Reports of Cases

JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

15 July 2015*

(Competition — Agreements, decisions and concerted practices — European market for prestressing steel — Price-fixing, market-sharing and exchange of commercially sensitive information — Decision finding an infringement of Article 101 TFEU — Rules on the imputability of the anticompetitive practices of a subsidiary to its parent company — Presumption of actual exercise of decisive influence — Reasonable time)

In Case T-436/10,

Hit Groep BV, established in Haarlem (Netherlands), represented initially by G. van der Wal, G. Oosterhuis and H. Albers, and subsequently by G. van der Wal and G. Oosterhuis, lawyers,

applicant,

v

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

defendant,

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

THE GENERAL COURT (Sixth Chamber),

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

Registrar: J. Plingers, Administrator,

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

gives the following

* Language of the case: Dutch.

Judgment [1] …

Procedure and forms of order sought

65 By application lodged at the Court Registry on 15 September 2008, Hit Groep brought the present action.

66 By document lodged at the Court Registry on 24 December 2010, Nedri sought leave to intervene in the proceedings in support of the form of order sought by the Commission; leave to intervene was granted by the President of the First Chamber of the Court by order of 28 February 2011. By letter lodged at the Court Registry on 28 October 2013, however, Nedri informed the Court that it was withdrawing its intervention. It was therefore removed from the register of Case T-436/10 as intervener, by order of the President of the Sixth Chamber of the Court of 4 December 2013.

67 By letter of 6 May 2011, Hit Groep sought leave to produce a new plea in law, in the light of matters revealed for the first time in the defence.

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

69 Hit Groep confirmed, by letter of 26 July 2011, that it was seeking leave to adapt its pleas following the adoption of the second amending decision.

70 By letter of 29 July 2011, the Court granted that request.

71 The written procedure ended on 20 October 2011 when the Commission lodged the rejoinder in the language of the case.

72 In the rejoinder, the Commission adopted a position on the applicant's request to amend its pleas, which it submitted in the reply, and also on the observations which the applicant had submitted following the adoption of the second amending decision.

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

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

75 On 17 December 2013, in the context of the measures of organisation of procedure provided for in Article 64 of the Rules of Procedure of 2 May 1991, the Court put a number of questions in writing to the Commission. The Commission complied with that request on 6 February 2014. The applicant submitted observations on the Commission's reply, by document lodged at the Court Registry on 14 March 2014.

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

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

1 — Only the paragraphs of this judgment which the Court considers it appropriate to publish are reproduced here.

78 Hit Groep claims that the Court should:

— annul the contested decision in so far as it concerns Hit Groep and, in particular, Article 1(9)(b), Article 2(9) and Article 4(22);

— in the alternative, annul or reduce in such manner as it may deem appropriate the amount of the fine imposed on Hit Groep in Article 2(9) of the contested decision;

— order the Commission to pay the costs.

79 The Commission contends that the Court should:

— dismiss the action;

— order Hit Groep to pay the costs.

Law

80 Hit Groep submits, primarily, three pleas in support of its claim for annulment of the contested decision and also two alternative pleas in support, this time, of its claim for annulment or reduction of the amount of the fine imposed on it.

81 Hit Groep also submitted a sixth, supplementary, plea during the course of the written procedure.

82 The first plea alleges infringement of Article 101 TFEU and Article 53 of the EEA Agreement and failure to state reasons, in that the contested decision finds that Hit Groep is liable for having committed an infringement between 1 January 1998 and 17 January 2002.

83 The second plea alleges that the imposition of a fine on Hit Groep, which has no longer been economically active since 1 November 2004, is contrary to the objectives of Article 101 TFEU, to European policy on fines and to the principle of proportionality, as that fine is neither appropriate nor necessary.

84 The third plea alleges that Hit Groep was wrongly held jointly and severally liable for the infringement committed by Nedri.

