Commission sent Nedri and WDI letters dated 19 September 2008, in which it informed them that immunity from fines was not available and that, pursuant to point 26 of the Leniency Notice, it intended to apply a reduction of fines within the limits prescribed at point 23(b) of that notice. On the same day, the Commission also sent letters to Redaelli and SLM, rejecting their leniency applications (contested decision, recital 113).

Initiation of the procedure and statement of objections

37 On 30 September 2008, the Commission adopted a statement of objections, which was directed at a number of companies, including Nedri.

38 All the addressees of the statement of objections submitted written observations in reply to the objections raised by the Commission.

Access to the file and hearing

39 The addressees of the statement of objections were able to have access to the Commission's file, in the form of a copy on DVD. At the same time, the companies also received a list of the documents in the investigation file, indicating the extent to which each document was accessible. They were informed that the DVD gave them access to all the documents which the Commission had been able to obtain during the investigation, apart from documents or parts of documents containing business secrets and other confidential information. Access to the documents related to leniency was granted at the Commission's premises.

40 Hit Groep obtained access to the part of Nedri's reply to the statement of objections concerning the liability of the parent company and on 19 December 2008 Nedri obtained access to the part of Hit Groep's reply to the statement of objections concerning the liability of the parent company.

41 A hearing took place on 11 and 12 February 2009. Apart from Hit Groep, Emesa and Galycas, all the addressees of the statement of objections took part.

42 Fourteen undertakings also claimed that they were unable to pay, within the meaning of point 35 of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2; 'the 2006 Guidelines'). They submitted evidence in support of their claims.

Requests for further information

43 The Commission subsequently sent requests for information to GSW, MRT, Tycsa, TQ, Companhia Previdente and Socitrel, in order to clarify certain points concerning, in particular, their business structure. Those companies replied between 6 March and 15 April 2009.

44 The Commission also sent requests for information to all the addressees of the initial decision, in order to establish the value of sales of the relevant products and also the group turnover. All the addressees replied to those requests.

Contested decision

45 The contested decision relates to a cartel of prestressing steel suppliers that participated in quota fixing, customer sharing, price fixing and exchanging of sensitive commercial information relating to price, volume and customers at European, regional and national level. According to recital 1 to the contested decision, those undertakings thereby committed a single continuous infringement of Article 101(1) TFEU and, from 1 January 1994, of Article 53(1) of the EEA Agreement. The illegal conduct lasted from at least the beginning of 1984 until 19 September 2002.

46 The investigation involved 18 undertakings. At recitals 122 to 133 to the contested decision, the cartel arrangements forming the subject-matter of the procedure are described in general terms. Those recitals are summarised below, in so far as the facts there described allow a better understanding of the background to the dispute.

47 At least from the early 1980s (1984) until the time of the inspections conducted by the Commission on 19 and 20 September 2002, several companies active in the PS sector were, partly or constantly, involved in a pan-European arrangement, consisting of a 'Zurich' and a 'European' phase, and/or, as the case might be, in national/regional arrangements. The pan-European and the national/regional arrangements had the same overall aim of maintaining equilibrium in order to avoid falling prices in an evolving European market, characterised by excess production capacities. The undertakings constantly attempted, therefore, to avoid fierce competition in the home market and/or in export markets, by agreeing on quotas, prices and/or customer allocation.

Zurich Club and regional agreements

48 The first phase of the pan-European arrangement is referred to as 'the Zurich Club'. Thus, from 1 January 1984 until 9 January 1996, following strong pressure on price at that time, Tréfileurope, Nedri, WDI, DWK (or their predecessors) and Redaelli, the latter representing several other Italian undertakings (at least in 1993 and 1995), fixed quotas per country (Germany, Spain, France, Italy, Austria and Benelux), shared customers, fixed prices and exchanged sensitive commercial information.

They were joined by the Spanish producers Emesa, in 1992, and Tycsa, in 1993 — which, around the same time, also began to hold meetings, concerning the Spanish market, initially with other Spanish producers, then also with Portuguese producers, in 'Club España'. During the 1980s the meetings of the Zurich Club were essentially held in Zurich (Switzerland) and in the 1990s they were held in Düsseldorf (Germany).

