Reports of Cases

JUDGMENT OF THE GENERAL COURT (Third Chamber)

12 December 2014*

(Competition — Agreements, decisions and concerted practices — Market for paraffin waxes — Decision finding an infringement of Article 81 EC — Price fixing — Evidence of the infringement — 2006 Guidelines on the method of setting fines — Equal treatment — Aggravating circumstances — Repeated infringement — Obligation to state reasons — Mitigating circumstances — Substantially limited participation — Infringement committed as a result of negligence — Rights of the defence — Unlimited jurisdiction)

In Case T-558/08,

Eni SpA, established in Rome (Italy), represented by M. Siragusa, D. Durante, G. Rizza, S. Valentino and L. Bellia, lawyers,

applicant,

v

European Commission, represented by F. Castillo de la Torre and V. Di Bucci, acting as Agents,

defendant,

APPLICATION, primarily, for annulment of Commission Decision C(2008) 5476 final of 1 October 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39.181 — Candle Waxes) and, in the alternative, for annulment or a reduction in the amount of the fine imposed on the applicant,

THE GENERAL COURT (Third Chamber),

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

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 19 March 2013,

gives the following

* Language of the case: Italian.

Judgment

Facts giving rise to the dispute

1. *Administrative procedure and adoption of the contested decision*

1 By Decision C(2008) 5476 final of 1 October 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39.181 — Candle Waxes) ('the contested decision'), the Commission of the European Communities found that the applicant, Eni SpA, had, together with other undertakings, infringed Article 81(1) EC and Article 53(1) of the Agreement on the European Economic Area (EEA) by participating in an agreement on the candle wax market in the EEA and on the German market for slack wax.

2 The addressees of the contested decision are, in addition to the applicant, the following companies: Esso Deutschland GmbH, Esso Société anonyme française, ExxonMobil Petroleum and Chemical BVBA and Exxon Mobil Corp. (together 'ExxonMobil'); H&R ChemPharm GmbH, the H&R Wax Company Vertrieb GmbH and Hansen & Rosenthal KG (together 'H&R'); Tudapetrol Mineralölerzeugnisse Nils Hansen KG; MOL Nyrt.; Repsol YPF Lubricantes y Especialidades SA, Repsol Petróleo SA and Repsol YPF SA (together 'Repsol'); Sasol Wax GmbH, Sasol Wax International AG, Sasol Holding in Germany GmbH and Sasol Ltd (together 'Sasol'); Shell Deutschland Oil GmbH, Shell Deutschland Schmierstoff GmbH, Deutsche Shell GmbH, Shell International Petroleum Company Ltd, The Shell Petroleum Company Ltd, Shell Petroleum NV and The Shell Transport and Trading Company Ltd (together 'Shell'); RWE Dea AG and RWE AG (together 'RWE'); and Total SA and Total France SA ('Total') (recital 1 to the contested decision).

3 Paraffin waxes are manufactured in refineries from crude oil. They are used for the production of a variety of products such as candles, chemicals, tyres and automotive products as well as in the rubber, packaging, adhesive and chewing gum industries (recital 4 to the contested decision).

4 Slack wax is the raw material required for the manufacture of paraffin waxes. It is produced in refineries as a by-product in the manufacture of base oils from crude oil. It is also sold to end customers, to producers of particle boards for instance (recital 5 to the contested decision).

5 The Commission began its investigation after Shell Deutschland Schmierstoff informed it, by letter of 17 March 2005, of the existence of a cartel and submitted an application to it for immunity under the Commission notice on the non-imposition or reduction of fines in cartel cases (OJ 2002 C 45, p. 3; 'the 2002 Leniency Notice') (recital 72 to the contested decision).

6 On 28 and 29 April 2005, the Commission, pursuant to Article 20(4) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 [EC] and 82 [EC] (OJ 2003 L 1, p. 1), conducted unannounced inspections at the premises of 'H&R/Tudapetrol', Eni, MOL and also the premises of companies in the Sasol, ExxonMobil, Repsol and Total groups (recital 75 to the contested decision).

7 Between 25 and 29 May 2007, the Commission sent a statement of objections to each of the companies referred to at paragraph 2 above, and therefore to the applicant (recital 85 to the contested decision). By letter of 14 August 2007, Eni replied to the statement of objections.

8 On 10 and 11 December 2007, the Commission held a hearing in which Eni took part (recital 91 to the contested decision).

9 In the contested decision, in the light of the evidence available to it, the Commission considered that the addressees, which constituted the majority of the producers of paraffin waxes and slack wax in the EEA, had participated in a single, complex and continuous infringement of Article 81 EC and Article 53 of the EEA Agreement, covering the EEA territory. That infringement consisted in agreements or concerted practices relating to price fixing and the disclosure of sensitive business information affecting paraffin waxes ('the main aspect of the infringement'). As regards RWE (later Shell), ExxonMobil, MOL, Repsol, Sasol and Total, the infringements relating to paraffin waxes also concerned customer sharing or market sharing ('the second aspect of the infringement'). Furthermore, the infringement committed by RWE, ExxonMobil, Sasol and Total also related to slack wax sold to end customers on the German market ('the slack wax aspect of the infringement') (recitals 2, 95 and 328 to and Article 1 of the contested decision).

10 The unlawful practices took form at anticompetitive meetings called 'technical meetings' or sometimes 'Blauer Salon' meetings by the participants and at 'slack wax meetings' devoted specifically to questions relating to slack wax.

11 The amount of the fines imposed in the present case was calculated on the basis 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'), which were in force when the statement of objections was notified to the companies referred to at paragraph 2 above.

12 The contested decision includes, in particular, the following provisions:

'Article 1

The following undertakings have infringed Article 81(1) [EC] and — from 1 January 1994 — Article 53 of the EEA Agreement by participating, for the periods indicated, in a continuing agreement and/or [continuing] concerted practice in the paraffin waxes sector in the common market and, as of 1 January 1994, within the EEA:

Eni SpA: on [30 and 31] October 1997 and from 21 February 2002 to 28 April 2005;

…

Article 2

For the infringement referred to in Article 1, the following fines are imposed:

Eni SpA: EUR 29 120 000;

Esso Société anonyme française: EUR 83 588 400;

of which jointly and severally with:

ExxonMobil Petroleum and Chemical BVBA and ExxonMobi1 Corporation for EUR 34 670 400, of which jointly and severally with Esso Deutschland GmbH for EUR 27 081 600;

Tudapetrol Mineralölerzeugnisse Nils Hansen KG: EUR 12 000 000;

Hansen & Rosenthal KG jointly and severally with H&R Wax Company Vertrieb GmbH: EUR 24 000 000,

of which jointly and severally with:

H&R ChemPharm GmbH for EUR 22 000 000;

MOL Nyrt.: EUR 23 700 000;

Repsol YPF Lubricantes y Especialidades SA jointly and severally with Repsol Petróleo SA and Repsol YPF SA: EUR 19 800 000;

Sasol Wax GmbH: EUR 318 200 000,

of which jointly and severally with:

Sasol Wax International AG, Sasol Holding in Germany GmbH and Sasol [Ltd] for EUR 250 700 000;

Shell Deutschland Oil GmbH, Shell Deutschland Schmierstoff GmbH, Deutsche Shell GmbH, Shell International Petroleum Company Limited, The Shell Petroleum Company Limited, Shell Petroleum NV and The Shell Transport and Trading Company Limited: EUR 0;

RWE-Dea AG jointly and severally with RWE AG: EUR 37 440 000;

Total France SA jointly and severally with Total SA: EUR 128 163 000.'

2. *The Eni group*

13 As regards the applicant's participation in the infringement, the Commission considered in the contested decision that:

'…

(342)
It has been established in section 4 that throughout the period of its involvement, Eni participated in the infringement via employees of AgipPetroli SpA and Eni SpA …

(343)
AgipPetroli SpA was represented at a meeting on 30 and 31 October 1997 and from 21 and 22 February 2002 until 31 December 2002 (when it was merged into Eni SpA and thus ceased to exist), and Eni SpA participated as from 1 January 2003 (from this date onwards, Eni's refining and marketing division was in charge of the sales of paraffin waxes and slack wax) until 28 April 2005 (end date of the infringement).

(344)
AgipPetroli SpA [was] taken over by Eni SpA on 31 December 2002. Consequently Eni SpA, according to the principles laid down in recital (334), must be considered to have taken over the liability of AgipPetroli SpA's activities prior to 31 December 2002 …

(345)
Thus, Eni SpA should be held liable, not only for its direct participation in the cartel after AgipPetroli SpA was merged into Eni SpA (31 December 2002), but also for the activities undertaken by AgipPetroli SpA in the cartel prior to that date.

(346)
In its reply to the statement of objections, Eni did not challenge the Commission's findings concerning liability.

(347)
For the reasons stated above, Eni SpA is liable for participation in a meeting on 30 and 31 October 1997 and from 21 and 22 February 2002 until 28 April 2005 (end date of the infringement).'

Procedure and forms of order sought

14 By application lodged at the Court Registry on 17 December 2008, the applicant brought the present action.

15 Upon hearing the report of the Judge-Rapporteur, the Court (Third Chamber) decided to open the oral procedure. In the context of the measures of organisation of procedure provided for in Article 64 of its Rules of Procedure, the Court requested the parties to answer a number of questions in writing and to produce certain documents. The parties complied with that request within the prescribed period.

16 The parties presented oral argument and answered the questions put by the Court at the hearing on 19 March 2013.

17 Owing to the factual links with Cases T-540/08 *Esso and Others* v *Commission*, T-541/08 *Sasol and Others* v *Commission*, T-543/08 *RWE and RWE Dea* v *Commission*, T-544/08 *Hansen & Rosenthal and H&R Wax Company Vertrieb* v *Commission*, T-548/08 *Total* v *Commission*, T-550/08 *Tudapetrol* v *Commission*, T-551/08 *H&R ChemPharm* v *Commission*, T-562/08 *Repsol YPF Lubricantes y especialidades and Others* v *Commission* and T-566/08 *Total Raffinage Marketing* v *Commission*, and to the fact that the legal points raised were closely related, the Court decided not to deliver judgment in the present case until after the hearings in those related cases, the last of which was held on 3 July 2013.

18 The applicant claims that the Court should:

— annul the contested decision in whole or in part and draw the inferences for the amount of the fine imposed on it;

— in the alternative, annul or reduce the amount of the fine imposed on it;

— order the Commission to pay the costs.

19 The Commission contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

Law

20 The applicant puts forward six pleas in law in support of its action.

21 The applicant puts forward two initial pleas, in which it disputes having participated in the cartel, alleging infringement of Article 81 EC. The first plea concerns the establishment of its participation owing to its presence at the technical meeting held on 30 and 31 October 1997. The second plea concerns its participation in the infringement between 21 February 2002 and 28 April 2005.

22 The applicant also puts forward four pleas relating to the calculation of the amount of its fine. The third plea alleges infringement of Article 81 EC and Article 23 of Regulation No 1/2003 and breach of the 2006 Guidelines and of the principles of proportionality and equal treatment owing to the incorrect fixing at 17% of the multiplier to reflect the gravity of the infringement and the addition 'entry fee' amount. The fourth plea alleges infringement of Article 81 EC and Article 23 of Regulation No 1/2003 and breach of the 2006 Guidelines and of the principles of legal certainty and equal treatment and also misuse of powers because of the increase in the amount of the fine by 60% to reflect the aggravating circumstance of repeated infringement. The fifth plea alleges infringement of Article 81 EC and Article 23 of Regulation No 1/2003 and breach of the 2006 Guidelines, the principle of equal treatment and the obligation to state reasons in that the Commission did not recognise the existence of the mitigating circumstance relating to the applicant's substantially limited participation in the cartel and its failure to implement the cartel. The sixth plea alleges infringement of Article 81 EC and Article 23 of Regulation No 1/2003 and breach of the 2006 Guidelines owing to failure to recognise the mitigating circumstance relating to negligence.

23 Since the first and second pleas concern the assessment of the evidence demonstrating Eni's participation in the cartel, the Court deems it appropriate to examine them together.

1. *First and second pleas, relating to the applicant's participation in the cartel and alleging infringement of Article 81 EC*

24 By its first plea, the applicant claims that the Commission unlawfully established its participation in an agreement or a concerted practice on the basis of its presence at the technical meeting held on 30 and 31 October 1997 in Hamburg (Germany). By its second plea, the applicant claims that the establishment of its participation in the cartel between 21 February 2002 and 28 April 2005 is unlawful.

The concepts of agreement and concerted practice

25 According to Article 81(1) EC, all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market are incompatible with the common market and prohibited.

26 In order for there to be an agreement within the meaning of Article 81(1) EC it is sufficient that the undertakings in question should have expressed their joint intention to conduct themselves on the market in a specific way (Case T-7/89 *Hercules Chemicals* v *Commission* [1991] ECR II-1711, paragraph 256, and Case T-9/99 *HFB and Others* v *Commission* [2002] ECR II-1487, paragraph 199).

27 An agreement within the meaning of Article 81(1) EC can be regarded as having been concluded where there is a concurrence of wills on the very principle of a restriction of competition, even if the specific features of the restriction envisaged are still under negotiation (Case T-240/07 *Heineken Nederland and Heineken* v *Commission* [2011] ECR II-3355, paragraph 45; see also, to that effect, *HFB and Others* v *Commission*, paragraph 26 above, paragraphs 151 to 157 and 206).

28 The concept of a concerted practice refers to a form of coordination between undertakings which, without being taken to the stage where an agreement properly so-called has been concluded, knowingly substitutes for the risks of competition practical cooperation between them (Case C-49/92 P *Commission* v *Anic Partecipazioni* [1999] ECR I-4125, paragraph 115, and Case C-199/92 P *Hüls* v *Commission* [1999] ECR I-4287, paragraph 158).

29 In that respect, Article 81(1) EC precludes any direct or indirect contact between economic operators of such a kind as either to influence the conduct on the market of an actual or potential competitor or to reveal to such a competitor the conduct which the operator concerned has decided to follow itself or contemplates adopting on the market, where the object or effect of those contacts is to restrict competition (*Heineken Nederland and Heineken* v *Commission*, paragraph 27 above, paragraph 47; see also, to that effect, *Commission* v *Anic Partecipazioni*, paragraph 33 above, paragraphs 116 and 117).

The principles of the assessment of evidence

30 According to the case-law, the Commission must prove the infringements which it has found and adduce evidence capable of demonstrating to the requisite legal standard the existence of the facts constituting an infringement (see Case C-185/95 P *Baustahlgewebe* v *Commission* [1998] ECR I-8417, paragraph 58, and Joined Cases T-44/02 OP, T-54/02 OP, T-56/02 OP, T-60/02 OP and T-61/02 OP *Dresdner Bank and Others* v *Commission* [2006] ECR II-3567, paragraph 59 and the case-law cited).

31 As regards the scope of review by the Court, it is settled case-law that, where the Court is faced with an application for the annulment of a decision applying Article 81(1) EC, it must undertake in a general manner a comprehensive review of the question whether or not the conditions for the application of Article 81(1) EC are met (see Case T-41/96 *Bayer* v *Commission* [2000] ECR II-3383, paragraph 62 and the case-law cited).

32 In this respect, any doubt on the part of the Court must operate to the advantage of the undertaking to which the decision finding an infringement was addressed. The Court cannot therefore conclude that the Commission has established the existence of the infringement at issue to the requisite legal standard if it still entertains doubts on that point, in particular in proceedings for the annulment of a decision imposing a fine (*Dresdner Bank and Others* v *Commission*, paragraph 30 above, paragraph 60, and Case T-112/07 *Hitachi and Others* v *Commission* [2011] ECR II-3871, paragraph 58).