85 The fourth plea alleges that the amount of the fine imposed on Hit Groep is incorrect, in so far as the Commission:

— in taking Hit Groep's turnover for 2003 into consideration, infringed Article 23(2) of Regulation No 1/2003 and breached the principle of proportionality (first part);

— ought to have granted Hit Groep the same reduction as it granted Nedri under the leniency programme, in so far as its liability cannot be greater then Nedri's (second part);

— calculated the fine imposed on Hit Groep separately, when it ought to have restricted that fine to a proportion of the fine imposed on Nedri, since Hit Groep was held only jointly and severally liable for the fine imposed on Nedri (third part);

— breached the principle of proportionality in failing to take account, after the application of the 10% upper limit, of the limited period for which Hit Groep is held liable for the infringement committed by Nedri (fourth part).

86 The fifth plea, submitted in the alternative, alleges breach of the 'reasonable time' principle by the Commission.

87 The sixth plea alleges that the basic amount of the find was calculated on the basis of a period during which Nedri was active that exceeded the period for which Hit Groep was held jointly and severally liable with its subsidiary.

88 Last, at the hearing, the applicant put forward a seventh plea, alleging breach of the 'reasonable time' principle by the Court.

The first three pleas

The contested decision

89 It is apparent from the contested decision that, from 1 January 1998 until 17 January 2002, the applicant held all of Nedri's capital and that the exercise of decisive influence may therefore be presumed, a presumption which, according to the Commission, the applicant was not in the period from 1 January 1998 to 17 January 2002 (recitals 804 to 812 to the contested decision).

90 The Commission therefore considered that Nedri should be held liable for the infringement from 1 January 1984 until 19 September 2002 and declared the applicant jointly and severally liable with Nedri for the period from 1 January 1998 until 17 January 2002 (recital 813 to the contested decision).

91 In the words of Article 1 of the contested decision:

'The following undertakings have infringed Article 101 [TFEU] and, from 1 January 1994, Article 53 of the EEA Agreement by participating, for the periods indicated, in a continuing agreement and/or concerted practice in the prestressing steel sector in the internal market and, as of 1 January 1994, within the EEA:

…

9. undertakings in the Nedri group:

(a) Nedri Spanstaal BV from 1 January 1984 to 19 September 2002; and

(b) Hit Groep BV from 1 January 1998 to 17 January 2002.'

92 Last, in Article 2 of the contested decision, the Commission imposes a fine of EUR 5 056 500 jointly and severally on Nedri and Hit Groep and a fine of EUR 1 877 500 on Hit Groep.

Arguments of the parties

– First plea, alleging infringement of Article 101 TFEU and Article 53 of the EEA Agreement in that the contested decision finds that Hit Groep committed an infringement during the period from 1 January 1998 to 17 January 2002, and failure to state reasons

93 In essence, Hit Groep claims that, both in the statement of objections and in the contested decision, it was held jointly and severally liable on the sole ground that it was a shareholder that controlled and exercised decisive influence over Nedri.

94 In the applicant's submission, the Commission at the same time concluded, however, without stating its reasons or setting out its reasoning on that point in the decision, that the applicant had itself infringed Article 101 TFEU.

95 Hit Groep submits that if the infringement can, if appropriate, be imputed to it, that does not mean that it actually committed the infringement. It maintains that it is not the author or joint author of the infringement, but that it assumes liability solely for Nedri's conduct.

96 According to Hit Groep, such liability does not have the same intensity as the liability of an undertaking that actually commits the infringement, which should have an impact on the amount of the fine.