49 At the latest from 23 January 1995 onwards and throughout 1995, the Italian companies Redaelli, ITC, CB and Itas (the latter three often represented by Redaelli) negotiated a (revised) quota arrangement with the other Zurich Club producers, which was to cover the sales of the Italian producers and the other Zurich Club producers in Italy and in the rest of Europe. In the end no agreement could be reached because the export quotas claimed by the Italian producers were considered too high. That contributed to the break-up of the Zurich Club, the last recorded meeting of which took place on 9 January 1996.

50 On 5 December 1995 the Italian companies Redaelli, ITC, CB and Itas none the less concluded among themselves an agreement fixing quotas both within the Italian market and concerning exports from Italy to the rest of Europe ('Club Italia'). Subsequently, those Italian undertakings were (again) joined by Tréfileurope and Tréfileurope Italia, SLM, Trame, Tycsa, DWK and Austria Draht. They regularly met in order to monitor the implementation of the quota arrangement, to fix prices (including a surcharge, the so-called 'extras'), to share/allocate customers and to exchange commercially sensitive information, and continued to do so until the Commission's inspection. Those undertakings operated a sophisticated monitoring system through independent third parties, who regularly checked prices and actual volume sold to customers in Italy.

51 There was specific coordination between the Zurich Club and Club Italia. Redaelli, and subsequently Tréfileurope, kept the members of the pan-European arrangement informed. Participants in Club Italia were also informed of relevant developments in the pan-European arrangement through Redaelli and then through Tréfileurope, DWK and Tycsa, which participated in both clubs.

52 At the same time, throughout 1996, the Italian companies (at least Redaelli, CB, ITC and Itas), Tycsa and Tréfileurope negotiated and reached a specific agreement at the end of 1996, 'the Southern Agreement', fixing the penetration rate of each of the participants in the Southern countries (Belgium, Spain, France, Italy and Luxembourg) and laying down an undertaking to negotiate quotas jointly with the other Northern European producers.

Club Europe and regional agreements

53 In order to overcome the Zurich Club crisis, its former participants (with, however, less regular participation by the Italian producers, in particular Redaelli) also continued to meet regularly between January 1996 and May 1997. Tréfileurope, Nedri, WDI, DWK, Tycsa and Emesa ('the permanent members') eventually adopted in May 1997 a revised pan-European arrangement, whereby they shared quotas calculated on the basis of a specific reference region and a specific reference period (from the fourth quarter of 1995 to the first quarter of 1997). That second phase of the pan-European arrangement is referred to as 'Club Europe'.

54 Furthermore, the permanent members allocated customers and fixed the prices of the products (both country and customer specific). They agreed on coordination rules, including the appointment of coordinators responsible for the implementation of the arrangements in the individual countries and for coordination with other interested companies active in the same countries or in respect of the same customers. Moreover, their representatives regularly met at different levels (directors and sales representatives) to monitor the implementation of the arrangements. They exchanged commercially sensitive information. In the event of discrepancy with the agreed trade behaviour, an appropriate compensation scheme was applied.

55 Within this pan-European arrangement, the permanent members, occasionally joined by the Italian producers and Fundia Hjulsbro AB ('Fundia'), also had bilateral (or multilateral) contacts and participated in price-fixing and customer-allocation on an ad hoc basis, if it was in their interest to do so (depending on their presence on the market under discussion).

56 During the period from at least September 2000 until the Commission's inspections in September 2002, the permanent members, and also ITC, CB, Redaelli, Itas and SLM, met regularly with the aim of integrating the Italian companies into Club Europe, as permanent members.

57 During the same period, in addition to the general territorial quota-fixing, the distribution of quotas by customer was discussed. The undertaking that traditionally co-ordinated a certain national market was also to manage the negotiations for detailed quota-allocation by customer in that country.

58 The members of Club Europe also attempted to integrate as permanent members not only the Italian producers but also all other significant PS producers with whom they previously had bilateral/multilateral arrangements or contacts, and to reallocate the European quotas by country, as had been done in the Zurich Club.

59 In parallel with the pan-European arrangement and with Club Italia, five Spanish undertakings (TQ, Tycsa, Emesa, Galycas and Proderac (the latter as from May 1994)) and two Portuguese companies (Socitrel (as from April 1994) and Fapricela (as from December 1998)) agreed, for Spain and Portugal, to keep their market shares stable and to fix quotas, to allocate customers, including for public works contracts, and to fix prices and payment conditions. In addition, they exchanged commercially sensitive information (Club España).