33 In the latter situation, it is necessary to take account of the principle of the presumption of innocence resulting in particular from Article 6(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, which is one of the fundamental rights which are general principles of EU law. Given the nature of the infringements in question and the nature and degree of gravity of the ensuing penalties, the principle of the presumption of innocence applies in particular to the procedures relating to infringements of the competition rules applicable to undertakings that may result in the imposition of fines or periodic penalty payments (*Hitachi and Others* v *Commission*, paragraph 32 above, paragraph 59; see also, to that effect, *Dresdner Bank and Others* v *Commission*, paragraph 30 above, paragraph 61 and the case-law cited).

34 Thus, the Commission must show precise and consistent evidence in order to establish the existence of the infringement. However, it is important to emphasise that it is not necessary for every item of evidence produced by the Commission to satisfy those criteria in relation to every aspect of the infringement. It is sufficient if the set of indicia relied on by the institution, viewed as a whole, meets that requirement (see *Dresdner Bank and Others* v *Commission*, paragraph 30 above, paragraphs 62 and 63 and the case-law cited).

35 The indicia on which the Commission relies in the contested decision in order to prove the existence of an infringement of Article 81(1) EC by an undertaking must not be assessed separately, but as a whole (see Case T-53/03 *BPB* v *Commission* [2008] ECR II-1333, paragraph 185 and the case-law cited).

36 It should also be observed that, in practice, the Commission is often obliged to prove the existence of an infringement under conditions which are hardly conducive to that task, in so far as several years may have elapsed since the time of the events constituting the infringement and a number of the undertakings covered by the investigation have not actively cooperated with it. While it is necessarily incumbent upon the Commission to establish that an unlawful price-fixing agreement was concluded, it would be excessive also to require it to produce evidence of the specific mechanism by which that object was to be attained. Indeed, it would be too easy for an undertaking guilty of an infringement to escape any penalty if it were able to base its argument on the vagueness of the information produced with regard to the operation of an illegal agreement in circumstances in which the existence and anticompetitive purpose of the agreement had none the less been sufficiently established. The undertakings are able to defend themselves properly in such a situation, provided that they are able to comment on all the evidence adduced against them by the Commission (Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00 *JFE Engineering and Others* v *Commission* [2004] ECR II-2501, paragraph 203).

37 As regards the evidence which may be relied on to establish an infringement of Article 81 EC, the prevailing principle of EU law is the unfettered evaluation of evidence (Case T-50/00 *Dalmine* v *Commission* [2004] ECR II-2395, paragraph 72, and *Hitachi and Others* v *Commission*, paragraph 32 above, paragraph 64).

38 As regards the probative value of the various items of evidence, the sole criterion relevant in evaluating the evidence adduced is its reliability (*Dalmine* v *Commission*, paragraph 37 above, paragraph 72).

39 According to the general rules regarding evidence, the reliability and, thus, the probative value of a document depends on its origin, the circumstances in which it was drawn up, the person to whom it is addressed and its content (Joined Cases T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95 *Cimenteries CBR and Others* v *Commission* [2000] ECR II-491, paragraphs 1053 and 1838, and *Hitachi and Others* v *Commission*, paragraph 32 above, paragraph 70).

40 Where the Commission relies solely on the conduct of the undertakings in question on the market as the basis for its finding that there has been an infringement, it is sufficient for those undertakings to prove the existence of circumstances which cast the facts established by the Commission in a different light and thus allow another plausible explanation of those facts to be substituted for the one adopted by the Commission in concluding that the European Union competition rules had been infringed (see, to that effect, *JFE Engineering and Others* v *Commission*, paragraph 36 above, paragraph 186).

41 Where, on the other hand, the Commission has relied on documentary evidence, it is for the undertakings concerned not merely to present a plausible alternative to the Commission's theory but to show that the evidence used in the decision is insufficient to establish the existence of the infringement (*JFE Engineering and Others* v *Commission*, paragraph 36 above, paragraph 187). Such an approach to evaluating the evidence does not constitute a breach of the principle of the presumption of innocence (see, to that effect, Case C-235/92 P *Montecatini* v *Commission* [1999] ECR I-4539, paragraph 181).

42 Since the prohibition on participating in anticompetitive practices and agreements and the penalties which offenders may incur are well known, it is normal for the activities which those practices and those agreements entail to take place in a clandestine fashion, for meetings to be held in secret and for the associated documentation to be reduced to a minimum. The Commission cannot therefore be

required to produce documents explicitly showing contacts between the operators concerned. Even if it discovers such documents, they will normally be only fragmentary and incomplete, so that it is frequently necessary to reconstitute certain details by inference. The existence of an anticompetitive practice or agreement may therefore be inferred from a number of coincidences and indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules (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, paragraphs 55 to 57; see *Dresdner Bank and Others* v *Commission*, paragraph 30 above, paragraphs 64 and 65 and the case-law cited).

43 When assessing the probative value of documentary evidence, it is necessary to attach great importance to the fact that those documents were drawn up in close connection with the facts (Case T-157/94 *Ensidesa* v *Commission* [1999] ECR II-707, paragraph 312, and Joined Cases T-5/00 and T-6/00 *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied and Technische Unie* v *Commission* [2003] ECR II-5761, paragraph 181) or by a direct witness of those facts (*JFE Engineering and Others* v *Commission*, paragraph 36 above, paragraph 207).

44 The fact that a document is undated or unsigned or is badly written does not impugn its probative value, especially where its origin, probable date and content can be determined with sufficient certainty (Joined Cases T-217/03 and T-245/03 *FNCBV* v *Commission* [2006] ECR II-4987, paragraph 124; see also, to that effect, Case T-11/89 *Shell* v *Commission* [1992] ECR II-757, paragraph 86).

45 It follows from the principle of the free evaluation of evidence that even if the absence of documentary evidence may be relevant in the context of the overall assessment of the set of indicia put forward by the Commission, it does not in itself have the consequence that the undertaking concerned is able to call the Commission's allegations into question by presenting an alternative explanation of the events. The applicant may do so only where the evidence submitted by the Commission does not enable the existence of the infringement to be established unequivocally and without the need for interpretation (*Hitachi and Others* v *Commission*, paragraph 32 above, paragraph 65; see also, to that effect, judgment of 12 September 2007 in Case T-36/05 *Coats Holdings and Coats* v *Commission*, not published in the ECR, paragraph 74).

46 In addition, no provision or any general principle of EU law prohibits the Commission from relying, as against an undertaking, on statements made by other undertakings accused of having participated in the cartel. If that were not the case, the burden of proving conduct contrary to Article 81 EC, which is borne by the Commission, would be unsustainable and incompatible with the task of supervising the proper application of those provisions (*JFE Engineering and Others* v *Commission*, paragraph 36 above, paragraph 192, and *Hitachi and Others* v *Commission*, paragraph 32 above, paragraph 67).

47 Particularly high probative value may be attached to statements which, first, are reliable, second, are made on behalf of an undertaking, third, are made by a person under a professional obligation to act in the interests of that undertaking, fourth, go against the interests of the person making the statement, fifth, are made by a direct witness of the circumstances to which they relate and, sixth, were provided in writing deliberately and after mature reflection (*Hitachi and Others* v *Commission*, paragraph 32 above, paragraph 71; see also, to that effect, *JFE Engineering and Others* v *Commission*, paragraph 36 above, paragraphs 205 to 210).

48 However, a statement by one undertaking accused of having participated in a cartel, the accuracy of which is contested by several other undertakings concerned, cannot be regarded as constituting adequate proof of an infringement committed by the latter unless it is supported by other evidence, though the degree of corroboration required may be less in view of the reliability of the statements at issue (*JFE Engineering and Others* v *Commission*, paragraph 36 above, paragraphs 219 and 220, and *Hitachi and Others* v *Commission*, paragraph 32 above, paragraph 68).

49 In addition, even if some caution as to the evidence provided voluntarily by the main participants in an unlawful cartel is generally called for, given the possibility that those participants might tend to play down the importance of their contribution to the infringement and maximise that of the others, the fact remains that seeking to benefit from the application of the 2002 Leniency Notice in order to obtain immunity from, or a reduction of, the fine does not necessarily create an incentive to submit distorted evidence in relation to the participation of the other members of the cartel. Indeed, any attempt to mislead the Commission could call into question the sincerity and the completeness of cooperation of the leniency applicant, and thereby jeopardise its chances of benefiting fully under the 2002 Leniency Notice (*Hitachi and Others* v *Commission*, paragraph 32 above, paragraph 72; see also, to that effect, Case T-120/04 *Peróxidos Orgánicos* v *Commission* [2006] ECR II-4441, paragraph 70).

50 In particular, where a person admits that he committed an infringement and thus admits the existence of facts going beyond those whose existence could be directly inferred from the documentary evidence, that implies, a priori, in the absence of special circumstances indicating otherwise, that that person had resolved to tell the truth. Thus, statements which run counter to the interests of the declarant must in principle be regarded as particularly reliable evidence (*JFE Engineering and Others* v *Commission*, paragraph 36 above, paragraphs 211 and 212; Joined Cases T-109/02, T-118/02, T-122/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02 *Bolloré and Others* v *Commission* [2007] ECR II-947, paragraph 166; and judgment of 8 July 2008 in Case T-54/03 *Lafarge* v *Commission*, not published in the ECR, paragraph 59).

51 The case-law cited above is applicable, by analogy, to Article 53 of the EEA Agreement.

The description of the main aspect of the infringement in the contested decision

52 First of all, it should be borne in mind that the Commission considered, at recital 2 to the contested decision, under the heading 'Summary of the infringement', that the addressees of the contested decision had participated in a single, complex and continuous infringement of Article 81 EC and Article 53 of the EEA Agreement. The main aspect of that infringement consisted of 'agreements and/or concerted practices aimed at price fixing and exchanging and disclosing commercially sensitive information' relating to paraffin waxes. That main aspect was the only component of the infringement in which the applicant took part, according to the contested decision.

53 In the contested decision, under the heading '4.1 The Basic Principles and Functioning of the Cartel', the Commission provided, at recital 106 et seq. to the contested decision, the following description of the main aspect of the infringement:

'…

(106)
The [t]echnical [m]eetings have been divided into two parts: an initial discussion on technical issues, which was followed by discussions of an anticompetitive nature such as price fixing, market and customer allocations (in certain cases), and exchange and disclosure of commercially sensitive information including present and future pricing policies, customers, production capacities and sales volumes.

(107)
Discussions about prices and potential price increases normally took place at the end of the [t]echnical [m]eetings. Usually, Sasol would instigate the discussions about prices, but then prices and pricing strategies were discussed by all the attendees in the form of a round table discussion. The discussions concerned both price increases and target prices for specific customers and general price increases as well as minimum and target prices for the whole market. Price increases were normally agreed upon

in terms of absolute numbers, not percentages (for example [EUR] 60 … per tonne for fully-refined paraffin waxes). Minimum prices were not only agreed upon when there was an agreement of a price increase but also when a price increase was not feasible (for example in times of falling prices).

…

(109)
Furthermore, the individuals representing the companies exchanged commercially sensitive information and disclosed their general business strategies.

(110)
The companies, except for MOL, were represented by managers that had the power to determine their respective company's pricing strategy and set prices with respect to individual customers …

(111)
In most of the [t]echnical [m]eetings the price discussions concerned paraffin waxes in general and only rarely the different kinds of paraffin waxes (such as fully-refined paraffin waxes, semi-refined paraffin waxes, wax-blends/specialties, hard paraffin waxes or hydro-finished paraffin waxes) were specified. Moreover, it was understood by all the companies that prices for all types of paraffin waxes would be increased by the same amount or percentage.

…

(113)
The outcome of the [t]echnical [m]eetings was mainly implemented through price increase announcements to customers or by cancelling existing pricing schemes. Occasional cases of cheating or non-implementation were discussed at subsequent meetings (see, for example, recitals 149 and 157). Usually, one of the companies represented would take the lead and start increasing its prices. Usually, that would be Sasol, but sometimes Sasol asked another participant to take the lead. Shortly after one company announced its intention to raise prices to its customers, the other suppliers would follow suit by announcing price increases as well. The individuals representing the companies at the [t]echnical [m]eetings informed each other of the steps they took to implement the results of the [t]echnical [m]eetings. This information was transmitted orally or by sending a copy of the relevant price increase or price cancellation announcements to one or all of the other [participating] companies … The Commission indeed found that such announcements were exchanged between the parties. A sample of around 150 such letters have been identified as having been exchanged within six weeks after [t]echnical [m]eetings. Also, an agreement has been reported where the companies represented should not profit from the implementation of an agreed price increase to increase their own market share. This statement was not contested in the replies to the [s]tatement of [o]bjections.'

54 In Section 4.2 of the contested decision, under the heading 'Details on the [t]echnical [m]eetings', the Commission first of all presented a table setting out the places and dates of the technical meetings and also the undertakings present (recital 124 to the contested decision). It then examined the available evidence relating to each of the technical meetings (recitals 126 to 177 to the contested decision).

55 In Section 5.3 of the contested decision, under the heading 'The Nature of the Infringement in the Present Case', the Commission set out the principles governing the characterisation of the anticompetitive conduct that were applicable in the present case:

'5.3.1 Principles …

(205)
… it is not necessary for the Commission to characterise the conduct as [an agreement or a concerted practice], particularly in the case of a complex infringement of long duration. The concepts of agreement and concerted practice are fluid and may overlap. The anticompetitive behaviour may well have varied from time to time, or its mechanisms may have been adapted or strengthened to take account of new developments. Indeed, it may not even be possible to make such a distinction, as an infringement may simultaneously present the characteristics of each form of prohibited conduct, while when considered in isolation, some of its manifestations could accurately be described as one rather than the other. It would be analytically artificial, however, to subdivide what is clearly a continuing common enterprise having one and the same overall objective into several different forms of infringement. A cartel may therefore be an agreement and a concerted practice at the same time. Article 81 [EC] lays down no specific category for a complex infringement of the type described in this decision.

(206)
In circumstances where there are several cartel members and their anticompetitive behaviour over time can be characterised as either agreements or concerted practices (complex infringements), the Commission is not required to classify each type of behaviour.'

56 Next, still in the same section of the contested decision, the Commission described the content of the infringement, as follows:

'5.3.2 Application

(210)
It is demonstrated by the facts described in Chapter 4 of the present Decision that all undertakings subject to the present procedure were involved in collusive activities concerning paraffin waxes and, for those companies identified in recital (2), slack wax … and regularly attended meetings at which the following items were at issue:

(1) price fixing[;]

(2) … customer and/or market allocation[;]

(3) disclosure and exchange of commercially sensitive information, in particular information relating to customers, pricing, production capacities and sales volumes …

5.3.2.2 Price fixing

(240)
Recitals 98, 107, 126, 128, 131, 133, 135, 137, 139, 140, 142, 145, 147, 149, 152, 153, 156, 157, 163, 168, 174, 176 and 177 demonstrate that the undertakings involved fixed minimum prices and agreed on price increases ("price fixing").

(241)
ExxonMobil, Repsol, Sasol and Shell confirmed that price fixing occurred [see recital 107] and reconfirmed this at the oral hearing and in their written replies to the statement of objections.'