97 The Commission disputes those arguments.

– Second plea, alleging that the imposition of a fine on Hit Groep, which has no longer been economically active since 1 November 2004, is contrary to the objectives of Article 101 TFEU, to European policy on fines and to the principle of proportionality, as that fine is neither appropriate nor necessary in this case

98 Referring to the judgment of 11 December 2007 in *ETI and Others* (C-280/06, ECR, EU:C:2007:775), and also to the Opinion of Advocate General Kokott in that case (EU:C:2007:404), Hit Groep maintains, in essence, that while admittedly neither it nor Nedri has disappeared or been transferred to another legal person or a third undertaking, it has itself no longer been active on the market since 1 November 2004 (that is to say, for more than five years before it was penalised by the Commission), that it was penalised solely in its capacity as the parent company of Nedri, which alone committed the infringement, and that, consequently, the fine will have no deterrent effect so far as Hit Groep is concerned.

99 That penalty is therefore not consistent with the objectives of competition policy and is not proportionate, since, according to the applicant, it is neither appropriate nor necessary for the purpose of attaining the objective of Article 101 TFEU.

100 The applicant maintains, in essence, that in such circumstances the principle of economic continuity should have had the effect that only the legal person that committed the infringement, that is to say, Nedri, received a penalty, since the applicant itself, which was merely a holding company, was no more than an empty shell.

101 In fact, in the applicant's submission, if a holding company, such as the applicant, disposes of a subsidiary which has committed an infringement, and that holding company is subsequently no longer economically active, the economic continuity of the former group is based on the entity that committed the infringement and it is on that entity, and not the economically inactive holding company, that the fine should be imposed.

102 Hit Groep maintains, moreover, that the choice that the Commission may make between penalising the parent company and penalising the subsidiary, according to the case-law, ought to have led it, in the desire for efficiency, to penalise only Nedri.

103 Furthermore, Hit Groep submits that, according to settled case-law, the Commission cannot determine the amount of the fine imposed on a subsidiary on the basis of the former parent company's turnover if, at the time of the adoption of the contested decision, the undertaking has been split up, since the former parent company's turnover no longer reflects the effective economic capacity of the undertaking. The Commission ought therefore, when determining the amount of the fine, to have

ensured that it corresponded with the applicant's effective economic capacity, which, given its limited turnover and its lack of economic activity, was (and still is) zero. That ought to have resulted in only Nedri being penalised.

104 The Commission disputes those arguments.

– Third plea, alleging that Hit Groep was wrongly held jointly and severally liable for the infringement committed by Nedri

105 Hit Groep was held to be jointly and severally liable for the infringement committed by Nedri for the infringement period between 1 January 1998 and 17 January 2002.

106 Hit Groep emphasises, however, that the Commission did not express a view in respect of the period from 1 May 1987 until 1 May 1994, during which Hit Groep nonetheless also owned 100% of its subsidiary's share capital. As for the period from 1 May 1994 until 31 December 1997, the Commission considered that it no longer had evidence that Hit Groep exercised decisive influence over Nedri.

107 Hit Groep maintains, in essence, that it nonetheless demonstrated, in the context of the administrative procedure, that it had rebutted the presumption that a parent company owing 100% of the share capital of a subsidiary which has committed the infringement exercised decisive influence over the conduct of its subsidiary.

108 It recalls that, during the period from 1 January 1998 until 17 January 2002, it was a financial holding company.

109 The applicant maintains that, owing to the nature of such a holding company, to the way in which it functions and to the extent of its shareholdings, such a legal person cannot be considered to exercise decisive influence over a subsidiary, even if it owns the subsidiary's entire share capital, unless the Commission proves the contrary.

110 Hit Groep observes in that regard, first, that the Commission relies on an 'instruction' (directie-instructie) dating from May 1994. That instruction predates by four years the period during which the exercise of decisive influence was considered by the Commission to be proved. Hit Groep further observes, in essence, that that instruction does not relate to the day-to-day management or the commercial policy of the subsidiary and that it does not go further than the mere exercise of the rights which the law and the company's statutes confer on a holding company as shareholder. Last, in Hit Groep's submission, both Nedri and it claimed that the status of that instruction was unclear and Nedri, notwithstanding its claims concerning that instruction, did not treat it as having the scope attributed to it by the Commission.