60 The pan-European and regional (Club Italia/Club España/Southern Agreement) arrangements remained in force until the inspections conducted by the Commission in September 2002.

61 As regards, more particularly, Nedri, the Commission found that it had directly participated in the cartel from 1 January 1984 until 19 September 2002 (recital 802 to the contested decision).

62 The Commission then stated that Hit Groep directly and indirectly owned all of Nedri's capital from 1 May 1987 until 1 May 1994 and from 31 December 1997 until 17 January 2002. As for the intermediate period, during which Nedri was owned by Nedri Draht Beteiligungs, itself owned as to 70% by Hit Groep as to 30% by Thyssen Draht, the Commission stated that it did not have sufficient evidence that Hit Groep did exert or could have exerted decisive influence over Nedri. It therefore did not hold Hit Groep liable for Nedri's unlawful behaviour during the period from 1 May 1994 until 31 December 1997 (recital 804 to the contested decision).

63 At recitals 805 to 812 to the contested decision, the Commission presumed that Hit Groep, which held 100% of Nedri's shares between 1 January 1998 and 17 January 2002, exercised decisive influence over Nedri, and rejected the arguments whereby Hit Groep sought to rebut that presumption.

64 In Article 1(9) of the contested decision, the Commission considered that Nedri and Hit Group infringed Article 101 TFEU by participating, from 1 January 1984 until 19 September 2002 in Nedri's case, and from 1 January 1998 until 17 January 2002 in Hit Groep's case, in a series of agreements and concerted practices in the PS sector.

65 In Article 2(9) of the contested decision, the Commission imposed a fine of EUR 5 056 500, jointly and severally, on Nedri and HIT Group, and a fine of EUR 1 877 500 on Hit Group.

Procedure and form of order sought

66 By application lodged at the Court Registry on 13 September 2010, Nedri brought the present action.

67 By decision of 6 June 2011, the Court asked the Commission to provide it with the second amending decision. The Commission complied with that request on 16 June 2011.

68 Nedri stated by letter of 26 July 2011 that it did not wish to adapt its pleas following the adoption of the second amending decision.

69 The written procedure ended on 15 December 2011 when the Commission lodged a corrigendum to the rejoinder.

70 The composition of the Chambers of the Court having been altered as from 23 September 2013, the Judge-Rapporteur was assigned to the Sixth Chamber, to which the present case was therefore assigned on 3 October 2013.

71 The preliminary report referred to in Article 52(2) of the Rules of Procedure of the General Court of 2 May 1991 was communicated to the Sixth Chamber on 8 November 2013.

72 On 17 December 2013, in the context of the measures of organisation of procedure provided for in Article 64 of the Rules of Procedure of 2 May 1991, the Court put a written question to the applicants concerning the possible consequences of the judgment of 18 July 2013 in *Schindler Holding and Others* v *Commission* (C-501/11 P, ECR, EU:C:2013:522), on the first plea in law put forward in support of its action. The applicant complied with that request.

73 By letter of 30 January 2014, Nedri withdrew the first plea submitted in support of its action, alleging infringement of Article 101 TFEU and Article 23(2) of Regulation No 1/2003 and breach of the obligation to state reasons.

74 On 14 May 2014, upon hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure.

75 The parties presented oral argument and answered the written and oral questions put by the Court at the hearing on 27 June 2014.

76 Nedri claims that the Court should:

— annul Article 1(9) of the contested decision, as regards the period for which the Hit Groep is held liable;

— annul Article 2(9) of the contested decision, as regards the amount of the fine imposed on it;

— order the Commission to pay the costs.

77 The Commission contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

Law

78 Nedri puts forward two pleas in law in support of its claim for annulment.

79 First, Nedri claims that the Commission infringed Article 23(2) of Regulation No 1/2003 and breached the 2006 Guidelines, the principles of equity and proportionality and the obligation to state reasons by applying the maximum amount of 10% of turnover during the preceding business year to its turnover in 2009, when it ought to have applied that maximum amount to the applicant's turnover in 2002.