57 The Commission concluded that Eni had participated in the cartel at recital 298 to the contested decision, as follows:

'As is demonstrated in Chapter 4, Eni participated in 1 meeting in 1997 and at 11 meetings between February 2002 and February 2005. At the meeting in 1997 (see recital (145)) the participants reached an agreement on prices in the sense of Article 81 [EC] and Article 53 of the EEA Agreement. As regards the meetings after February 2002 (see recitals 165 [to] 178), the Commission concludes, in light of the available evidence coupled with the general description of the usual structure of the [t]echnical [m]eetings, that Eni attended, participated in and contributed to price fixing and an exchange of sensitive information. As Eni participated in 11 out of 13 meetings after 2002, the Commission considers that Eni was aware or ought to have been aware of the anticompetitive aim and measures that were adopted at the [t]echnical [m]eetings. Although there is no evidence that Eni participated in the meetings of 14 and 15 January 2004 and of 11 and 12 May 2004, the Commission considers Eni's continuous involvement in the infringement to be demonstrated between 21 and 22 February 2002 and 28 April 2005 … In particular, the Commission considers that the events described in recital (165) show that Eni took into account the information obtained on its competitors' conduct in the market and adapted its own conduct, taking implemented steps. This can be characterised as concerted practice.'

Eni's participation in the infringement on the basis of its presence at the technical meeting held on 30 and 31 October 1997

58 The applicant claims that the Commission cannot validly find that it participated in the cartel on the basis of its presence at the technical meeting held on 30 and 31 October 1997. Its presence was explained by a visit by its representative to Hamburg for lawful negotiations with Sasol. In addition, that representative distanced himself from the anticompetitive content of the technical meeting in question.

Examination of the evidence

59 At recital 145 to the contested decision, with respect to the technical meeting held on 30 and 31 October 1997, the Commission relied on a Sasol note of a 'Blauer Salon' meeting, containing the following information:

.	'Date	Increase	Min. price
√ SCHS, D	.	.	.
√ Dea, D	.	.	.
√ SRS-Tuda, D	.	.	.
√ MOL, HU	1.1.	.	.
√ Total, F	1.1.	DEM 10,-	DEM 120
Mobil-Bp, F	.	.	.
√ Repsol, E	.	.	.
√ Agip, I	1.1.	DEM 10'	.

60 Sasol stated that that note showed that all the participants had committed themselves to increase prices by German marks (DEM) 10 to 12 per 100 kg, that Total and Agip had wanted to increase prices by DEM 10 and that that would lead to a minimum price of DEM 120 per 100 kg, at least for Total.

61 The levels and dates of the increases are wholly confirmed by two notes relating to that meeting, found at MOL's premises.

62 The Commission concluded, at recital 145 to the contested decision, on the basis of those documents and the explanatory statements provided by the undertakings, that:

'[T]he participating companies agreed on a strategy to harmonise and to raise prices. The note concerns both paraffin waxes and slack wax. [MOL's] note moreover reveals that the undertakings exchanged information about maintenance and general pricing strategy.'

63 In the first place, in that regard, it should be observed that Sasol and Repsol stated that the technical meeting held on 30 and 31 October 1997 had an anticompetitive content. In addition, Sasol also interpreted the documents found by the Commission, stating, in particular, that all the participants had undertaken to increase their prices (see paragraph 60 above). Those statements were made by individuals who had participated in the technical meetings, after mature reflection, and they also incriminate the undertakings on whose behalf they were made. Thus, within the meaning of the case-law cited at paragraph 47 above, they are particularly reliable.

64 In the second place, it should be observed that the content of the discussions at the technical meeting held on 30 and 31 October 1997 is particularly well documented by MOL's notes and Sasol's 'Blauer Salon' minutes. It should further be observed that, as the Commission stated at recital 215 to the contested decision, MOL's notes were drawn up during the meetings by the individual who attended them and their content is structured and relatively detailed. The probative value of those notes is therefore very high. As regards the minutes of the 'Blauer Salon' meetings drawn up by Sasol, they are documents dating from the time of the facts and drawn up *in tempore non suspecto*, shortly after each technical meeting. Even though the person who drafted them was not present at the technical meetings, she relied on information obtained from a participant. The probative value of those minutes is therefore also high.

65 The Court therefore concludes that all the evidence set out by the Commission at recital 145 to the contested decision confirms that the participants did in fact agree on increases in the prices of paraffin waxes at the technical meeting held on 30 and 31 October 1997.

Eni's presence at the technical meeting held on 30 and 31 October 1997 and the question whether it distanced itself from the content of the meeting

66 The applicant does not deny that its representative, Mr DS., participated in the technical meeting held on 30 and 31 October 1997.

67 However, it claims that Mr DS.'s presence at that technical meeting was accidental. Following a bilateral meeting with the representative of Sasol, a customer of Eni, Sasol invited the applicant to join it also in a meeting organised by Sasol on a wider scale, with other European paraffin producers.

68 Furthermore, the applicant distanced itself from the anticompetitive content of the technical meeting in question. As Mr DS. was not interested in matters associated with prices charged and quantities offered, he did not take part in the discussions, but remained until the end of the meeting out of simple courtesy to Sasol. However, he informed his counterparts in Sasol at the outset that neither Eni nor he was interested in such meetings, as is apparent from his statement. The fact that Sasol

understood that Mr DS. was distancing himself from the content of the meeting is demonstrated by the fact that Eni was not invited to subsequent technical meetings until 21 February 2002. In addition, Eni even withdrew from the trade association European Wax Federation (EWF) on 12 June 1998.

69 According to the case-law, as regards agreements of an anticompetitive nature which, as in the present case, become evident at meetings of competing undertakings, an infringement of Article 81 EC is constituted when those meetings have the object of restricting, preventing or distorting competition and are thus aimed at artificially organising the functioning of the market. In such a case, it is sufficient for the Commission to establish that the undertaking concerned participated in meetings during which agreements of an anticompetitive nature were concluded in order to prove that the undertaking participated in the cartel. Where participation in such meetings has been established, it is for that undertaking to put forward indicia to establish that its participation in those meetings was without any anticompetitive intention by demonstrating that it had indicated to its competitors that it was participating in those meetings in a spirit that was different from theirs (*Aalborg Portland and Others* v *Commission*, paragraph 29 above, paragraph 81, and Joined Cases C-403/04 P and C-405/04 P *Sumitomo Metal Industries and Nippon Steel* v *Commission* [2007] ECR I-729, paragraph 47).

70 The reason underlying that principle of law is that, having participated in the meeting without publicly distancing itself from what was discussed, the undertaking gave the other participants to believe that it subscribed to what was decided there and would comply with it (*Aalborg Portland and Others* v *Commission*, paragraph 42 above, paragraph 82, and *Sumitomo Metal Industries and Nippon Steel* v *Commission*, paragraph 69 above, paragraph 48).

71 It should be observed that both MOL's notes and Sasol's 'Blauer Salon' minutes refer to Eni, in that both the name of Agip, the Eni subsidiary active in the production of paraffin waxes, and the price increase proposed by Agip (DEM 100 per tonne according to MOL's note and DEM 10 per 100 kg according to the 'Blauer Salon' minutes) and the proposed date of the price increase (1 January 1998) appear in those documents. The fact that the notes are agreed on those details demonstrates beyond doubt that Eni's representative did in fact announce the increase in the price of its products corresponding to paraffin waxes and the date on which it was to take effect, just like the representatives of the other undertakings present at that technical meeting. That finding is further corroborated by Sasol's statement, according to which the interpretation of the tables in the documents in question is that all the participants undertook to increase their prices by between DEM 10 and 12 per 100 kg (see paragraph 60 above).

72 In addition, the applicant claims that Mr DS. merely indicated his lack of interest to Sasol's representatives. The fact that the price increase and the date thereof proposed by Eni is mentioned in two notes, drawn up independently by two undertakings, reflecting the content of the discussions at that technical meeting, indicates that the other participants considered that Eni was a party to the anticompetitive arrangements. Thus, the applicant's argument that it publicly distanced itself from the anticompetitive content of that technical meeting must be rejected.

Conclusion on the applicant's participation in the cartel on 30 and 31 October 1997

73 On the basis of the foregoing analysis, it must be found that on 30 and 31 October 1997 the applicant participated in a technical meeting the content of which came within the main aspect of the infringement, namely agreements or concerted practices relating to price fixing and the exchange and disclosure of commercially sensitive material affecting paraffin waxes. Apart from the direct evidence demonstrating that the applicant participated in the arrangements concerning the fixing of prices of paraffin waxes, it must be pointed out that it did not publicly distance itself from the anticompetitive content of that technical meeting. The Commission was therefore correct to establish that the applicant had participated in the first aspect of the infringement on 30 and 31 October 1997.

74 The other arguments put forward by the applicant cannot call that assessment into question.

75 As regards the fact that Sasol did not invite the applicant to the subsequent technical meetings and that the applicant withdrew from the EWF, it is sufficient to observe that the fact that Eni was not invited to the subsequent technical meetings is correctly reflected in the contested decision in the establishment of the duration of its participation in the infringement. The Commission merely found that Eni had participated in the cartel on 30 and 31 October 1997, without adding a further period after the technical meeting in question.

76 The same applies to the applicant's argument that the Commission was mistaken as to the price increases which it had applied following the technical meeting held on 30 and 31 October 1997. Since Eni's participation in the cartel was not taken into consideration for the period between 1 November 1997 and 20 February 2002, the arguments concerning the price increase applied by Eni on 1 January 1998 cannot undermine the validity of the finding that it participated in the cartel on 30 and 31 October 1997, which is clearly confirmed by the evidence in the Commission's possession.

77 Nor, last, can the applicant's arguments relating to the incorrect establishment of its participation in a continuing agreement and/or a continuing concerted practice on the basis of its presence at the technical meeting held on 30 and 31 October 1997 succeed. The word 'continuing' is used in Article 1 of the contested decision, owing to the establishment of more extensive periods of participation in the cartel, on the basis that the undertakings involved were regularly present at the technical meetings. In Eni's case, its participation in a continuing agreement and/or a continuing concerted practice is taken into consideration for the period from 21 February 2002 to 28 April 2005. On the other hand, the Commission could properly find that Eni participated in the cartel, on 30 and 31 October 1997, on the basis of direct evidence relating to the technical meeting concerned, without being required to have evidence relating to the concept of continuing infringement.

78 Regard being had to all of the foregoing considerations, it is appropriate to confirm the Commission's finding that the applicant participated in the infringement on 30 and 31 October 1997.

Eni's participation in the infringement between 21 February 2002 and 28 April 2005

79 The applicant acknowledges having participated in 10 technical meetings between 21 February 2002 and 28 April 2005. It maintains, however, that the Commission could not properly conclude on the basis of its presence at those technical meetings that it had participated in an agreement or a concerted practice aimed at price fixing (first part) or the exchange of sensitive information (second part).

Eni's non-participation in an agreement or a concerted practice aimed at fixing the prices of paraffin waxes

– Examination of the evidence

80 The applicant claims that the Commission has not proved that it participated in an agreement or a concerted practice aimed at fixing the prices of paraffin waxes.

81 In the first place, it should be observed that the Commission has evidence proving that at least one discussion of prices generally took place during the technical meetings.

82 In particular, according to Sasol's statement of 12 May 2005, the technical meetings generally resulted in collusive activity, in so far as price increases and reductions were discussed in those meetings and information on overall prices and capacity planning was exchanged.

83 According to Repsol's statement of 19 May 2005, discussion of the price levels of paraffin waxes charged by participants formed part of the technical meetings.

84 Shell stated that all the technical meetings concerned price fixing. According to its statement of 14 June 2006, at least since 1999, when its representative who had given evidence began to participate in the technical meetings, the prices of paraffin waxes were never decided unilaterally but were always agreed by competitors at technical meetings.

85 In addition, those undertakings also asserted, in those statements, that at a number of technical meetings the participants had in fact agreed on minimum prices or price increases, sometimes even on the means of applying increases.

86 Those statements, to which the Commission referred, moreover, in particular at recitals 107 and 113 to the contested decision, were made on the basis of the testimony of the persons who had participated in the technical meetings, after mature reflection, and also incriminate the undertakings on whose behalf they were made. In addition, the statements are agreed on the broad outlines of the description of the infringement, which further increases their reliability. Thus, within the meaning of the case-law cited at paragraph 47 above, they are particularly reliable.

87 In addition, it should be emphasised that, in the statements referred to at paragraphs 82 to 84 above, and also in other statements to which recitals 107, 109, 111 and 113 to the contested decision make reference, and extracts from which were produced by the Commission in answer to the written question put by the Court, reference was made to the fact that Eni was present at the technical meetings in question and that its representative took part in the discussions held at those meetings.

88 The applicant claims, however, that the Commission did not take account, in Shell's statement of 14 June 2006, of the passage in which it was stated that 'as regards the prices agreed at the technical meeting, [Mr S.] does not know whether Eni and Repsol, which played rather a passive role during the technical meetings, had subscribed to the date and amount agreed for the price increase'. The applicant concludes that there is no proof that it complied with the pricing arrangements agreed on at the technical meetings.

89 It must be observed that, in the same statement, Shell also mentions Eni among the undertakings which agreed on the price increases and minimum prices. According to that statement, MOL, Repsol and Eni did not send out price increase letters to their customers following the technical meetings, but rather communicated their price increases orally.

90 That statement is therefore part of the body of evidence showing that Eni participated in the cartel and, in particular, in the agreements or concerted practices relating to the fixing of the prices of paraffin waxes. The fact that Mr S. was uncertain as to the means whereby Eni implemented the agreements cannot deprive the other assertions, which relate specifically to Eni's participation in such agreements or concerted practices, of their probative value.

91 In the second place, it must be emphasised that the statements referred to at paragraphs 82 to 84 above are corroborated by numerous handwritten notes contemporaneous to the technical meetings which the Commission found during the inspections, to which the applicant had access during the administrative procedure and some of which are cited, in particular, at recitals 165 and 177 to the contested decision. As regards the Eni note cited at recital 165 to the contested decision, this is a document dating from the time of the infringement and drawn up *in tempore non suspecto*, or shortly after the technical meeting to which it refers. Its probative value is therefore high. The MOL note cited at recital 177 to the contested decision is a handwritten note drawn up during the meetings by the individual who attended them and its content is structured and relatively detailed. Its probative value is therefore very high.

92 First, as regards the content of the Eni note, relating to the technical meeting held on 21 and 22 February 2002, the Commission cited the following passage at recital 165 to the contested decision:

'The meeting which took place in an extremely transparent climate has confirmed — also taking into account the differences of the individual markets and the different strategies with respect to products and marketing — the possibility to increase the revenue in line with the actions we already adopted. We can therefore continue the actions under way of revision of contractual formats and relative prices which will naturally involve our major clients/distributors of paraffin.'

93 According to the contested decision, the content of that note shows that discussions on the price levels of paraffin waxes took place.

94 That interpretation must be upheld. The fact that the Eni note mentions the revision of prices as being the step to continue in the light of the discussions held at the meeting shows that the participants exchanged information on prices. That, moreover, is borne out by the Shell statement of 30 March 2005, which includes the technical meeting in question on the list headed 'Overview of meetings and communications concerning prices'.

95 The applicant claims that its note specifically shows that it defined its commercial strategy independently of the technical meetings. As is apparent from the last part of the extract reproduced at paragraph 92 above, even before having had the slightest contact with its European competitors, the applicant had decided to alter its commercial strategies.

96 The Court considers that that interpretation is implausible in the light of the wording of the extract in question.

97 In fact, Eni's confirmation of the possibility to increase its revenue, owing to the 'revision of contractual formats and relative prices' by the information received at the 'meeting[,] which took place in an extremely transparent climate', and the anticompetitive nature of which was acknowledged independently by Shell and Sasol, shows beyond reasonable doubt that the information on prices that Eni obtained at the technical meeting was useful to it and capable of influencing its commercial behaviour.