111 Hit Groep observes, second, that the Commission relies on the existence of the steering group, which met around five times a year. The applicant denies having admitted that the general conduct of the business and other important matters were discussed within that group. It claims that it had only 2 employees, whereas the number of its shareholdings came to 11 in 1994 and reached 26 in 2001. It contends that, in such circumstances, the Commission could not merely state that the applicant exercised decisive influence without providing further particulars in that respect, even if it asked Nedri to keep it informed of the general conduct of the business and matters of interest to it. Hit Groep maintains that the Commission has provided neither reasons nor proof of the extent of collusion within the steering group.

112 Hit Groep notes, third, that the Commission relies on an incriminating statement by Nedri, which claims that during the meetings of the steering group all business aspects were discussed. It maintains that it has already provided an explanation on that point in the course of the administrative procedure and that those statements are merely the statements of a party involved in the infringement and are not supported by written evidence or statements by third parties.

113 Hit Groep maintains, on the contrary, that it is clear from the way in which the business was conducted that it did not exercise influence over its subsidiary. It submits, in essence, that Nedri commenced its participation in the cartel in 1984, or 14 years before the applicant was considered to exercise decisive influence over it, and that Nedri continued its participation until autumn 2002, when the applicant had disposed of that subsidiary. In the applicant's submission, the autonomous nature of Nedri's conduct is thus established.

114 Last, the applicant contends, in essence, that the Commission's claims that the applicant was also active in the steel sector and that Nedri's business activities were therefore associated with the applicant's own sphere of activity are unfounded. It submits that the Commission never maintained that the applicant was aware of the infringement committed by Nedri and that the applicant itself always denied having been aware of that infringement, which renders irrelevant the Commission's claims that the applicant had activities in the steel sector, which did not in any way concern the PS sector.

115 The Commission disputes those arguments.

Findings of the Court

116 It is appropriate first to examine, in turn, the third plea, and then the first and second pleas.

– Outline of the principles

117 It is settled case-law that the concept of 'undertaking' covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. On that point, the Court of Justice has stated that in this context the term 'undertaking' must be understood as designating an economic unit even if in law that economic unit consists of several natural or legal persons, and that when such an economic entity infringes the competition rules, it is for that entity, according to the principle of personal responsibility, to answer for that infringement (see judgment of 29 September 2011 in *Elf Aquitaine* v *Commission*, C-521/09 P, ECR, EU:C:2011:620, paragraph 53 and the case-law cited).

118 It is also clear from settled case-law that the conduct of a subsidiary may be imputed to the parent company in particular where, although having a separate legal personality, that subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company, having regard in particular to the economic, organisational and legal links between those two legal entities (see judgment in *Elf Aquitaine* v *Commission*, cited in paragraph 117 above, EU:C:2011:620, paragraph 54 and the case-law cited).

119 In such a situation, since the parent company and its subsidiary are part of the same economic unit and therefore form a single undertaking for the purposes of Article 101 TFEU, the Commission may address a decision imposing fines to the parent company, without having to establish the personal involvement of the latter in the infringement (see judgment in *Elf Aquitaine* v *Commission*, cited in paragraph 117 above, EU:C:2011:620, paragraph 55 and the case-law cited). In other words, the factor which entitles the Commission to address the decision imposing fines to the parent company is not necssarily a parent-subsidiary relationship in which the parent company instigates the infringement;

nor, a fortiori, is it because of the parent company's involvement in the infringement; rather, it is because the companies concerned constitute a single undertaking for the purposes of Article 101 TFEU (judgment in *Elf Aquitaine* v *Commission*, cited in paragraph 117 above, EU:C:2011:620, paragraph 88).