80 Second, Nedri claims that the Commission breached point 23 of the Leniency Notice and the obligation to state reasons by granting it a reduction of only 25% of the amount of the fine instead of a reduction of 30%.

First plea, alleging infringement of Article 23(2) of Regulation No 1/2003 and breach of the 2000 Guidelines, the principles of equity and proportionality and of the obligation to state reasons, in that the Commission applied the maximum amount of 10% to the business year 2009 and not to the business year 2002 when calculating the amount of the fine which it imposed on Nedri

The contested decision

81 It is apparent from recital 1063 et seq. to the contested decision that the Commission considered that, in order to determine the maximum amount of 10% of turnover provided for in Article 23(2) of Regulation No 1/2003, it should take into account the turnover for the business year 2009, which was disputed by Nedri, which maintained that the Commission ought to have made reference to the business year 2002, the last year during which it had taken part in the infringement.

Arguments of the parties

82 Nedri maintains, in essence, that the Commission was wrong to apply the maximum amount of 10% of turnover to the business year 2009 and to reject its request that reference be made in that regard to the business year 2002. It claims that the Commission thereby infringed Article 23(2) of Regulation No 1/2003 and breached the 2006 Guidelines, in particular paragraph 32, and the principles of equity and proportionality.

83 In the applicant's submission, it follows from the judgment of 7 June 2007 in *Britannia Alloys & Chemicals* v *Commission* (C-76/06 P, ECR, EU:C:2007:326, paragraphs 20 and 25), that where substantial changes in the economic situation of the undertaking concerned have taken place between the period in which the infringement was committed and the date of adoption of the decision imposing a fine on the applicant, that the real economic situation during the period in which the infringement was committed should be taken into account.

84 The applicant's turnover in 2009 does not, in its submission, represent a full year of normal economic activity over a period of 12 months and does not reflect its real economic situation during the period in which the infringement was committed.

85 Nedri's turnover was EUR 31 641 636 in 2001 and EUR 69 345 000 in 2009. That development is attributable to the steep increase in the price of raw materials and also to the fact that WDI resumed its activities in the PS sector during that period.

86 It maintains that substantial changes in the undertaking's economic situation therefore occurred between the period in which the infringement was committed and the date of adoption of the final decision and that the Commission should for that reason have referred to the last business year of the infringement period, that is to say, to the 2002 business year.

87 In addition, Nedri submits that, as a single-product undertaking, it is penalised more heavily than large undertakings with a wide range of activities.

88 The Commission disputes those arguments.

Findings of the Court

– Outline of the principles

89 Under Article 23(2)(a) of Regulation No 1/2003, the Commission may, by decision, impose fines on undertakings or associations of undertakings where, either intentionally or negligently, they infringe Article 101 TFEU or Article 102 TFEU. For each undertaking and association of undertakings participating in the infringement, the fine is not to exceed 10% of its total turnover in the preceding business year.

90 The Court of Justice has made clear that the maximum amount relating to turnover laid down in Article 23(2) of Regulation No 1/2003 seeks to prevent fines imposed by the Commission from being disproportionate in relation to the size of the undertaking concerned (judgment in *Britannia Alloys & Chemicals* v *Commission*, EU:C:2007:326, paragraph 24).

91 That amount is therefore an upper limit which is uniformly applicable to all undertakings and arrived at according to the size of each of them, which has a distinct and independent objective by comparison with that of the criteria of gravity and duration of the infringement. The only possible consequence of the upper limit is that the amount of the fine calculated on the basis of those criteria will be reduced to the maximum permitted level. Its application implies that the undertaking concerned will not pay the fine which in principle would be payable if it were assessed on the basis of those criteria (judgment of 28 June 2005 in *Dansk Rørindustri and Others* v *Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, ECR, EU:C:2005:408, paragraphs 281 to 283).

92 In other words, the objective sought by the establishment, in Article 23(2), of an upper limit of 10% of the turnover of each undertaking participating in an infringement is, inter alia, to ensure that the imposition of a fine higher in amount than that ceiling should not exceed the capacity of an undertaking to make payment at the time when it is identified as responsible for the infringement and a financial penalty is imposed on it by the Commission (judgment of 4 September 2014 in *YKK and Others* v *Commission*, C-408/12 P, ECR, EU:C:2014:2153, paragraph 63).