98 Second, it is appropriate to examine the MOL note, cited at recital 177 to the contested decision, which relates to the technical meeting held on 23 and 24 February 2005 in Hamburg, at which Eni was present.

99 That note indicates as follows:

'ExxonMobil	[= 1 April]	€ 15/t
Shell	Raised price	
Sasol	[= 12 April]	Price raise'

100 Sasol stated that a price increase had been discussed and that it had communicated its own price increase to the other participants. Both Shell and Sasol described that meeting as collusive in statements referred to in the contested decision.

101 On that basis, it must be concluded that the Commission has handwritten notes contemporaneous with the impugned facts and relating to the agreements or concerted practices relating to the fixing of prices of paraffin waxes which had taken place at the technical meetings at which Eni was present.

– Eni's presence at the anticompetitive meetings and its failure to distance itself from the content of those meetings

102 According to the contested decision, during the main period of its participation in the infringement, that is to say, between 21 February 2002 and 28 April 2005, the applicant was represented by Mr MO. at 11 of the 13 technical meetings that took place. The applicant acknowledges having been present at 10 technical meetings, but denies having participated in the meeting held in Munich on 27 and 28 February 2003.

103 The parties are therefore agreed that the applicant participated in 10 of the 13 technical meetings held between 21 February 2002 and 28 April 2005.

104 According to the case-law cited at paragraphs 69 and 70 above, in order to prove that an undertaking participated in a cartel, it is sufficient for the Commission to demonstrate that it participated in meetings during which anticompetitive agreements were concluded. Where participation in such meetings has been established, it is for the undertaking in question to put forward indicia to establish that its participation in those meetings was without any anticompetitive intention by demonstrating that it had indicated to its competitors that it was participating in those meetings in a spirit that was different from theirs. The reason underlying that principle of law is that, having participated in the meeting without publicly distancing itself from what was discussed, the undertaking has given the other participants to believe that it subscribed to what was decided there and would comply with it.

105 In the present case, however, the applicant does not claim to have publicly distanced itself from what was discussed at the anticompetitive meetings.

106 It should be emphasised that the existence of direct evidence of the existence of agreements or concerted practices during the technical meetings in which the applicant participated without distancing itself from their anticompetitive content is in itself sufficient to establish its liability for an infringement of Article 81 EC.

107 In the present case, the Commission has a body of evidence which shows that agreements or concerted practices relating to price fixing and also the exchange and disclosure of commercially sensitive information concerning paraffin waxes took place during the technical meetings at which the applicant was present.

– The applicant's alleged lack of interest in participating in agreements or concerted practices aimed at fixing the prices of paraffin waxes

108 The applicant relies on the fact that it had no interest in participating in the cartel. Operating exclusively on the Italian paraffin waxes market, which is characterised by demand much higher than national production, it always succeeded in placing its entire production on that market. In addition, around 60% to 70% of its production was earmarked for its main customers, the reseller SIMP and the processor SER, with which commercial relations, since 1 January 2004 and 1 January 2005 respectively, were governed by contracts providing for 'pricing formulae linked with the prices indicated in the official *ICIS-LOR* reports', those formulae being based directly or indirectly on the average prices of paraffin waxes of 'Chinese Origin CIF NWE'.

109 The applicant therefore had no interest in colluding with the other European producers, since it would have derived no benefit from jointly fixing prices at high levels which it would in reality have been unable to charge. Eni's main commercial problem was connected with the permeability of Italy to low-cost Chinese imports, which the cartel would have been wholly unable to remedy.

110 Nor did Eni have any interest in participating in collusion aimed at a general price increase on the national markets of the members of the cartel, since it did not have the capacities to export to the other Member States. Likewise, the competing producers had no need to come to an agreement with Eni to fix an increase in their sales prices in Italy, since the Italian market required paraffin waxes from abroad.

111 In that regard, it is sufficient to observe that, according to the case-law, so far as the existence of the infringement is concerned, it does not matter whether or not the conclusion of the agreement or the pursuit of the concerted practice was in the commercial interest of the undertakings concerned. Such an argument on the applicant's part cannot lead the Court to impose stricter requirements on the Commission as to the evidence to be adduced. Where the Commission has succeeded in gathering documentary evidence in support of the alleged infringement and where that evidence, associated with the undertakings' statements, appears to be sufficient to demonstrate the existence of an agreement of an anticompetitive nature, there is no need to examine the question whether the undertaking concerned had a commercial interest in the agreement (see, to that effect, *Sumitomo Metal Industries and Nippon Steel* v *Commission*, paragraph 69 above, paragraphs 44 to 46).

112 Furthermore, the applicant's argument is rendered implausible by the fact that it regularly participated, over a period of more than three years, in technical meetings the anticompetitive content of which was acknowledged independently by four undertakings that participated in the cartel. The applicant does not explain how a reasonable operator could be induced to participate in the unlawful practices, and thus risk a significant fine, if there was no prospect of deriving benefits from the arrangements in question.

113 In addition, the applicant's argument that it had no interest in participating in the cartel is directly rebutted by its note relating to the technical meeting held on 21 and 22 February 2002, cited at paragraph 92 above, from which it is apparent that it expected, in the light of the discussions held during the technical meeting in question, to be able to increase its revenues as a result of price 'revisions'.

114 This argument must therefore be rejected.

– The alternative explanation provided by the applicant

115 The applicant claims that its participation in the technical meetings was justified solely by its strategic decision to emerge from its international isolation and form relationships with the main European operators, by establishing contacts with the EWF, and also by its interest in questions of a technical nature, relating in particular to the characteristics of paraffin products.

116 It should be pointed out that, according to the case-law cited at paragraph 41 above, where the Commission has relied on documentary evidence, it is for the undertakings concerned not merely to present a plausible alternative to the Commission's theory but to show that the evidence used in the contested decision is insufficient to establish the existence of the infringement.

117 The applicant puts forward no argument to rebut the accuracy and the relevance of the undertakings' statements and the handwritten notes contemporaneous with the impugned facts gathered by the Commission, on which the conclusion that Eni participated in the agreements or concerted practices aimed at fixing the prices of paraffin waxes was based.

118 Accordingly, the mere assertion that the applicant's interest in participating in the technical meetings was justified solely by its desire to form international contacts and to follow discussions of a technical nature is not of such a kind as to demonstrate that the contested decision is unlawful.

119 Nor does the applicant explain why its representative did not leave the technical meetings when, following the technical discussions, the discussion turned to anticompetitive matters.

120 In addition, Eni's note relating to the technical meeting held on 21 and 22 February 2002 (see paragraph 92 et seq. and paragraph 113 above) indicates beyond reasonable doubt that it took into account, when revising its prices and with a view to increasing its revenues, the anticompetitive content of that technical meeting. That in itself rebuts the assertion that the only reason for the applicant's presence was its interest in the technical discussions relating to paraffin waxes.

121 The applicant's argument must therefore be rejected.

– The alleged absence of a concurrence of wills

122 The applicant claims that it cannot be held liable for a price-fixing agreement in the absence of a concurrence of wills with the other members of the cartel.

123 Its representative, Mr MO., was perfectly aware that it would have been impossible for Eni to increase its prices in the sense desired by the other cartel participants, owing to the competitive pressure from Chinese products and to the fact that 60% to 70% of its sales were made to two purchasers (SIMP and SER), the prices to those undertakings being fixed by reference to the international prices published in the *ICIS-LOR* reports. Nor could the increases have been charged to the small number of end-users serviced directly by Eni, owing to the possibility that they would obtain supplies from SIMP.

124 In the first place, in that regard, it should be emphasised that, according to Shell's statement of 14 June 2006, the competitive pressure from the Chinese producers represented a concern for all the cartel participants and one of the reasons for fixing minimum prices and small price increases was to counter the effect of that pressure. That pressure was therefore not a concern for the applicant alone, which would have constituted an obstacle to the formation of a common will, but rather a market development affecting all the participants that was likely to encourage their collusion.

125 In addition, according to its own assertions, the applicant covered only 60% to 65% of sales in Italy, including paraffin waxes produced by the applicant and then resold or processed by SIMP and SER. According to the applicant, between 2002 and 2004 between 18% and 33% of paraffin waxes sold in Italy came from producers established in other member countries of the European Union. Furthermore, direct sales by Eni to Italian customers other than SER and SIMP were also significant, equivalent to 20% or 22% of the Italian market.

126 Accordingly, as regards direct sales to Italian end customers, the applicant was competing not only with SIMP, SER or the Chinese producers, but also with the other producers established in the European Union. In fact, almost all the large European producers participated in the cartel. As the Commission asserts at recitals 67 and 68 to the contested decision, the members of the cartel had around 75% of the paraffin waxes market in the EEA, the remainder of the market being largely covered by Chinese imports.

127 It should also be observed that, at the hearing, Eni asserted that it did not participate in the allocation of geographic markets in the context of the cartel, since the 'other European producers' sold in Italy. Thus, Eni indirectly admitted that the other members of the cartel made sales in Italy. It should be borne in mind in that regard that the members of the cartel dominated production in the EEA and that between 18% and 33% of paraffin waxes sold in Italy came from European producers.

128 At the very least, Eni must have expected that the Italian demand for paraffin waxes that it could not satisfy would be satisfied by the other members of the cartel, in such a way that there was a competitive relationship between it and them. Furthermore, it is clear that, through their coordinated

behaviour, the members of the cartel had a decisive influence on the price level of paraffin waxes in the EEA, owing to the size of their combined market share. In those circumstances, the applicant cannot validly deny the possible benefits it could expect by participating in the cartel.

129 Nor can the applicant's argument in relation to the competitive pressure from SIMP succeed. Since 75% of sales of paraffin waxes in the EEA and the great majority of production were covered by the cartel, the general increase of paraffin wax prices in the EEA as a result of the cartel was likely to affect the prices at which SIMP could obtain paraffin waxes from producers other than the applicant, which, in turn, was likely to affect the prices charged by SIMP to its customers. Accordingly, the applicant could logically expect that a general increase in the level of paraffin wax prices as a result of the cartel could be beneficial to it.

130 Last, it should be observed that the applicant's prices to SIMP did not begin to be indexed on the prices based on the average prices of paraffin wax of 'Chinese Origin CIF NWE' until 1 January 2004. In addition, the applicant's prices to SER began to be indexed on the basis of the 'best prices charged by the best distributor' on 1 January 2005. It follows that the applicant significantly exaggerates the commercial constraints resulting from its agreements with SIMP and SER. Those agreements were simultaneously present only during the last months of the applicant's participation in the infringement, between 1 January and 28 April 2005. In addition, since the cartel covered the very great majority of paraffin wax production in the EEA, and 75% of sales, there is reason to think that it had repercussions on the general level of prices (including on the 'best offers') and thus on the prices charged by the applicant resulting from the indexation referred to above.

131 The applicant's arguments therefore lack conviction.

132 In the second place, and in any event, it should be borne in mind that the arguments relating to the lack of interest in participating in the cartel, including those referring to the applicant's unwillingness to enter into the unlawful agreements because of the alleged impossibility in practice of acting in accordance with them, does not mean that the Court should require evidence from the Commission beyond that which is sufficient to demonstrate participation in the cartel according to the case-law cited at paragraphs 30 to 50, 69 and 70 above. In the present case, it is apparent that the Commission gathered sufficient evidence to substantiate its conclusion that the applicant had participated in the first aspect of the infringement, during the period from 21 February 2002 until 28 April 2005, and in particular in the agreements or concerted practices aimed at fixing the prices of paraffin waxes.

133 Likewise, it should be borne in mind that, according to the case-law cited at paragraph 27 above, in order to establish the existence of an agreement constituting an infringement of Article 81 EC, the presence of a concurrence of wills on the actual principle of restricting competition is sufficient, even if the specific elements of the proposed restriction are still being negotiated. Accordingly, the arguments which the applicant derives from what it alleges to have been the impossibility to implement the price increases decided on at the technical meetings are irrelevant, since the concurrence of wills on the actual principle of fixing or aligning prices, indeed on exercising artificial influence on their levels, is sufficient to establish a concurrence of wills on the part of the participants, within the meaning of the case-law cited. The applicant puts forward no specific argument to counter the statements of Sasol, Repsol and Shell, according to which the aim of the technical meetings was price fixing.

134 Accordingly, the argument which the applicant derives from its unwillingness to enter into agreements aimed at fixing the prices of paraffin waxes must be rejected.

– The alleged non-participation in a concerted practice

135 The applicant maintains that the Commission has been unable to establish validly that it had participated in a concerted practice aimed at fixing the prices of paraffin waxes.

136 In the first place, it should be borne in mind that the Commission has direct evidence, consisting in statements by undertakings that participated in the cartel and in handwritten notes from which it is apparent that the technical meetings, at which the applicant was present, gave rise to agreements or concerted practices relating to the fixing of the prices of paraffin waxes.

137 In addition, it is apparent from that evidence that the participants regularly exchanged information on their prices and proposed increases, at technical meetings over more than 12 years, including during the period of Eni's participation. The applicant has provided no coherent explanation in respect of those activities that might call into question the Commission's assertion that the purpose of those practices was, in particular, price fixing. On the contrary, the long period during which the meetings were systematically held indicates in itself that the participants had the objective of harmonising their pricing policies, by knowingly substituting cooperation between them for the risks of the market.

138 In the second place, the applicant none the less maintains that it supplied, in its reply to the statement of objections, proof that its pricing strategies were independent of the choices made during the technical meetings. Accordingly, in the applicant's submission, the Commission could not properly assert, at recital 298 to the contested decision, that Eni '[had taken] into account the information obtained on its competitors' conduct in the market and adopted its own conduct, taking implementing steps'.

139 In that regard, the applicant produces a table showing trends in the price of its sales to SIMP with respect to '133' paraffin between 2002 and 2005. It infers that there is no synchronicity between the prices fixed during the technical meetings and the changes in the prices which it charged and that the increase in its prices, from EUR 542 on 1 January 2002 to EUR 588 on 1 April 2005, is below inflation and cannot be the result of the implementation of collusion aimed at price fixing. In addition, from 1 January 2004 the applicant fixed the prices of its sales to SIMP by reference to 'the average of the average monthly prices of "Chinese Origin CIF NWE" paraffin indicated in the *ICIS-LOR* reports of the preceding month'. Subsequently, an identical arrangement was also applied to sales to SER. The alleged concerted practice could not therefore concern the absolutely overwhelming quota (between 60% and 70%) of its production subject to agreements with SIMP and SER.

140 First, it should be observed that the table supplied by the applicant is a very selective presentation of its pricing trends. In fact, it contains only information relating to '133' paraffin, one of the many types of paraffin waxes marketed by Eni. Furthermore, it relates to prices charged to SIMP, a company which, according to the applicant itself, had significant purchasing power and therefore the ability to secure advantageous purchasing conditions from Eni. The table contains no information concerning trends in the prices that Eni charged to its end customers, logically the most exposed to the price manipulations resulting from the cartel.

141 Second, the applicant cannot validly raise against the Commission the objection that there is no correlation between the information available about the technical meetings and the table set out in the application.

142 It is apparent from a number of statements cited above that the price increases agreed at the technical meetings could not generally be applied in full to customers. Shell states that around two thirds of the agreed increases could be implemented. In addition, there are several indications in the file that the participants were frequently wholly unable to implement the agreed increase.