120 Furthermore, the Court of Justice has stated that, in the specific case where a parent company has a 100% shareholding in a subsidiary which has infringed the competition rules of the European Union: (i) the parent company is able to exercise decisive influence over the conduct of the subsidiary; and (ii) there is a rebuttable presumption that the parent company does in fact exercise such influence ('the presumption of actual exercise of decisive influence') (see judgment in *Elf Aquitaine* v *Commission*, cited in paragraph 117 above, EU:C:2011:620, paragraph 56 and the case-law cited).

121 The purpose of the presumption of actual exercise of decisive influence is, in particular, to strike a balance between, on the one hand, the importance of the objective of combating conduct contrary to the competition rules, in particular to Article 101 TFEU, and of preventing a repetition of such conduct, and, on the other hand, the importance of the requirements flowing from certain general principles of EU law such as the principle of the presumption of innocence, the principle that penalties should be applied solely to the offender, the principle of legal certainty and the principle of the rights of the defence, including the principle of equality of arms. It is for that reason, among others, that the presumption is rebuttable (judgment in *Elf Aquitaine* v *Commission*, cited in paragraph 117 above, EU:C:2011:620, paragraph 59). It follows that such a presumption is proportionate to the legitimate aim pursued (judgment of 18 July 2013 in *Schindler Holding and Others* v *Commission*, C-501/11 P, ECR, EU:C:2013:522, paragraph 108).

122 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 actually exercises decisive influence over the subsidiary's commercial policy. 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 judgment in *Elf Aquitaine* v *Commission*, cited in paragraph 117 above, EU:C:2011:620, paragraph 57 and the case-law cited).

123 It should be pointed out that, although the Court of Justice has referred in its case-law, in addition to ownership of 100% of the share capital of the subsidiary, to other circumstances, such as fact that it was not disputed that the parent company exercised decisive influence over the commercial policy of its subsidiary and the fact that the two companies were jointly represented during the administrative procedure, the fact nonetheless remains that such circumstances were not mentioned by the Court of Justice with the aim of making the application of the presumption conditional on the production of further indicia of the actual exercise of influence by the parent company. In other words, the Commission is not required, in order to apply the presumption of actual exercise of decisive influence in a given case, to provide indicia over and above those demonstrating the applicability and operation of that presumption (see, to that effect, judgment in *Elf Aquitaine* v *Commission*, cited in paragraph 117 above, EU:C:2011:620, paragraph 80 and the case-law cited).

124 In addition, the presumption of actual exercise of decisive influence is based on the fact that, save in quite exceptional circumstances, a company holding all the capital of a subsidiary can, by dint of that shareholding alone, exercise decisive influence over that subsidiary's conduct and that it is within the sphere of operations of those entities against whom the presumption operates that evidence of the lack of actual exercise of that power to influence is generally apt to be found. In those circumstances, if, in order to rebut that presumption, it were sufficient for a party concerned to put forward mere unsubstantiated assertions, the presumption would be largely robbed of its usefulness (judgment in *Elf Aquitaine* v *Commission*, cited in paragraph 117 above, EU:C:2011:620, paragraphs 60 and 61).

125 It has consistently been held that the mere fact that the parent company is a holding company is not sufficient to preclude the possibility that it exercised decisive influence over that subsidiary. In the context of a group of companies, a holding company that coordinates, inter alia, financial investments within the group is a company which is in a position to regroup shareholdings in various companies and whose function is to ensure that they are run as one, including by means of such budgetary control (see, to that effect, judgments of 8 October 2008 in *Schunk and Schunk Kohlenstoff-Technik* v *Commission*, T-69/04, ECR, EU:T:2008:415, paragraph 63; 13 July 2011 in *Shell Petroleum and Others* v *Commission*, T-38/07, ECR, EU:T:2011:355, paragraph 70 and the case-law cited; and 29 June 2012 in *E.ON Ruhrgas and E.ON* v *Commission*, T-360/09, ECR, EU:T:2012:332, paragraph 283).