93 As regards the 'preceding business year' within the meaning of Article 23(2) of Regulation No 1/2003, it refers, in principle, to the last complete business year of the undertaking concerned at the date on which the decision was adopted (judgment of 28 April 2010 in *Gütermann and Zwicky* v *Commission*, T-456/05 and T-457/05, ECR, EU:T:2010:168, paragraph 80; see also, to that effect, judgment in *Britannia Alloys & Chemicals* v *Commission*, paragraph 83 above, EU:C:2007:326, paragraph 32).

94 It is clear both from the objectives of the system of which the second subparagraph of Article 23(2) forms part and from the case-law cited at paragraph 92 above that the application of the maximum amount of 10% presupposes, first, that the Commission has at its disposal the turnover figure for the last business year preceding the date of adoption of the decision and, second, that those data represent a full year of normal economic activity over a period of 12 months (judgments of

29 November 2005 in *Britannia Alloys & Chemicals* v *Commission*, T-33/02, ECR, EU:T:2005:428, paragraph 38, and in *Gütermann and Zwicky* v *Commission*, paragraph 93 above, EU:T:2010:168, paragraph 95).

95 While it is clear from the judgment in *Britannia Alloys & Chemicals* v *Commission*, paragraph 83 above (EU:C:2007:326, paragraph 32) that, for the purposes of calculating the upper limit of the fine provided for in Article 23(2) of Regulation No 1/2003, the Commission must, in principle, take into account the turnover achieved by the undertaking concerned in the last complete business year at the date of adoption of the decision imposing the fine, it follows from the context and from the objectives pursued by the legislation of which that provision forms par that, where the turnover for the business year preceding the adoption of the Commission's decision does not represent a full year of normal economic activity over a period of 12 months and thus does not provide any useful indication as to the real economic situation of the undertaking concerned and the appropriate level of fine to impose on it, that turnover cannot be taken into account in fixing the upper limit of the fine. In the latter situation, which will arise only in exceptional circumstances, the Commission is obliged, for the purposes of calculating the upper limit of the fine, to refer to the last full business year corresponding to a full year of normal activity (judgment of 12 December 2012 in *1. garantovaná* v *Commission*, T-392/09, EU:T:2012:674, paragraph 86, upheld on appeal in the judgment of 15 May 2014 in *1. garantovaná* v *Commission*, C-90/13 P, EU:C:2014:326).

96 Thus, for example, if the business year had ended before the adoption of the decision but the annual accounts of the undertaking in question had not been drawn up or had not been disclosed to the Commission, the latter would have the right, indeed the obligation, to use the turnover achieved in an earlier business year in order to apply Article 23(2) of Regulation No 1/2003. Similarly, if, as a result of a reorganisation or a change in accounting practices, an undertaking has, for the preceding business year, produced accounts which relate to a shorter period than 12 months, the Commission is entitled to rely on the turnover achieved in an earlier complete year in order to apply that provision. The same is true if an undertaking has not achieved any turnover during the business year preceding the adoption of the Commission's decision (judgment in *Britannia Alloys & Chemicals* v *Commission*, paragraph 94 above, EU:T:2005:428, paragraph 39, upheld in the judgment in *Britannia Alloys & Chemicals* v *Commission*, paragraph 83 above, EU:C:2007:326, paragraphs 27 and 30).

97 However, it has been held that, with respect to an applicant's argument that its total turnover in a particular year was 'artificially high' owing to an allegedly significant increase in raw material prices, it was sufficient to note that even if that were established, it would not prevent such turnover from being taken into account for the purposes of the calculation of the upper limit of the fine. It may be inferred from the case-law that the turnover of an undertaking can be taken into account for that purpose, even if it differs significantly from turnover achieved in previous years, if it corresponds to a full business year during which economic activities were actually pursued. It should be clarified in that regard that the reference in the case-law to a 'full year of normal economic activity' is intended to ensure that a year in which the undertaking concerned was in the process of winding down its business, although economic activity had not yet entirely come to an end, is precluded from being taken into account, as, more generally, is a year in which the market conduct of the undertaking concerned did not correspond to that of an undertaking carrying on an economic activity on the usual terms. On the other hand, the mere fact that the turnover or the profits generated in a particular year are significantly lower, or higher, than in previous years does not mean that the year in question does not constitute a full year of normal economic activity (judgment of 12 December 2012 in *Almamet* v *Commission*, T-410/09, EU:T:2012:676, paragraph 253).