143 In any event, it should be borne in mind that, according to the case-law cited at paragraph 42 above, the evidence relating to cartels is normally fragmentary and incomplete. Thus, since the Commission did not have detailed evidence of what was discussed at each technical meeting, the applicant cannot derive any valid argument from the alleged lack of correspondence between the trends in its sales prices of '133' paraffin to SIMP and the partial content of the technical meetings that the Commission was able to reconstitute, *a fortiori* because the prices of the various paraffin wax products varied and customers logically tried to resist the increases.

144 Third, according to the case-law, the fact that the undertakings actually announced the agreed price increases and that the prices so announced served as a basis for fixing individual transaction prices suffices in itself for a finding that the collusion on prices had both as its object and as its effect a serious restriction of competition (Case T-308/94 *Cascades* v *Commission* [1998] ECR II-925, paragraph 194). In such a case, the Commission is not required to examine the details of the parties' arguments seeking to establish that the agreements in question did not have the effect of increasing prices beyond those which would have been observed under normal conditions of competition and to respond point by point to those arguments (*Bolloré and Others* v *Commission*, paragraph 50 above, paragraph 451).

145 As is apparent from the examination of the evidence in the context of the present plea, the Commission demonstrated to the requisite legal standard that the collusive practices in this case concerned the fixing of the prices of paraffin waxes and that the result of the meetings during which price increases had been discussed or fixed had often been implemented by cancelling prices to customers and announcing increases, just as the prices thus announced had served as a basis for fixing individual transaction prices. Likewise, where, having regard to market conditions, the participants in the cartel agreed to maintain prices, that must also be considered to form part of the implementation of the single, complex and continuous infringement in the present case.

146 It follows that the table showing trends in its selling prices to SIMP of '133' paraffin between 2002 and 2005 and the arguments put forward by the applicant in that connection are irrelevant.

147 In the light of the foregoing, it must be concluded that the Commission properly established that Eni had participated in agreements or concerted practices aimed at fixing the prices of paraffin waxes and the first part of the second plea must be rejected.

Eni's non-participation in the agreement or concerted practice aimed at the exchange of information

148 The applicant denies that the information exchanged at the technical meetings assumed a strategic or competitive nature for it. Therefore, contrary to the Commission's assertion, it did not take account of that information and determined its commercial conduct independently of the information exchanged. In any event, it did not supply sensitive information to the other participants.

149 In that regard, the Court has already held that, where competitors participated in meetings during which they exchanged information about, in particular, the prices they wished to see charged on the market, an undertaking, by participating in a meeting having an anticompetitive object, had not only pursued the aim of eliminating in advance uncertainty about the future conduct of its competitors, but had necessarily been bound to take into account, directly or indirectly, the information obtained during those meetings in determining the policy which it contemplated adopting on the market (Case T-1/89 *Rhône-Poulenc* v *Commission* [1991] ECR II-867, paragraphs 122 and 123, and judgment of 8 July 2008 in Case T-52/03 *Knauf Gips* v *Commission*, not published in the ECR, paragraph 276, not set aside on that point).

150 Likewise, according to the case-law, the presumption must be, subject to proof to the contrary, which the economic operators concerned must adduce, that the undertakings taking part in the concerted arrangements and remaining active on the market take account of the information exchanged with their competitors when determining their conduct on that market. That is all the more the case where the undertakings concert together on a regular basis over a long period (*Hüls* v *Commission*, paragraph 28 above, paragraph 162).

151 The present argument must therefore be rejected.

152 In addition, the applicant relies on the high degree of transparency that generally characterises the paraffin waxes sector. The average prices charged in the various European countries were regularly published in the *ICIS-LOR* report. Thus, the applicant had no interest in taking the information communicated at the technical meetings into account.

153 It should be observed that the *ICIS-LOR* report of 30 January 2002 annexed to the application contains the ranges of average prices of certain types of paraffin waxes, based on market information relating to price movements in January 2002 and some vague predictions relating to future pricing trends, the word 'rumoured' being used by the author of the report.

154 It should be noted that at the technical meetings the participants often communicated the price increases which they proposed to apply in the future, producer by producer, and not only the industry average. In addition, as is apparent from the evidence gathered by the Commission, the participants also informed each other of the date on which they intended to announce the new prices to their customers. The information shared at the technical meetings was therefore incomparably more detailed and focused on the future and not on the past.

155 Consequently, the document annexed by the applicant is not such as to show that the information on prices exchanged by the participants at the technical meetings was not useful, or even that such exchanges were lawful, and it is not capable of rebutting the presumption that the applicant took into account the information on prices communicated at the technical meetings.

156 Accordingly, the present argument must also be rejected.

157 In any event, it should be borne in mind that the main aspect of the infringement which the applicant is found to have committed consisted in 'agreements and/or concerted practices aimed at price fixing and exchanging and disclosing commercially sensitive information'. The applicant's participation in agreements or concerted practices aimed at price fixing was amply demonstrated in the analysis of the first part of the present plea. That in itself justified the characterisation of the infringement in question as 'very serious' and therefore the fine imposed. In addition, those practices also involved the exchange of commercially sensitive information, namely information on the prices of paraffin waxes. Accordingly, the arguments put forward in the context of the present part of this plea are not capable of calling into question the lawfulness of the contested decision.

158 Regard being had to the foregoing, the Commission's finding that the applicant participated in the main aspect of the infringement between 21 February 2002 and 28 April 2005 must be upheld and, accordingly, the second plea must be rejected.

2. *The pleas put forward with regard to the calculation of the amount of the fine imposed on the applicant*

159 By the second group of pleas, the applicant submits complaints and arguments challenging both the lawfulness of the calculation of the amount of the fine imposed on it and the appropriateness of the fine. Thus, those complaints and arguments seek for the most part, without drawing a clear distinction, both the annulment in part of the contested decision and its variation in the exercise by the Court of its unlimited jurisdiction.

160 According to the case-law, the review of the lawfulness of decisions adopted by the Commission is supplemented by the unlimited jurisdiction conferred on the Courts of the European Union by Article 31 of Regulation No 1/2003, in accordance with Article 229 EC. That jurisdiction empowers the Courts, in addition to carrying out a mere review of the lawfulness of the penalty, to substitute their own appraisal for the Commission's and, consequently, to cancel, reduce or increase the amount of the fine or penalty payment imposed. The review provided for in the Treaties therefore implies, in accordance with the requirements of the principle of effective judicial protection set out in Article 47 of the Charter of Fundamental Rights of the European Union, that the Courts of the European Union exercise their review both de lege and de facto and that they are empowered to assess the evidence, annul the contested decision and vary the amount of fines (see, to that effect, Case C-3/06 P *Groupe Danone* v *Commission* [2007] ECR I-1331, paragraphs 60 to 62, and Case T-368/00 *General Motors Nederland and Opel Nederland* v *Commission* [2003] ECR II-4491, paragraph 181).

161 It is therefore for the Court, in the exercise of its unlimited jurisdiction, to assess, on the date on which it adopts its decision, whether the applicant received a fine the amount of which properly reflects the gravity and the duration of the infringement in question, in such a way that the fine is proportionate in the light of the criteria set out in Article 23(3) of Regulation No 1/2003 (see, to that effect, Case T-156/94 *Aristrain* v *Commission* [1999] ECR II-645, paragraphs 584 to 586, and Case T-220/00 *Cheil Jedang* v *Commission* [2003] ECR II-2473, paragraph 93).

162 It must, however, be pointed out that the exercise of unlimited jurisdiction does not amount to a review of the Court's own motion, and be borne in mind that proceedings before the Courts of the European Union are *inter partes*.

Third plea, alleging an error in the setting at 17% of the multiplier to reflect the gravity of the infringement and of the additional amount known as the 'entry fee'

163 In the contested decision, under the heading 'Conclusions on Gravity', the Commission considered that:

'…

(651)
As regards the geographic scope, the infringement covered the entire EEA as the undertakings involved sold [paraffin waxes] in all countries of the EEA. …

(653)
Given the specific circumstances of this case, taking into account the criteria discussed above relating to the nature of the infringement and the geographic scope, the percentage to be applied for the additional amount for Eni and H&R/Tudapetrol should be 17%. It has been established that for ExxonMobil, MOL, Repsol, RWE, Sasol, Shell and Total, the single and continuous infringement also consisted of customer and/or market allocation. Market and customer allocation are by their very nature also among the most harmful restrictions of competition as these practices lead to the

reduction or elimination of competition in certain markets or for certain customers … In view of this additional gravity, the percentage to be applied for the additional amount for ExxonMobil, MOL, Repsol, RWE, Sasol, Shell and Total should be 18%.'

164 The applicant takes issue with the Commission for having chosen a multiplier of 17% to be applied to reflect the gravity of the infringement, according to Section 21 of the 2006 Guidelines, and for deterrence, according to Section 25 of those Guidelines (an additional amount known as the 'entry fee'). The multiplier chosen for the undertakings that had participated not only in the main aspect of the infringement but also in the second aspect, consisting in market sharing and customer allocation, is only 18%. The difference in gravity is not proportionately reflected by a difference of only one percentage point. In addition, in the applicant's submission, the Commission has infringed Article 81 EC and Article 23 of Regulation No 1/2003 and breached the principle of equal treatment, the 2006 Guidelines and its obligation to state reasons. On that basis, the applicant asks the Court to reduce those multipliers to a level below 17%.

165 According to the case-law, it follows from Article 49(3) of the Charter of Fundamental Rights that the intensity of penalties must not be disproportionate to the infringement in question and that, pursuant to Article 23(3) of Regulation No 1/2003, in fixing the amount of the fine, regard is to be had both to the gravity and to the duration of the infringement. The principle of proportionality and the principle that the penalty must be appropriate to the offence also require that the amount of the fine imposed must be proportionate to the gravity and the duration of the infringement (see, to that effect, Joined Cases T-202/98, T-204/98 and T-207/98 *Tate & Lyle and Others* v *Commission* [2001] ECR II-2035, paragraph 106, and Case T-43/02 *Jungbunzlauer* v *Commission* [2006] ECR II-3435, paragraph 226).

166 In particular, the principle of proportionality requires the Commission to set the fine proportionately to the factors taken into account to assess the gravity of the infringement and also to apply those factors in a way which is consistent and objectively justified (*Jungbunzlauer* v *Commission*, paragraph 165 above, paragraphs 226 to 228, and Case T-446/05 *Amann & Söhne and Cousin Filterie* v *Commission* [2010] ECR II-1255, paragraph 171).

167 In addition, when determining the amount of the fine, objective factors such as the content and duration of the anticompetitive conduct, the number of incidents and their intensity, the extent of the market affected and the damage to the economic public order must be taken into account. The analysis must also take into consideration the relative importance and market share of the undertakings responsible and also any repeated infringements. In the interests of transparency, the Commission adopted the 2006 Guidelines, in which it indicates the basis on which it will take account of one or other aspect of the infringement and what this will imply as regards the amount of the fine (see, to that effect, Case C-386/10 P *Chalkor* v *Commission* [2011] ECR I-13085, paragraphs 57 to 59).

168 In the first place, as regards the present case, it should be observed that, as stated at Section 23 of the 2006 Guidelines, price-fixing agreements and concerted practices, forming as in the present case part of the main aspect of the infringement, are, by their very nature, among the most serious infringements of the competition rules. Therefore, according to Sections 21 and 23 of those Guidelines, the multiplier to reflect the gravity of the infringement must be set at the higher end of the scale of 0% to 30%. Furthermore, in the present case, the agreements and concerted practices aimed at price fixing concerned all countries of the EEA, which is also relevant, according to Section 22 of the 2006 Guidelines (recitals 651 and 653 to the contested decision).

169 In the light of those factors, the Commission did not infringe either Article 81 EC or Article 23 of Regulation No 1/2003 or breach the 2006 Guidelines by taking a multiplier of 17% to reflect the gravity of the infringement with respect to the main aspect of the infringement, consisting of 'agreements and/or concerted practices aimed at price fixing and exchanging and disclosing commercially sensitive information' concerning paraffin waxes. The same applies to the establishment of the amount to be added for the purposes of deterrence according to Section 25 of the 2006

Guidelines, known as the 'entry fee'. In addition, the Commission referred to the links between the relevant factors taken into account to reflect the gravity of the infringement and the multiplier applied and thus complied with its obligation to state reasons.

170 It should be added that the setting of the multiplier in question at 17% is also justified in the light of the assessment criteria identified in the case-law cited at paragraph 167 above. The Court therefore considers that that multiplier is proportionate to the gravity of the infringement committed by the applicant, in other words, that it reflects the gravity of the infringement in an appropriate manner.

171 In the second place, it is appropriate to examine the applicant's arguments that the difference between the multipliers taken for the principle aspect of the infringement, on the one hand, and for the first and second aspects together, on the other hand, which is one percentage point, does not reflect the difference in gravity consisting in the addition of participation in market sharing and customer allocation.

172 The applicant claims that, according to the 2006 Guidelines, market sharing and customer allocation are also among the most serious restrictions of competition and that it is therefore disproportionate to have taken only 1% of the value of sales to reflect gravity and the 'entry fee', when the multipliers applied for the main aspect of the infringement were 17%.

173 In that regard, it should be pointed out that, as is apparent from recitals 240 and 248 to the contested decision, the agreements consisting in market sharing or customer allocation were sporadic during the technical meetings by comparison with the agreements or concerted practices aimed at fixing the prices of paraffin waxes. Furthermore, according to the independent statements of undertakings which had also participated in the cartel (see paragraphs 82 to 84 above), a discussion of the levels of prices applied by the participants was always part of the technical meetings, as those meetings generally concerned price fixing.

174 In addition, according to recital 267 to the contested decision, the unlawful and impugned objective pursued by the participants in the single and continuous infringement in the present case consisted in reducing or eliminating competitive pressure with the ultimate goal of achieving higher profits in order to ultimately stabilise or increase profits. Admittedly, the second aspect of the infringement could increase the harmful effects of the infringement vis-à-vis the customers and relevant markets. However, it did not pursue an anticompetitive objective that could have been clearly separated from the objective of the main aspect of the infringement, since the same products and the same geographic market were concerned and since, in the final analysis, market sharing and customer allocation also served the aim consisting in achieving supracompetitive price levels, like the practices aimed at price fixing.

175 On that basis, the Court considers that the multipliers of 17% taken into account for the undertakings participating in the main aspect of the infringement are not disproportionate by comparison with those taken into account for the undertakings that also participated in the second aspect of the infringement.

176 The applicant also refers to Case T-61/99 *Adriatica di Navigazione* v *Commission* [2003] ECR II-5349. It observes that, as in the present case, the Commission established the existence of 'a single continuous infringement'. The Court held that the Commission could not penalise in the same way the undertakings which had in reality taken part in two infringements and those which had participated in only one of them, which would be contrary to the principle of proportionality.

177 It must be pointed out that, in *Adriatica di Navigazione* v *Commission*, paragraph 176 above (paragraphs 188 to 190), the Court took issue with the Commission's finding that the two separate cartels concerning, on the one hand, the northerly roll on-roll off routes and, on the other, the southerly roll-on roll-off routes, between Greece and Italy, constituted a single infringement.

Following that finding, the Court considered that the Commission could not penalise with the same severity the companies to which the contested decision imputed both infringements and those, like Adriatica di Navigazione, to which only one of the infringements was imputed.

178 In the present case, however, the applicant does not dispute the Commission's finding that the agreements or concerted practices concerning price fixing and the exchange and disclosure of commercially sensitive information affecting paraffin waxes (the main aspect of the infringement) and customer allocation or market sharing with respect to paraffin waxes (the second aspect of the infringement) are part of the same single, complex and continuous infringement.