126 Furthermore, in order to ascertain whether a subsidiary determines its conduct on the market independently, account must also be taken of all the relevant factors relating to the economic, organisational and legal links which tie the subsidiary to the parent company, which may vary from case to case and cannot therefore be set out in an exhaustive list (judgment of 10 September 2009 in *Akzo Nobel and Others* v *Commission*, C-97/08 P, ECR, EU:C:2009:536 paragraph 74).

127 It is not necessary to restrict that assessment to matters relating solely to the subsidiary's commercial policy stricto sensu, such as the distribution or pricing strategy. In particular, the presumption of actual exercise of decisive influence cannot be rebutted merely by showing that it is the subsidiary that manages those specific aspects of its commercial policy, without receiving instructions (see judgment of 16 June 2011 in *FMC* v *Commission*, T-197/06, ECR, EU:T:2011:282, paragraph 105 and the case-law cited).

128 Likewise, given that the independence of the subsidiary is not to be assessed solely by reference to the operational management aspects of the undertaking, the fact that the subsidiary never implemented for the benefit of its parent company a specific information policy on the market concerned is not sufficient to show that it was independent (judgment in *FMC* v *Commission*, cited in paragraph 127 above, EU:T:2011:282, paragraph 145).

129 Furthermore, the fact that it is not apparent from the documents in the file that the parent company gave instructions to its subsidiary cannot prove that such instructions did not exist (see judgment of 7 June 2011 in *Arkema France and Others* v *Commission*, T-217/06, ECR, EU:T:2011:251, paragraph 118 and the case-law cited).

130 In addition, attribution to the parent company of the unlawful conduct of a subsidiary does not require proof that the parent company influences its subsidiary's policy in the specific area in which the infringement occurred (judgments in *Shell Petroleum and Others* v *Commission*, cited in paragraph 125 above, EU:T:2011:355, paragraph 70, and of 13 July 2011 in *Eni* v *Commission*, T-39/07, ECR, EU:T:2011:356, paragraph 97).

131 Moreover, a parent company may be held liable for an infringement committed by a subsidiary even where there is a large number of operating companies in a group (judgments of 20 April 1999 in *Limburgse Vinyl Maatschappij and Others* v *Commission*, T-305/94 to T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, ECR, EU:T:1999:80, paragraph 989, and 27 September 2012 in *Shell Petroleum and Others* v *Commission*, T-343/06, ECR, EU:T:2012:478, paragraph 52).

132 Furthermore, according to settled case-law, the statement of reasons required under Article 296 TFEU must be appropriate to the measure in question and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted that measure, in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to carry out its review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of

direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (judgments of 2 April 1998 in *Commission* v *Sytraval and Brink's France*, C-367/95 P, ECR, EU:C:1998:154, paragraph 63; 30 September 2003 in *Germany* v *Commission*, C-301/96, ECR, EU:C:2003:509, paragraph 87; and 22 June 2004 in *Portugal* v *Commission*, C-42/01, ECR, EU:C:2004:379, paragraph 66).

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

– The merits of the third plea

134 Hit Groep, which does not deny having held 100% of Nedri's capital, maintains, in essence, that, as it is itself a holding company, the fact that it held 100% of the capital of a subsidiary did not entitle the Commission to consider that it had exercised decisive influence over that subsidiary.

135 It maintains that it is for the Commission to prove such influence, which it failed to do, as the further evidence on which it relied does not permit such a conclusion.

136 The applicant claims that, on the other hand, it has rebutted the presumption of actual exercise of decisive influence.

137 However, that argument must be rejected.

138 Since Hit Groep owned 100% of its subsidiary's capital during the infringement period in respect of which it was held liable, the Commission was entitled to rely on the presumption of actual exercise of decisive influence and was not required to adduce further evidence in that respect (see judgment in *Elf Aquitaine* v *Commission*, cited in paragraph 117 above, EU:C:2011:620, paragraph 63 and the case-law cited).