98 According to settled case-law, moreover, the statement of reasons required under Article 296 TFEU must be appropriate to the measure in question and disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted that measure, in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to carry out its 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 296 TFEU 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 (judgments of 2 April 1998 in *Commission* v *Sytraval and Brink's France*, C-367/95 P, ECR, EU:C:1998:154, paragraph 63; of 30 September 2003 in *Germany* v *Commission*, C-301/96, ECR, EU:C:2003:509, paragraph 87; and of 22 June 2004 in *Portugal* v *Commission*, C-42/01, ECR, EU:C:2004:379, paragraph 66).

99 As for the principle, it should be recalled that, according to the case-law of the Court of Justice, the principle of proportionality requires that acts adopted by EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by the legislation in question; where there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see judgment of 17 October 2013 in *Schaible*, C-101/12, ECR, EU:C:2013:661, paragraph 29 and the case-law cited).

– The substance of the first plea

100 In the present case, Nedri claims, in essence, that between 2002 and 2009 its structure changed and its turnover increased, and that those circumstances preclude the business year 2009 being the year taken into consideration when determining the maximum amount of 10% of turnover, since it does not reflect Nedri's real economic situation during the period in which the infringement was committed (that is to say, from 1987 until 2002).

101 It must be stated that Nedri's turnover for the business year 2009 corresponds to the 'total turnover in the preceding business year' preceding the adoption of the contested decision and that it corresponds to a full business year during which economic activities were actually pursued by the applicant, which, moreover, the applicant does not dispute.

102 In the light of the case-law of this Court referred to at paragraphs 93 and 97 above, the arguments put forward by Nedri concerning the structural changes which it underwent and the increase in its turnover between 2002 and 2009 are therefore irrelevant, as those factors are not exceptional circumstances of such a kind that would have justified the Commission's referring to a turnover for a business year earlier than 2009.

103 In that regard, it should be held that the fact that WDI resumed activities in the PS sector is not, in the light of the case-law referred to at paragraph 96 above, an exceptional circumstance that would have justified the Commission's referring to a different business year from that preceding the adoption of the contested decision.

104 As for the applicant's argument, derived from paragraph 25 of the judgment in *Britannia Alloys & Chemicals* v *Commission*, paragraph 83 above (EU:C:2007:326), that it would have been appropriate to take into consideration a turnover that reflected its real economic situation 'during the period in which the infringement was committed', which would preclude any business year after that period, it must be stated that such an interpretation would entail a systematic departure from the case-law relating to Article 23(2) of Regulation No 1/2003, which provides that it is necessary, save in exceptional circumstances, to refer to the total turnover achieved during the business year preceding the adoption of the contested decision. There is no indication in the judgment in *Britannia Alloys & Chemicals* v *Commission*, paragraph 83 above (EU:C:2007:326) that the Court of Justice intended to depart from that established case-law. It must be stated, on the contrary, that that case-law is clearly confirmed at

paragraphs 30 and 41 of the judgment in *Britannia Alloys & Chemicals* v *Commission*, paragraph 83 above (EU:C:2007:326). Paragraph 25 of the judgment of the Court of Justice must therefore be read in the context of the specific circumstances of that case and not as establishing a generally applicable exception to the second subparagraph of Article 23(2) of Regulation No 1/2003 and the interpretation of that provision in the case-law.

105 In conclusion, the Commission therefore did not err in refereeing to the applicant's turnover for 2009, which was the turnover it was required to take into consideration in accordance with the case-law referred to at paragraphs 93 and 97 above.

106 It follows that the Commission did not infringe Article 23(2) of Regulation No 1/2003.

107 It follows that, in referring to the business year 2009 for the purposes of the calculation of the maximum amount of 10% laid down in Article 23(2) of Regulation No 1/2003, the Commission did not breach the principle of proportionality, since it took into consideration, as it was required to do, the last full year during which the applicant carried out its normal economic activity over a period of 12 months.

108 Last, the Court must reject the complaint alleging failure to state reasons, since recital 1063 et seq. to the contested decision set out in a comprehensible manner the reasons why the Commission referred to the applicant's turnover for 2009.