179 In any event, as stated at paragraph 172 above, customer allocation and/or market sharing did not pursue an anticompetitive objective that could be clearly separated from the objective of the main aspect of the infringement. In general, market sharing and customer allocation also serve the goal of achieving supracompetitive price levels, like price-fixing practices. The arrangements relating to both aspects at issue concerned the same products and geographic market and were achieved by means of the same mechanism, based on the technical meetings. Furthermore, price fixing is easier to implement when customers' ability to turn to other suppliers is reduced owing to the allocation of customers between suppliers. In addition, all the undertakings participating in the second aspect of the infringement were also involved in the main aspect of the infringement and both aspects of the infringement took place during the same period. It is thus possible to conclude that the two aspects are complementary (see, to that effect, *Amann & Söhne and Cousin Filterie* v *Commission*, paragraph 166 above, paragraphs 89 to 92) and the Commission's finding that there was a single infringement in the present case must therefore be upheld.

180 Therefore, unlike the factual and legal context of *Adriatica di Navigazione* v *Commission*, paragraph 176 above, there is a single infringement in the present case. Furthermore, the second aspect of the infringement did not have equivalent weight to that of the main aspect of the infringement and, moreover, the participants in the second aspect were penalised more severely than those involved only in the main aspect of the infringement. Thus, the argument which the applicant derives from that judgment must be rejected.

181 In the third place, the applicant claims that there is manifest discrimination between the undertakings that participated in the infringement. The two most serious infringements of Article 81 EC were penalised in a completely different way, in this instance, as regards price fixing, by a basic amount and an additional amount of 17% of the value of sales and, as regards market sharing and/or customer allocation, by a basic amount and an additional amount equal to an insignificant 1% of the reference turnover.

182 According to the case-law, the principle of equal treatment is breached only where comparable situations are treated differently or different situations are treated in the same way, unless such difference in treatment is objectively justified (Case 106/83 *Sermide* [1984] ECR 4209, paragraph 28, and Case T-304/02 *Hoek Loos* v *Commission* [2006] ECR II-1887, paragraph 96).

183 In the present case, all the participants were in the same situation in that they were held liable for the main aspect of the infringement. The Commission then, in compliance with the principle of equal treatment, took into account, for all the participants, 17% of the value of sales to reflect the gravity of the infringement, and also in order to calculate the 'entry fee'.

184 It should be borne in mind, moreover, that the second aspect of the infringement consisted in rather sporadic arrangements, involving fewer participants and thus having less economic significance. In addition, it may be regarded as complementary to the main aspect of the infringement. The situation is therefore objectively different by reference to the main aspect of the infringement and the

Commission therefore did not breach the principle of equal treatment by not using the same or a closely related multiplier to reflect gravity and the 'entry fee' for the main aspect of the infringement and for the second aspect of the infringement, taken on its own.

185 Consequently, the plea alleging breach of the principle of equal treatment must also be rejected.

186 In any event, the Court, in the exercise of its unlimited jurisdiction, considers that the figure of 17% of the value of sales of the undertakings participating solely in the main aspect of the infringement appropriately reflects the gravity of the infringement, as required by Article 23(3) of Regulation No 1/2003 and by the case-law cited at paragraph 165 above.

187 In the light of the foregoing developments, the third plea must be rejected.

Fifth plea, alleging improper failure to take Eni's marginal role in the cartel and its failure to implement the pricing agreements into account as a mitigating circumstance

188 The applicant maintains that the Commission erred in refusing to allow it to benefit from the mitigating circumstance relating to its marginal role in the cartel and its failure to implement the anticompetitive arrangements. In doing so, the Commission infringed Article 81 EC and Article 23 of Regulation No 1/2003 and breached the 2006 Guidelines and also the principle of equal treatment and its obligation to state reasons. The applicant therefore asks the Court to annul the contested decision in whole or in part in so far as it relates to the amount of the fine imposed on the applicant and to recalculate the amount of that fine.

189 As a preliminary point, it should be borne in mind that, according to the third indent of Section 29 of the 2006 Guidelines, the basic amount of the fine may be reduced where the Commission finds that mitigating circumstances exist, in particular where the undertaking concerned provides evidence that its involvement in the infringement is substantially limited and thus demonstrates that, during the period in which it was party to the offending agreements, it actually avoided applying them by adopting competitive conduct on the market. According to the same provision, the mere fact that an undertaking participated in an infringement for a shorter duration than others will not be regarded as a mitigating circumstance since this will already be reflected in the basic amount.

190 The parties are agreed that, according to the letter and the structure of the 2006 Guidelines, the application of the mitigating circumstance deriving from the third indent of Section 29 of the 2006 Guidelines requires, in addition to proof of 'substantially limited involvement' in the cartel, also proof that the undertaking concerned 'avoided applying' the relevant agreement, those two factors constituting two cumulative conditions.

191 In addition, it should be noted that, according to the first indent of Section 3 of the 1998 Guidelines, the 'exclusively passive or "follow-my-leader" role' played by an undertaking in the infringement might constitute an attenuating circumstance. The parties share the view that the concept of 'substantially limited involvement' in the 2006 Guidelines must be interpreted in a manner analogous to that of the 'exclusive passive role' in the 1998 Guidelines.

The passive or marginal role played by Eni in the cartel

– The merits of the contested decision

192 At recital 690 to the contested decision, the Commission rejected the arguments put forward by the applicant in order to demonstrate its marginal role in the cartel, taking the view that for the period in which Eni had participated in the cartel, its conduct had not been different from that of the other

members, with the exception of Sasol. As for Sasol, according to recitals 685 and 686 to the contested decision the Commission concluded that it had played a leading role and increased the basic amount applicable to it by 50% to reflect that aggravating circumstance.

193 According to the applicant, it is clear from the administrative file that its role was marginal during the technical meetings. However, in breach of the principle of equal treatment, the Commission treated it in the same way as all the other participants.

194 According to the case-law, where an infringement has been committed by several undertakings, it is appropriate to consider the relative gravity of the participation of each of them (Joined Cases 40/73 to 48/73, 50/73, 54/73 to 56/73, 111/73, 113/73 and 114/73 *Suiker Unie and Others* v *Commission* [1975] ECR 1663, paragraph 623) in order to determine whether any aggravating or attenuating circumstances should be taken into account (Case T-40/06 *Trioplast Industrier* v *Commission* [2010] ECR II-4893, paragraph 105).

195 The Court has also held, in connection with the first indent of Section 3 of the 1998 Guidelines, that a passive role implied that the undertaking concerned had adopted a 'low profile', that is to say, that it did not actively participate in the creation of an anticompetitive agreement or agreements (*Trioplast Industrier* v *Commission*, paragraph 194 above, paragraph 106; see also, to that effect, *Cheil Jedang* v *Commission*, paragraph 161 above, paragraph 167).

196 Likewise, according to the case-law, among the factors likely to demonstrate an undertaking's passive role in a cartel, significantly more sporadic participation at meetings than that of the other ordinary members of the cartel can be taken into account, as well as the undertaking's late entry on the market which was subject of the infringement, independently of the duration of its participation in the infringement, and also the existence of express statements to that effect made by representatives of other undertakings which participated in the infringement (*Cheil Jedang* v *Commission*, paragraph 161 above, paragraph 169; Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01 *Tokai Carbon and Others* v *Commission* [2004] ECR II-1181, paragraph 331; and *Trioplast Industrier* v *Commission*, paragraph 194 above, paragraph 107).

197 In the first place, the applicant maintains that it was late in entering the relevant market. Until 2002 its sales were virtually limited to supplying SIMP and SER, which absorbed more than 80% of its paraffin waxes and slack wax production. Only after 2002 did Eni gradually begin to supply directly an increasing number of end customers.

198 In that regard, the Commission observes before the Court that Agip had already been active on the paraffin waxes market since 1977.

199 In its answer to the written question put by the Court, the applicant claims that Agip, to which it succeeded, actually produced paraffin waxes from 1975. However, it emphasises that until 2001 it sold virtually exclusively to SIMP and SER and did not have a proper marketing structure for those products.

200 It must be considered that the mere fact that the major part of Eni's paraffin waxes production was sold by SIMP and SER before 2002 does not serve to demonstrate late entry on the relevant market, as the production of paraffin waxes and their sale to resellers or processors also constitutes a presence on the market.

201 In any event, it should be observed that the case-law to which the applicant refers, which consists in judgments referring to late entry on the market, relates to the application of the 1998 Guidelines. In those Guidelines the amount of the fine was less influenced by the duration of the infringement, since the number of years of participation in the cartel constituted only an additional amount. In the

structure of the 2006 Guidelines, on the other hand, the number of years is a multiplier of the value of sales, so that the amount of the fine is proportionate in arithmetical terms to the duration of the infringement, apart from the small part of the amount of the fine known as the 'entry fee'.

202 According to the new structure of the 2006 Guidelines, therefore, in principle late entry on the market is already sufficiently reflected by the lower value of the multiplier for duration.

203 The Court considers that in the present case the mere fact that before 2002 the applicant sold by far the major part of the paraffin waxes which it produced to only two companies is not a factor that might constitute a mitigating circumstance, even in conjunction with the other factors to which the applicant refers.

204 Consequently, the applicant's present argument must be rejected.

205 In the second place, Eni claims that it was not involved in bilateral meetings, except when cross-deliveries between suppliers of paraffin waxes or slack wax made such contacts necessary.

206 In that regard, the wording of recital 275 to the contested decision should be borne in mind:

'… the Commission has chosen not to investigate bilateral contacts as this would have required disproportionate efforts to prove additional components of this infringement without any obvious effect of altering the final outcome. For the same reason, the Commission has chosen not to investigate other contacts that occurred outside the [t]echnical [m]eetings. The Commission also considers that it has sufficiently established the existence of a single and continuous infringement for those practices it has investigated.'

207 Accordingly, it must be pointed out that the Commission did not take into account any factors relating to the bilateral contacts outside the technical meetings with respect to the other participants in the cartel either. Participation in the cartel was established, in the case of all of the undertakings, on the basis of what was discussed at the technical meetings which they attended. Consequently, the applicant's argument relating to its non-involvement in bilateral contacts is not such as to demonstrate its limited participation in the cartel.

208 That argument must therefore be rejected as inoperative.

209 In the third place, Eni claims that it never sent its competitors letters concerning changes to its prices. Among the 150 letters gathered by the Commission, the applicant is mentioned only twice as addressee, for reasons, moreover, unconnected with the cartel, namely its purchases of paraffin from Sasol.

210 First, it is apparent from recitals 113 and 299 to the contested decision that certain participants in the cartel exchanged the pricing letters which they sent to customers. However, the exchange of pricing letters did not relate directly to the anticompetitive discussions and arrangements in which Eni was found to have taken part, but only to the mechanism for monitoring their implementation.

211 Second, Shell observes in its statement of 14 June 2006 that MOL, Eni and Repsol did not send pricing letters to their customers, but communicated their price orally. Likewise, Total did not often send pricing letters. Accordingly, as they did not send pricing letters to their customers, a significant proportion of the participants, namely three or four out of nine, could not be involved in the exchange of pricing letters between competitors because of their commercial practices, independently of the question of their willingness to be a party to such a practice. Nor did those undertakings benefit from a mitigating circumstance on account of limited participation in the cartel.

212 The Commission therefore did not act unlawfully by failing to take that circumstance into account in favour of Eni.

213 That argument must therefore be rejected.

214 In the fourth place, independently of the questions relating to the bilateral discussions and the exchange of pricing letters, the applicant claims that its activity during the technical meetings was limited by comparison with the other participants. In that regard, it refers to Sasol's statement, according to which 'Eni was not a very active participant in the "Blue Saloon"', and to Shell's statement, according to which, 'as regards the prices fixed by common agreement during the technical meetings, Mr S. did not know whether Eni and Repsol, which both played a very passive role during the technical meetings, would have adhered to the price increase and the decisions adopted'. In addition, the applicant claims to have been the only participating undertaking not to have contributed to the organisation of the technical meetings. Even Repsol organised one such meeting.

215 In that regard, the Court has already had occasion to state that the fact that other undertakings participating in a single cartel may have been more active than a given participant does not necessarily imply that the latter had an exclusively passive or follow-my-leader role. In fact, only complete passivity could be taken into account as a factor, and it must be proved by the party alleging it (*Trioplast Industrier* v *Commission*, paragraph 194 above, paragraph 108; see also, to that effect, *Bolloré and Others* v *Commission*, paragraph 50 above, paragraph 611).

216 Such complete passivity cannot be inferred from the fact that the impugned undertaking did not itself organise secret anticompetitive meetings.

217 Furthermore, Shell's statement, which has already been examined at paragraph 89 above, is indeed a relevant factor relied on by the applicant. However, the passage cited by the applicant cannot in itself suffice to establish that its participation in the cartel was substantially limited.

218 Admittedly, Shell refers to the rather passive role played by Eni's and Repsol's representatives in the technical meetings. However, their presence at those meetings gave the other participants the impression that those two large producers were also involved in the anticompetitive arrangements. Furthermore, in the same statement, Shell also mentions Eni among the undertakings that had agreed on price increases and minimum prices.

219 It should be borne in mind in that regard that Eni was a regular participant in the technical meetings between 2002 and 2005, having attended at least 10 of the 13 technical meetings held during that period.

220 In the light of all of those considerations, the Court finds that the Commission did not infringe Article 81 EC or Article 23 of Regulation No 1/2003 or breach the 2006 Guidelines or the principle of equal treatment when it asserted, at recital 690 to the contested decision, that, 'for the period in which Eni participated in the cartel, its conduct was not different from [that] of the other members'.

221 That applicant's other arguments cannot upset that finding.

222 In the first place, the applicant claims that it was unable to benefit from mitigating circumstances on the basis of actual cooperation with the Commission outside the scope of the 2002 Leniency Notice. Although Eni supplied all the information in its possession, it did not, precisely because of its marginal role in the technical meetings, possess any documents relating to the meetings to support the existence of the cartel. It was therefore penalised twice owing to the failure to recognise its passive role.

223 First, as the Commission correctly observes in that respect, as Eni was perfectly aware of the anticompetitive practices carried out at the technical meetings, there was nothing to prevent it from submitting a request for leniency before any other participating undertaking and thus benefiting from full or partial immunity under the 2002 Leniency Notice.

224 Second, it should be borne in mind that the 2002 Leniency Notice, at paragraphs 3 and 4, states the following:

'The Commission is aware that certain undertakings involved in [the] illegal agreements are willing to put an end to their participation and inform it of the existence of such agreements, but are dissuaded from doing so by the high fines to which they are potentially exposed. The Commission considered that it is in the … interest [of the European Union] to grant favourable treatment to undertakings which cooperate with it. The interests of consumers and citizens in ensuring that secret cartels are detected and punished outweigh the interest in fining those undertakings that enable the Authority to detect and prohibit such practices.'

225 It follows that the purpose of the leniency programme is not to afford undertakings participating in secret cartels, who have been alerted to the fact that the Commission has initiated the procedure, the opportunity to escape the financial consequences of their responsibility, but to facilitate the detection of such practices, in the interests of consumers and European citizens, by giving the participants an incentive to disclose them and subsequently, during the administrative procedure, to help the Commission in its efforts to reconstitute the relevant facts so far as possible. Accordingly, the benefits that may be obtained by undertakings participating in such practices cannot go beyond what is necessary to ensure the full effectiveness of the leniency programme and of the administrative procedure conducted by the Commission.

226 There is no interest of European consumers requiring the Commission to allow a greater number of undertakings than is necessary to ensure the full effectiveness of the leniency programme and its administrative procedure to benefit from immunity from fines or a reduction in the amount thereof. There is thus no justification for allowing undertakings other than those that were the first to supply evidence enabling the Commission to order inspections or to establish an infringement or to assist it otherwise and effectively during the administrative procedure to benefit from such immunity or reduction.