139 It follows that even on the assumption that the further evidence put forward by the Commission (namely the instruction of May 1994, the existence and impact of the steering group and Nedri's statements) were shown to be irrelevant, that would in any event have no impact on the applicant's liability, since the presumption of actual exercise of decisive influence is sufficient to render Hit Groep liable, unless the latter were in a position to rebut that presumption, which, however, it has failed to do.

140 The fact that Hit Groep is a holding company, even a non-operational holding company, is not sufficient to rebut the presumption of actual exercise of decisive influence (see, to that effect, judgments in *Schunk and Schunk Kohlenstoff-Technik* v *Commission*, cited in paragraph 125 above, EU:T:2008:415, paragraph 63; *Shell Petroleum and Others* v *Commission*, cited in paragraph 125 above, EU:T:2011:355, paragraph 70 and the case-law cited; and *E.ON Ruhrgas and E.ON* v *Commission*, cited in paragraph 125 above, EU:T:2012:332, paragraph 283) and does not entail any reversal of the burden of proof, as Hit Groep wrongly maintains.

141 In that regard, the fact that, because of the type of company it is and the objects defined in its statutes, the parent company confined itself to managing its shareholdings, is irrelevant (see, to that effect, judgments in *Schunk and Schunk Kohlenstoff-Technik* v *Commission*, cited in paragraph 125 above, EU:T:2008:415, paragraph 70, and *FMC* v *Commission*, cited in paragraph 127 above, EU:T:2011:282, paragraph 130). In addition, attribution to the parent company of the unlawful conduct of Nedri does not require proof that Hit Groep influenced its subsidiary's policy in the specific area in which the infringement occurred (see, to that effect, judgments in Shell *Petroleum and Others* v *Commission*, cited in paragraph 125 above, EU:T:2011:355, paragraph 70, and *Eni* v *Commission*, cited in paragraph 130 above, EU:T:2011:356, paragraph 97).

142 Nor, consequently, is the fact that the parent company itself was not active in the PS sector sufficient to rebut the presumption of actual exercise of decisive influence, and Hit Groep's argument on that point must therefore be rejected.

143 Furthermore, Hit Groep's argument that it follows from the course of business that it had no influence over its subsidiary must also be rejected.

144 In fact, the presumption of actual exercise of decisive influence cannot be rebutted merely be showing that Nedri managed its commercial policy stricto sensu, such as the distribution or pricing strategy, without receiving instructions from Hit Groep. Nor, therefore, can the independence of the subsidiary be established merely by showing that Nedri managed the specific aspects of its policy relating to the marketing of the products concerned by the infringement.

145 Likewise, since Nedri's autonomy cannot be assessed solely by reference to the aspects of the operational management of the undertaking, the fact that the subsidiary never implemented a specific information policy in favour of its parent company on the relevant market cannot suffice to demonstrate that it was independent (see, to that effect, judgment in *FMC* v *Commission*, cited in paragraph 127 above, EU:T:2011:282, paragraph 105 et seq. and the case-law cited).

146 None of the elements put forward by Hit Groep is therefore such as to entail the rebuttal of the presumption of actual exercise of decisive influence and the third plea must therefore be rejected.

– The merits of the first and second pleas

147 Since, according to a consistent line of decisions of the Court of Justice referred to in paragraph 119 above, there is no requirement to establish that the parent company was personally involved in the infringement in order to address to it a decision imposing a fine on the sole ground that that infringement was committed, Hit Groep's argument that the infringement cannot be imputed to it because it was neither the author nor the joint author of the infringement cannot succeed.

148 Nor, in that regard, was the Commission required to provide specific reasons in the contested decision for imputing the infringement to Hit Groep as the parent company of Nedri.