109 The first plea must therefore be rejected.

Second plea, alleging breach of point 23 of the Leniency Notice and of the obligation to state reasons, in that the Commission ought to have granted the applicant a reduction of 30% and not 25% of the amount of the fine

The contested decision

110 It is apparent from recitals 1082 to 1087 to the contested decision that the Commission considered that, in the light of the cooperation provided by Nedri, a reduction of 25% of the fine could be granted to that undertaking.

Arguments of the parties

111 Nedri maintains that, as it was the second undertaking to meet the requirements of point 21 of the Leniency Notice, it was entitled to receive a reduction of up to 30% of the amount of the fine.

112 First, it points out that it submitted the evidence at its disposal on 23 October 2002, or a little more than one month after the inspections, which took place on 19 and 20 September 2002. The Commission consider that it had thus made a contribution to the procedure at an early stage (recital 1087 to the contested decision). It also completed its leniency application on 29 March 2004.

113 Second, Nedri maintains that the Commission acknowledges that the very considerable amount of detailed information which it supplied — which related to the entire pan-European arrangement and in particular to the Zurich Club, the Nordic market, including Addtek, and Club Europe — represented significant added value (recital 1084 to the contested decision).

114 Nedri contends, however, that owing to the way in which the Commission presented the information supplied by it in the contested decision, the level of detail and the amount of that information do not appear to their full extent.

115 It further maintains that the Commission was wrong to decide, at recital 1085 to the contested decision, that the information provided on customer allocation and quotas on the German market had not significantly contributed to the understanding and/or the establishment of the infringement. In Nedri's submission, it was the first to provide information of value on the discussions within Club Europe of customer allocation and quotas on the German market. It observes that it also supplied evidence of a large number of meetings concerning customer allocation. Thus, the information on the German market obtained by the Commission, referred to in footnotes 354 to 357 to the contested decision, refers to documents originating from Nedri. In Nedri's submission, without the evidence which it supplied, the Commission would only have been able to prove that a few meetings took place, which, according to the applicant, the Commission did not deny at recital 1085 to the contested decision. Nor, in Nedri's submission, did the Commission substantiate its assessment that the information did not have significant added value.

116 Last, Nedri claims that the numerous references in the contested decision to the answers which it gave to the requests for information, to its leniency application, to the additional information supplied during the investigation and to the confirmation which it was able to give of the Commission's assumptions (recitals 1082 and 1087 to the contested decision) show that it provided extensive and continuous cooperation.

117 It is therefore wrong, in Nedri's submission, that the reduction granted to it was only 25% and not 30%.

118 The Commission disputes those arguments.

Findings of the Court

119 According to point 20 et seq. of the Leniency Notice:

'20. Undertakings that do not meet the conditions under [the] section [on immunity from fines] may be eligible to benefit from a reduction of any fine that would otherwise have been imposed.

21. In order to qualify, an undertaking must provide the Commission with evidence of the suspected infringement which represents significant added value with respect to the evidence already in the Commission's possession and must terminate its involvement in the suspected infringement no later than the time at which it submits the evidence.

22. The concept of "added value" refers to the extent to which the evidence provided strengthens, by its very nature and/or its level of detail, the Commission's ability to prove the facts in question. In this assessment, the Commission will generally consider written evidence originating from the period of time to which the facts pertain to have a greater value than evidence subsequently established. Similarly, evidence directly relevant to the facts in question will generally be considered to have a greater value than that with only indirect relevance.

23. The Commission will determine in any final decision adopted at the end of the administrative procedure:

(a) whether the evidence provided by an undertaking represented significant added value with respect to the evidence in the Commission's possession at that same time;

(b) the level of reduction an undertaking will benefit from, relative to the fine which would otherwise have been imposed, as follows. For the:

… Second undertaking to meet point 21: a reduction of 20 [to] 30%, …

> In order to determine the level of reduction within each of these bands, the Commission will take into account the time at which the evidence fulfilling the condition in point 21 was submitted and the extent to which it represents added value. It may also take into account the extent and continuity of any cooperation provided by the undertaking following the date of its submission.
>
> In addition, if an undertaking provides evidence relating to facts previously unknown to the Commission which have a direct bearing on the gravity or duration of the suspected cartel, the Commission will not take these elements into account when setting any fine to be imposed on the undertaking which provided this evidence.'