227 Accordingly, undertakings that did not objectively supply information that significantly advanced the investigation carried out by the Commission cannot validly rely on circumstances, resulting from their own situation and not from the Commission's steps, that allegedly made cooperation more difficult. The value of cooperation is measured against the usefulness of the contribution of the undertakings concerned, from the viewpoint of the conduct of the administrative procedure by the Commission.

228 The applicant's argument must therefore be rejected.

229 In the second place, the applicant maintains that even though it participated regularly in the technical meetings between 2002 and 2005, its interest was limited to technical discussions, to the exclusion of the anticompetitive content of the meetings.

230 In that regard, reference is made to the analysis carried out at paragraphs 108 to 114 above, from which it is apparent that the applicant has not shown its lack of interest and that, in any event, such lack of interest is not a relevant factor in the assessment of its liability for the infringement.

231 It follows that the Commission did not act unlawfully when assessing what Eni claims to have been its marginal and/or passive role in the cartel, that assessment forming part of the examination of the condition relating to substantially limited participation in the cartel (see paragraph 220 above).

– The reasons stated in the contested decision

232 As regards the alleged failure to state reasons, it should be observed that the arguments put forward by the applicant at pages 41 to 43 of its reply to the statement of objections are essentially the same as those reproduced at paragraphs 193, 197, 205, 209 and 214 above.

233 The reasons stated by the Commission for rejecting those arguments are, admittedly, succinct. At recital 690 to the contested decision, the Commission merely states that, 'for the period in which Eni participated in the cartel, its conduct was not different from [that] of the other members'.

234 However, according to the case-law, 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 all the legal rules governing the matter in question (Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63, and Case C-413/06 P *Bertelsmann and Sony Corporation of America* v *Impala* [2008] ECR I-4951, paragraphs 166 and 178).

235 In the present case, the Commission stated that it considered only the period during which the applicant participated in the cartel. Thus, it stated that the argument that the applicant was late in entering the market was irrelevant.

236 As regards the fact that the applicant was not involved in the bilateral contacts and in the exchanges of pricing letters, it is sufficient to recall that the Commission did not take into account the factors relating to the bilateral contacts outside the technical meetings when establishing the infringement (see paragraphs 207 and 208 above); and the Commission cannot be found to have provided insufficient reasons because it did not undertake a detailed examination of arguments which are essentially irrelevant from the aspect of the assessment of mitigating circumstances in the specific context of the contested decision.

237 As regards the Commission's finding that 'for the period in which Eni participated in the cartel, its conduct was not different from [that] of the other members', moreover, the reasoning supplied by the Commission in that regard must be deemed to include the examination, in the contested decision, of the content of the technical meetings and the evidence showing that Eni was present at those meetings. That examination and the findings made therein must, furthermore, be considered in the light of all the documents and statements made available to the applicant, forming part of the context of the contested decision.

238 While it is true that Sasol and Shell refer to the rather passive or 'not very active' role played by Eni's representatives at the technical meetings, it should be pointed out that, in its statement of 14 June 2006, Shell also mentions Eni among the undertakings that agreed on the price increases and minimum prices and states that MOL, Repsol and Eni did not send letters announcing price increases to their customers following the technical meetings, but 'rather communicated their price increases orally' (see paragraph 89 above). Accordingly, given also the well-founded assertions in the contested decision concerning Eni's presence at at least 10 of the 13 technical meetings held during the period from 21 February 2002 until 28 April 2005, that decision provides sufficient material to explain both to Eni and to the Courts of the European Union the reasons why Eni's participation in the cartel could not be considered to be substantially limited.

239 It follows that the Commission did not breach its obligation to state reasons with respect to its examination of the alleged marginal or passive role played by Eni in the infringement.

240 In the light of the foregoing examination, the complaint alleging failure to recognise the marginal or passive role played by Eni in the infringement must be rejected.

Eni's non-application of the price-fixing agreements

241 It should be noted that 'substantially limited involvement' in the infringement and the avoidance of its application are cumulative conditions of the mitigating circumstance referred to in the third indent of Section 29 of the 2006 Guidelines. The applicant has not shown that its involvement had been substantially limited; therefore its complaint that the rejection, in the contested decision, of the arguments whereby it sought to show that it avoided applying the cartel was unlawful cannot in any event lead to a finding of a breach of the 2006 Guidelines by the Commission.

242 In any event, in the interest of completeness, the Court will examine the applicant's arguments.

– The merits of the contested decision

243 At recital 695 to the contested decision, the Commission stated:

'… As to Eni's arguments, the Commission observes that it is apparent from the data Eni submitted in its reply to the statement of objections that it indeed increased its prices five times between 2002 and 2005. The Commission also observes that attempts to increase prices did often not succeed because higher prices were not accepted by customers but not because of the behaviour of the undertaking claiming the benefit of an attenuating circumstance. The Commission therefore does not view Eni's … arguments as showing that implementation of the agreed price increases was not realised or even attempted. With respect to the pricing letters, the Commission has previously explained that these letters were not the only means of implementation. It is therefore not possible to conclude from [the] fact that the Commission may not have been able to provide evidence that such letters were always sent and received that implementation did not occur. The Commission also considers in this context that information on price increases may have been communicated by other means between the participants of the [t]echnical [m]eetings.'

244 According to the case-law, it is necessary to ascertain whether the circumstances which the applicant pleads are capable of showing that during the period in which it was a party to the unlawful practices it actually avoided applying them by adopting competitive conduct on the market (Case T-224/00 *Archer Daniels Midland and Archer Daniels Midland Ingredients* v *Commission* [2003] ECR II-2597, paragraph 268, and *Bolloré and Others* v *Commission*, paragraph 50 above, paragraph 625).

245 Likewise, it is settled case-law that the fact that an undertaking which has been proved to have participated in collusion on prices with its competitors did not behave on the market in the manner agreed with its competitors is not necessarily a matter which must be taken into account as a mitigating circumstance when determining the amount of the fine to be imposed. An undertaking which despite colluding with its competitors follows a more or less independent policy on the market may simply be trying to exploit the cartel for its own benefit (*Cascades* v *Commission*, paragraph 144 above, paragraph 230, and *Jungbunzlauer* v *Commission*, paragraph 165 above, paragraph 269).

246 In that context, it is necessary to determine whether such circumstances are capable of showing that, during the period in which the applicant was party to the offending agreements, it actually avoided implementing them by adopting competitive conduct on the market or, at the very least, whether it clearly and substantially breached the obligations relating to the implementation of the cartel to the point of disrupting its very operation (see, to that effect, Case T-26/02 *Daiichi Pharmaceutical* v *Commission* [2006] ECR II-713, paragraph 113).

247 In the first place, the applicant claims that it never applied the price increases decided on by the other participants during the technical meetings. It refers in that regard to the arguments put forward in the context of the second plea. The table showing trends in the price of '133' paraffin submitted by the applicant shows that prices fluctuated, instead of undergoing a series of increases as stated in the contested decision. The applicant likewise refers to those arguments concerning the indexation of its prices on the prices set out in the *ISIS-LOR* report as regards sales to SIMP and SER.

248 First of all, it should be borne in mind that similar arguments were examined at paragraph 140 et seq. above.

249 The table mentioned above covers only sales of '133' paraffin to SIMP and the prices charged by the applicant to that undertaking were apparently rather stable; furthermore, owing to its purchasing power, SIMP was well placed to counter any attempt by Eni to raise its prices. The table contains no indication of trends in Eni's prices to its final customers, who were more exposed to the price manipulations resulting from the cartel. It should be added that '133' paraffin is only one of the many types of paraffin wax produced by the applicant. Accordingly, the information which it communicated is very selective and cannot in any event be extrapolated to the full range of paraffin waxes produced by the applicant and sold to all purchasers.

250 Next, the applicant cannot validly raise the objection against the Commission that there is no correlation between the information available on the technical meetings and the table in the application. It is apparent from a number of statements cited above that the price increases agreed at the technical meetings could not generally be applied in full vis-à-vis customers. Shell stated that around two thirds of the agreed increases could be implemented. In addition, there are several indications in the file that the participants were frequently unable to implement the agreed increase at all. In addition, the participants often focused their efforts on maintaining prices, or on stopping prices from being eroded, and not on a coordinated increase.

251 It should be added that, according to the case-law cited at paragraph 42 above, the evidence relating to cartels is normally fragmentary and incomplete, as in the present case, where the Commission succeeded in reconstituting the content of only a small part of the technical meetings. For that reason alone, the Commission is rarely in a position to examine correspondence between the outcome of the unlawful discussions of prices and trends in the prices charged by the individual participants in the cartel. There is thus no justification for giving the participants the benefit of non-application of the pricing arrangements, as a mitigating circumstance, solely because trends in the prices of certain products, charged to certain customers, cannot be directly compared with the fragmentary and incomplete information which the Commission may have at its disposal.

252 Last, in any event, the fact that the price of the '133' paraffin sold to SIMP rose, from EUR 542 on 1 January 2002 to EUR 588 on 1 April 2005, by only 8.48% is not such as to show that Eni breached the arrangements designed to implement the cartel, to the extent of having disrupted its very operation.

253 Accordingly, the applicant's arguments relating to the table showing pricing trends are not capable of showing that it actually avoided applying the unlawful practices.

254 In the second place, the applicant submits that it did not participate in the exchange of letters announcing price increases intended for customers, but mutually communicated by certain other participants in the cartel.

255 In that regard, it is sufficient to refer to the finding made at paragraph 211 above, that a significant proportion of the participants in the cartel — three or four out of nine, including the applicant — did not send pricing letters to their customers, since those participants communicated their prices orally.

256 In addition, the implementation of the cartel consisted essentially in taking into account, during negotiations on prices with customers, the information received during the technical meetings. Accordingly, the fact that Eni did not participate in the exchange of pricing letters, which was, rather, a mechanism for monitoring the implementation of the pricing arrangements, cannot show that it avoided applying the unlawful practices.

257 It follows from the foregoing that the complaint which the applicant bases on its alleged non-application of the infringement is factually incorrect.

258 Accordingly, the Commission did not infringe Article 81 EC or Article 23 of Regulation No 1/2003 or breach the 2006 Guidelines or the principle of equal treatment in that context.

– The reasons stated in the contested decision

259 As regards the alleged breach of the obligation to state reasons, it should be borne in mind that, in addition to the considerations set out at recital 695 to the contested decision, the Commission examined in the contested decision the content of the technical meetings and the evidence showing that Eni was present at those meetings. That examination and the findings made therein must, moreover, be considered in the light of all the documents and statements made available to the applicant, which form part of the context of the contested decision.

260 In fact, the statement of reasons in the present case enables both the applicant and the Court to understand the reasons why the Commission did not recognise the applicant's claim that it avoided the application of the infringement.

261 It follows that neither of the two cumulative conditions of the application of the mitigating circumstance provided for in the third indent of Section 29 of the 2006 Guidelines is satisfied in the present case. The Commission has demonstrated to the requisite legal standard that Eni's participation in the infringement was not substantially limited and that it did not actually avoid applying the anticompetitive arrangements by adopting competitive conduct on the market.

262 It should be pointed out, moreover, that the Court has examined in detail the documentation on which the Commission relied in the contested decision. It concludes, in the exercise of its unlimited jurisdiction, that no reduction of the amount of the fine imposed on the applicant is justified on the ground of what it alleges to have been its limited participation in the cartel, its marginal or passive role in the cartel, its avoidance of the application of the anticompetitive arrangements or its failure to implement the cartel.

263 In the light of the foregoing, the fifth plea must be rejected.

Sixth plea, alleging failure to take Eni's negligence into account as a mitigating circumstance

264 The applicant claims that the Commission wrongly refused to allow it the mitigating circumstance relating to negligence. In doing so, the Commission infringed Article 81 EC and Article 23 of Regulation No 1/2003 and breached the 2006 Guidelines. The applicant asks the Court to annul the contested decision, in so far as the Commission refuses to apply that mitigating circumstance to the applicant and to recalculate the amount of the fine accordingly.

265 As a preliminary point, it should be borne in mind that, according to the second indent of Section 29 of the 2006 Guidelines, the basic amount of the fine may be reduced where the undertaking concerned provides evidence that the infringement was committed as a result of negligence.

266 According to recital 708 to the contested decision:

'Eni also claims that it had no intention of committing an infringement as its representative … attended the meetings without any intention of infringing competition rules. … At the oral hearing, Eni stated that its representative was of the opinion that he attended legitimate meetings of the EWF when he in fact attended the technical meetings. The Commission observes that Eni's statements are not based on any evidence. The Commission does not deem it likely that Eni's representatives attend meetings without the intention of doing so. With respect to Mr [MO.]'s belief that he attended meetings of the EWF, the Commission does not comprehend how such a misunderstanding could have occurred given that neither the invitation nor the set-up of the meetings showed any connection with the EWF.'

267 The applicant claims that it provided evidence of its negligence. It refers in that regard to a note from Mr MO. to Mr D., his superior, stating that he attended a 'meeting between the main European producers of paraffins and slack wax, organised within the framework of the EWF, which [Eni] rejoined a short time ago'. It follows that Mr MO. was convinced that he was taking part in lawful meetings, organised within the framework of the EWF.

268 In that regard, it should be observed that negligence on Eni's part cannot be established in the present case, since the anticompetitive content of the technical meetings was clear and obvious and since, in spite of that, Mr MO. participated in at least 10 of the 13 meetings held between 21 February 2002 and 28 April 2005.

269 In the light of the manifestly anticompetitive content of the technical meetings, the fact that, according to the information provided by Mr MO. to Mr D., the meetings in question were organised under the aegis of the EWF is irrelevant.

270 Moreover, the question whether Mr D. had the correct impression of what was discussed during the technical meetings is also irrelevant. The Commission's power to penalise an undertaking where it has committed an infringement presumes only the unlawful action of a person who is generally authorised to act on behalf of the undertaking (Joined Cases 100/80 to 103/80 *Musique Diffusion française and Others* v *Commission* [1983] ECR 1825, paragraph 97, and *Tokai Carbon and Others* v *Commission*, paragraph 196 above, paragraph 277). As a product manager employed first of all by AgipPetroli and then by Eni, Mr MO. must be considered to be a person generally authorised to act on behalf of Eni.

271 As regards the arguments which the applicant derives from Eni's lack of interest in participating in the cartel, reference is made to the analysis set out at paragraphs 108 to 121 above.

272 The sixth plea must therefore be rejected.

Fourth plea, alleging incorrect establishment of the aggravating circumstance of repeated infringement

273 The applicant claims that the Commission infringed Article 81 EC and Article 23 of Regulation No 1/2003, breached the 2006 Guidelines, and the principles of legal certainty and equal treatment and misused its powers by increasing the basic amount of the fine by 60% to reflect the aggravating circumstance of repeated infringement. Consequently, it asks the Court to annul the contested decision in so far as the Commission increased the amount of the fine imposed on the applicant by 60% on the ground of repeated infringement. In the alternative, it asks the Court to reduce the rate of increase applied by the Commission.

274 According to Section 28 of the 2006 Guidelines, the basic amount of the fine may be increased where the Commission finds that there are aggravating circumstances. One of the aggravating circumstances is repeated infringement, defined in that section as continuation or repetition of the same or a similar

infringement after the Commission or a national competition authority has made a finding that the undertaking in question infringed Article 81 EC or 82 EC. In such a case, the basic amount of the fine will be increased by up to 100% of each infringement established.

275 The concept of repeated infringement, as understood in a number of national legal orders, implies that a person has committed new infringements after being punished for similar infringements (Case T-141/94 *Thyssen Stahl* v *Commission* [1999] ECR II-347, paragraph 617, and Case T-203/01 *Michelin* v *Commission* [2003] ECR II-4071, paragraph 284).

276 Any repeated infringement is among the factors to be taken into consideration in the analysis of the gravity of the infringement in question (*Aalborg Portland and Others* v *Commission*, paragraph 42 above, paragraph 91, and *Groupe Danone* v *Commission*, paragraph 160 above, paragraph 26).

277 In the present case, according to recital 673 to the contested decision, before beginning its participation in the cartel, Eni or its subsidiaries had been the addressees of previous Commission decisions concerning cartels, namely Commission Decision 86/398/EEC of 23 April 1986 relating to a proceeding under Article [81 EC] (IV/31.149 — Polypropylene) (OJ 1986 L 230, p. 1, 'the Polypropylene decision') and Commission Decision 94/599/EC of 27 July 1994 relating to a proceeding pursuant to Article [81 EC] (IV/31.865 — PVC) (OJ 1994 L 239, p. 14, 'the PVC II decision').

278 The applicant claims that it has never been an addressee of any decision relating to an infringement. The procedures that led to the adoption of the Polypropylene decision and the PVC II decision were conducted against Anic SpA and EniChem SpA respectively. There is no reference to Eni in those decisions. It received no requests for information, it did not participate in the procedures in question in any capacity and it did not have the opportunity to exercise its rights of defence.

279 In the contested decision, the Commission therefore objectively imputed to Eni liability for the actions of other legal entities, and did so retrospectively, after 25 years. Such an approach constitutes a breach of the principle of personal liability, of the principle of legal certainty and of Eni's rights of defence, since it was unable, at the time of the adoption of the Polypropylene decision and the PVC II decision, to challenge the liability which the Commission subsequently imputed to it in the contested decision.

280 The Commission contends that the applicant's argument fails to have regard to the case-law on the presumption of the effective exercise of decisive influence by the parent company over the commercial conduct of its wholly-owned, or almost wholly-owned, subsidiary. In such a case, the Commission is not required to adduce any further evidence when the companies concerned do not themselves adduce evidence to rebut the presumption in question, which was the case here.

281 It is clear from the parties' argument that the main question for the Court in the context of the present plea is the applicability of the presumption that there is an economic unit between the parent company and its wholly-owned subsidiaries, in the specific context of repeated infringement, where the subsidiaries committed infringements penalised by the Commission in previous decisions in which liability for the subsidiaries' actions was not imputed to the parent company.

282 It must be borne in mind that the competition law of the European Union covers the activities of undertakings 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 (see Case C-97/08 P *Akzo Nobel and Others* v *Commission* [2009] ECR I-8237, paragraph 54 and the case-law cited).

283 An undertaking's anticompetitive conduct can therefore be attributed to another undertaking where it has not decided independently upon its own conduct on the market, having regard in particular to the economic and legal links between them (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 117, and *Akzo Nobel and Others* v *Commission*, paragraph 282 above, paragraph 58).

284 In the specific case of a parent company holding 100% of the capital of a subsidiary which has infringed the European Union competition rules, first, the parent company can exercise a decisive influence over the conduct of the subsidiary and, second, there is a rebuttable presumption that the parent company does in fact exercise a decisive influence over the conduct of its subsidiary. In those circumstances, it is sufficient for the Commission to prove that the subsidiary is wholly owned by the parent company in order to presume that the parent company exercises a decisive influence over the commercial policy of the subsidiary. The Commission will then be able to regard the parent company as jointly and severally liable for the 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 *Akzo Nobel and Others* v *Commission*, paragraph 282 above, paragraphs 60 and 61 and the case-law cited).

285 According to the case-law, for the purpose of rebutting the presumption, it is for the companies concerned to put before the Court any evidence relating to the organisational, economic and legal links between the subsidiary and the parent company which in their view is apt to demonstrate that they do not constitute a single economic entity. When making its assessment, the Court must take into account all the evidence adduced, the nature and importance of which may vary according to the specific features of each case (Case T-112/05 *Akzo Nobel and Others* v *Commission* [2007] ECR II-5049, paragraph 65, and Case T-39/07 *Eni* v *Commission* [2011] ECR II-4457, paragraph 95).

286 In the present case, the applicant claims that the imputation *ex post facto* of notional liability for the purposes of establishing a repeated infringement, on the basis of a presumption that there is an economic unit between the subsidiary and the parent company, based on the link of ownership of the capital, would render that presumption irrebuttable, since the applicant was unable to exercise its rights of defence during the procedures leading to the adoption of the Polypropylene decision and the PVC II decision.

287 The Commission merely observes, at recitals 674 to 676 to the contested decision, that the Polypropylene decision was addressed, inter alia, to Anic, while the PVC II decision was addressed, inter alia, to Enichem. According to the Commission, those addressees were, at the time of the respective infringements, 'part of groups that subsequently developed into today's Eni group', so that Eni has already been the addressee of earlier decisions finding an infringement of Article 81 EC.

288 Next, relying on *Michelin* v *Commission*, paragraph 275 above (paragraph 290), the Commission considered, at recital 678 to the contested decision, that:

> '… The [Polypropylene and PVC II] Decisions … were adopted against entities that were part of an undertaking at the time the infringement took place. … [Repeated infringement] can also be adduced against a subsidiary within one group with reference to a past infringement by a different subsidiary within the same group even if the parent company was not an addressee of the earlier prohibition decision. … In any event, internal reorganisations cannot have any effect on the assessment of this aggravating circumstance. The Commission also observes that it is not required to address a decision to the ultimate parent company but has discretion in determining the addressee of a decision.'

289 In the first place, it should be noted that, in *Michelin* v *Commission*, paragraph 275 above, unlike in the present case, the applicant did not deny that the two subsidiaries and the parent company belonged to the same undertaking, nor did it claim that there had been a breach of the parent company's rights of defence owing to the retrospective imputation of liability for the infringement committed by the other

subsidiary to which the earlier decision had been addressed. It is for that reason that in that judgment the Court was able to dismiss the action without ruling on whether any factors rebutting the presumption of liability should be taken into account or on the exercise of the rights of the defence in that context. Since, on the other hand, in the present case Eni puts forward weighty arguments in that respect, the Court cannot automatically transpose to the present case the solution reached in *Michelin* v *Commission*, paragraph 275 above.

290 In the second place, reference should be made to the development of the case-law of the Courts of the European Union since the judgment in *Michelin* v *Commission*, paragraph 275 above, with respect to the presumption of the actual exercise of decisive influence by the parent company over its subsidiary, on the sole basis that the parent company owns all or virtually all the capital of the subsidiary.

291 In particular, in Case C-90/09 P *General Química and Others* v *Commission* [2011] ECR I-1, paragraphs 104 to 109, and Case C-521/09 P *Elf Aquitaine* v *Commission* [2011] ECR I-8947, paragraphs 153, 167 and 168, the Court of Justice emphasised the importance of examining the arguments put forward by the undertakings on which penalties have been imposed concerning the rebuttal of the presumption that the parent company does in fact exercise decisive influence over its subsidiary.

292 In the third place, it should be observed that, in the present case, as Eni was not an addressee of the Polypropylene decision or of the PVC II decision, it was given no opportunity, in the administrative procedures leading to the adoption of those decisions, to adduce evidence capable of rebutting the presumption that the parent company does in fact exercise decisive influence over its subsidiary, on the basis of which, more than 14 years later, the Commission established repeated infringement on its part in the contested decision.

293 Admittedly, in the statement of objections issued in the context of the procedure leading to the contested decision, in the context of the aggravating circumstances, the Commission stated that 'before or during the infringement, at least Eni, Shell and Total had already been or were the addressees of [its] earlier … decisions relating to cartels', and made clear that it was referring to the Polypropylene decision and the PVC II decision.

294 However, that reference in the statement of objections cannot satisfy the requirements resulting from respect for the rights of the defence, consisting in the actual possibility to submit evidence of such a kind as to rebut the presumption in question.

295 In that regard, it should be pointed out that, according to the case-law of the Court of Justice, first, the principle of respect for the rights of the defence precludes a competition decision in which the Commission imposes a fine on an undertaking without first having informed it of the objections relied on against it from being held to be lawful and, second, given its importance, the statement of objections must specify unequivocally the legal person on whom fines may be imposed and be addressed to that person (Joined Cases C-322/07 P, C-327/07 P and C-338/07 P *Papierfabrik August Koehler and Others* v *Commission* [2009] ECR I-7191, paragraphs 37 and 38, and Case C-97/08 P *Akzo Nobel and Others* v *Commission*, paragraph 282 above, paragraph 57).

296 Thus, it cannot be accepted that the Commission is entitled to decide, when making a determination as to the aggravating circumstance of repeated infringement, that an undertaking should be held liable for a previous infringement in relation to which it was not penalised by a Commission decision and in the establishment of which it was not the addressee of a statement of objections. Such an undertaking was not given an opportunity, in the procedure leading to the adoption of the decision establishing the previous infringement, to make representations with a view to disputing that it formed an economic unit with certain other companies to which the previous decision was addressed (Joined Cases T-144/07, T-147/07 to T-150/07 and T-154/07 *ThyssenKrupp Liften Ascenseurs and Others* v *Commission* [2011] ECR II-5129, paragraph 319).

297 That conclusion appears all the more valid since, while it is true that the principle of proportionality requires that the time that has elapsed between the infringement at issue and a previous breach of the competition rules be taken into account in assessing the undertaking's tendency to infringe those rules, the Court of Justice has already stated that the Commission cannot be bound by any limitation period when reaching a finding of repeated infringement (*Groupe Danone* v *Commission*, paragraph 160 above, paragraph 38, and Case T-410/03 *Hoechst* v *Commission* [2008] ECR II-881, paragraph 462) and that such a finding may therefore be reached several years after a finding of infringement, at a time when the undertaking concerned would, in any event, be incapable of disputing the existence of such an economic unit, in particular if the presumption referred to in paragraph 284 above is applied (*ThyssenKrupp Liften Ascenseurs and Others* v *Commission*, paragraph 296 above, paragraph 320).

298 Last, it cannot be accepted that, where a parent company owns almost the entire share capital of its subsidiary, that parent company also becomes the addressee of the warning which is directed towards its subsidiary as a result of a previous Commission decision penalising the latter for an infringement of competition law. Indeed, while it would be reasonable to assume that a parent company would actually have knowledge of a previous Commission decision addressed to a subsidiary of which it owned almost the entire share capital, such knowledge cannot remedy the absence of any finding in the previous decision that the parent company and the subsidiary form an economic unit reached for the purpose of imputing to the parent company liability for the previous infringement and increasing the fines imposed on the parent company for repeated infringement (*ThyssenKrupp Liften Ascenseurs and Others* v *Commission*, paragraph 296 above, paragraph 322).

299 The Court therefore considers that, in making a finding of repeated infringement on the basis of the Polypropylene decision and the PVC II decision, of which Eni was not an addressee, and in retrospectively imputing liability to Eni for the infringements committed by Anic and Enichem, the Commission breached Eni's rights of defence.

300 That conclusion cannot be called into question by the Commission's other arguments.

301 The Commission relies on the judgments in Case T-53/03 *BPB* v *Commission* [2008] ECR II-1333, paragraphs 368 and 389, and Case T-161/05 *Hoechst* v *Commission* [2009] ECR II-3555, paragraph 147. In those judgments, the Court confirmed the possibility of applying the aggravating circumstance of repeated infringement with respect to infringements committed directly by different subsidiaries of the same parent company.

302 In that regard, it is sufficient to observe that, in the judgments to which the Commission refers, the Court did not consider, from the aspect of respect for the rights of the defence, whether the Commission was entitled to impute retrospectively to the parent company liability for an infringement committed by a subsidiary penalised in an earlier decision. Those judgments cannot therefore influence the analysis of the present plea.

303 The same applies to the judgment in Case T-343/06 *Shell Petroleum and Others* v *Commission* [2012] ECR.

304 In *Shell Petroleum and Others* v *Commission*, paragraph 303 above, the applicants raised, for the first time at the hearing, the fact that the Commission had breached their rights of defence by failing to provide them with the opportunity to rebut the presumption that parent companies do in fact exercise decisive influence over their subsidiaries which had been penalised for two previous infringements, which had been taken into account for the purpose of establishing a repeated infringement.

305 However, the Court did not examine the substance of that plea, but rejected it as inadmissible on the ground that it had been raised out of time on the basis of Article 44(1)(c) and Article 48(2) of the Rules of Procedure.

306 Therefore *Shell Petroleum and Others* v *Commission*, paragraph 303 above, does not preclude the solution adopted at paragraph 299 above either.

307 It follows from the foregoing that the fourth plea must be upheld and the contested decision must be varied, without there being any need to examine the other complaints raised by the applicant in the context of this plea.

308 The conclusions that must be drawn from the illegality found at paragraph 299 above will be examined at paragraph 309 et seq. below.

The exercise of the Court's unlimited jurisdiction and the determination of the final amount of the fine

309 According to recital 662 to the contested decision, the basic amount of the fine to be imposed on Eni was set at EUR 13 000 000.

310 According to recital 680 to the contested decision, the Commission increased the basic amount of the fine by 60% to reflect a repeated infringement, the basic amount thus reaching the sum of EUR 20 800 000.

311 Next, at recital 713 to the contested decision, the Commission stated that, for the purposes of deterrence, owing to Eni's size, pursuant to Section 30 of the 2006 Guidelines, the basic amount of the fine should be further increased by the application of a multiplier of 1.4. Thus, the Commission arrived at an adjusted basic amount equal to EUR 29 120 000. That amount corresponds to the fine imposed on Eni in the contested decision.

312 In the light of the conclusion which the Court reached following its examination of the fourth plea (see paragraphs 307 and 308 above), the amount of the fine should be re-calculated taking into account a basic amount of EUR 13 000 000, but without an increase of 60% to reflect a repeated infringement.

313 As the other elements of the calculation of the amount of the fine remain unaltered, the amount of the fine imposed on Eni must be set at EUR 18 200 000.

314 The Court considers, in the exercise of its unlimited jurisdiction, that the amount of the fine as thus set is appropriate, in the light of the gravity and the duration of the infringement committed by the applicant.

Costs

315 Under Article 87(3) of the Rules of Procedure, where each party succeeds on some and fails on other heads, the Court may order that the costs be shared or that each party bear its own costs.

316 In the present case, the pleas whereby Eni disputes its participation in the cartel have been rejected. Only one of the six pleas put forward by the applicant has been upheld by the Court, with the consequence that the amount of the fine imposed on the applicant was reduced by 37.5%. Accordingly, it is fair in the circumstances of the case to decide that the applicant is to bear one half of its own costs and pay one half of the Commission's costs. The Commission will bear one half of its own costs and pay one half of the costs incurred by the applicant.

On those grounds,

THE GENERAL COURT (Third Chamber)

hereby:

1. **Sets the amount of the fine imposed on Eni SpA in Article 2 of Commission Decision C(2008) 5476 final of 1 October 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39.181 — Candle Waxes) at EUR 18 200 000;**

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

3. **Orders the European Commission to bear one half of its own costs and to pay one half of the costs incurred by Eni. Eni is ordered to bear one half of its own costs and pay one half of those incurred by the Commission.**

Czúcz Labucka Gratsias

Delivered in open court in Luxembourg on 12 December 2014.

[Signatures]

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