120 It is thus for the Commission, when it determines the percentage of the reduction to which the second undertaking is entitled, to take account of the date on which the evidence was communicated and the extent to which it provides added value. It may also take into consideration — but is under no obligation to do so — the extent and continuity of any cooperation provided by the undertaking following the date of its submission.

121 In the present case, it should be observed that the Commission took into account the time at which Nedri's submission was made (recitals 1082 and 1087 to the contested decision) and that it assessed the extent of the added value of the evidence produced by Nedri (recitals 1082 and 1085 to the contested decision). It also took into consideration the extent and continuity of any cooperation provided by Nedri following the date of its submission (recital 1087 to the contested decision).

122 The complaint alleging failure to state reasons must therefore be rejected at the outset.

123 Furthermore, it should be borne in mind that point 23 of the Leniency Notice provides that, for the second undertaking to meet the condition set out at point 21 of that notice, the reduction will be between 20% and 30% and that the reduction within that band will depend on the three criteria referred to at paragraph 120 above.

124 The promptness of the cooperation and the extent of the added value provided by the evidence supplied, and the taking into consideration of the extent and continuity of any cooperation provided by the undertaking following the date of its submission, are cumulative criteria, weighted according to the context and the circumstances of each particular case, which may lead to a reduction within a band of 20% to 30% of the amount of the fine.

125 As regards the Commission's application of those different criteria, first, it should be observed that, as concerns the assessment of the time when Nedri submitted it as evidence, its leniency application was submitted one month after the inspections.

126 Nedri's cooperation therefore did indeed occur at an early stage in the administrative procedure — as, moreover, the Commission acknowledges in the contested decision (recital 1087) — but it none the less did not occur immediately after the inspections, unlike ITC's, for example.

127 The Commission is entitled to take such factual circumstances into account when assessing the percentage of the reduction that it may grant a leniency applicant for its cooperation.

128 Second, as regards the added value represented by Nedri's submission, it should be observed first of all that the Commission took into consideration that the fact that the information provided by Nedri related to the entire pan-European arrangement, and in particular to the Zurich Club, to the Nordic market, including Addtek, and to Club Europe, and that it recognised the significant added value of that evidence. That is clear from recitals 1082 to 1084 to the contested decision.

129 Next, as regards the arguments put forward by Nedri with respect to the German market, the Commission considered, in essence, that that evidence had not made a significant contribution to the understanding or the establishment of the infringement and that its added value was therefore not significant.

130 It should be observed that, in order to challenge that assessment, the applicant merely submits that it was the first to supply evidence to the Commission on that subject, that the evidence related to a large number of meetings concerning the allocation of customers and that without that evidence the Commission would only have been able to prove that a few meetings took place.

131 However, Nedri does not show how the Commission's assertion that the allocation of customers on the German market was only one of a number of examples of customer allocation, described in section 9.1.3.6 of the contested decision, and that the evidence provided in that regard therefore in fact had only relative added value.

132 It must be held that the evidence submitted by Nedri which made it possible to establish that certain meetings of Club Europe concerning one of the components of the geographic markets coordinated in the context of that club, namely the German market (Nedri refers in that regard to recitals 220 (and footnote 354) and 223 (and footnote 357) to the contested decision), also represents only relative added value. In addition, the fact that another meeting concerning that market was held was established by the evidence supplied by another member of the cartel (see recital 221 and footnotes 354 and 355 to the contested decision), as the Commission rightly observes.

133 Third, it is apparent from recital 1087 to the contested decision that the Commission did take Nedri's subsequent cooperation into consideration.

134 In conclusion, in the light of the time when Nedri's leniency application was submitted, of the added value represented by the evidence which it submitted to the Commission and of its subsequent cooperation, it must be held that the Commission did not err in setting the rate of the reduction of the amount of the fine to be granted to Nedri at 25%.

135 The second plea must therefore be rejected.

136 Consequently, the action must be dismissed in its entirety.

Costs

137 Under Article 134(1) 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. As the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Nedri Spanstaal BV, in addition to bearing its own costs, to pay the costs incurred by the European Commission.**

Frimodt Nielsen Dehousse Collins

Delivered in open court in Luxembourg on 15 July 2015.

[Signatures]

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