149 The first plea must therefore be rejected in its entirety.

150 As regards the second plea, it should be borne in mind that, for the effective enforcement of the competition rules, it may become necessary, by way of exception, to attribute a cartel offence not to the initial operator but to the new operator of the undertaking involved, if the new operator may in fact be regarded as the successor to the original operator, that is if he continues to operate the undertaking involved in the cartel (see, to that effect, Opinion of Advocate General Kokott in *ETI and Others*, cited in paragraph 98 above, EU:C:2007:404, points 75 and 76). If there was no possibility of imposing a penalty on an entity other than the one which committed the infringement, undertakings

could escape penalties by simply changing their identity through restructurings, sales or other legal or organisational changes (see, to that effect, judgment in *ETI and Others*, cited in paragraph 98 above, EU:C:2007:775, paragraph 41).

151 It has thus been considered by the Court of Justice that the 'economic continuity' test can apply only where the legal person responsible for running the undertaking has ceased to exist in law after the infringement has been committed (judgments of 8 July 1999 in *Commission* v *Anic Partecipazioni*, C-49/92 P, ECR, EU:C:1999:356, paragraph 145, and 20 March 2002 in *HFB and Others* v *Commission*, T-9/99, ECR, EU:T:2002:70, paragraph 104) or where there have been internal restructurings within an undertaking where the initial operator does not necessarily cease to have legal existence but no longer exercises an economic activity on the market concerned and in the light of the structural links between the initial operator and the new operator of the undertaking (see, to that effect, judgments of 7 January 2004 in *Aalborg Portland and Others* v *Commission*, 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, ECR, EU:C:2004:6, paragraph 359, and in *ETI and Others*, cited in paragraph 98 above, EU:C:2007:775, paragraph 41).

152 It must be stated, however, that, as the Commission observes, Hit Groep does not come within either of the two situations envisaged by the Court of Justice.

153 Neither Nedri nor Hit Groep has ceased to exist — although they no longer form part of the same group — and there has been no internal restructuring in the context of which Hit Groep would have structural links with the buyer.

154 It follows that the 'economic continuity' criterion that would justify the infringement being imputed only to the subsidiary is not applicable in the present case and that Hit Groep cannot rely on that case-law to prevent joint and several liability for the infringement committed by Nedri being imputed to it when it wholly controlled that subsidiary.

155 The Commission is correct, moreover, to observe that the penalising of infringements of competition law and the fine imposed for such an infringement have both a deterrent and a punitive effect and that the penalty continues to be binding on the parent company even though it has indeed limited its economic activity as in the present case but has retained a legal existence that still allows it to be penalised.

156 Hit Groep's argument that the penalty imposed on it is ineffective cannot therefore succeed. The fact of penalising Hit Groep is neither disproportionate in itself nor contrary to the objective of Article 101 TFEU.

157 Last, in the applicant's submission, it follows from the judgment of 24 March 2011 in *Pegler* v *Commission* (T-386/06, ECR, EU:T:2011:115) that the Commission cannot determine the amount of the fine imposed on a subsidiary on the basis of the turnover of its former parent company if, at the time when the decision is adopted, the undertaking has been split up, since the former parent company's turnover no longer reflects the effective economic capacity of that undertaking.

158 It follows, in Hit Groep's submission, that the Commission ought to have set the amount of the fine in such a way that it corresponded to the effective economic capacity of the applicant, which, given its limited turnover and the fact that it had no economic activity at the time of adoption of the contested decision, was zero, in consequence of which the Commission ought to have penalised only Nedri.

159 That argument — which, it should be observed, was developed for the first time in the reply (paragraph 2.14) — cannot succeed, however.

160 Paragraph 133 of the judgment in *Pegler* v *Commission*, cited in paragraph 157 above (EU:T:2011:115), to which the applicant refers, relates to a situation of fact and of law that is different from that of Nedri and Hit Groep. It concerns the application of the fourth and fifth subparagraphs of section 1.A of the Guidelines on the setting of fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) ECSC (OJ 1998 C 9, p. 3), on the increase of the fine for deterrence.

161 Furthermore, according to the case-law, it is indeed only if it subsequently transpires that several addressees of the decision imposing the fine constitute the 'undertaking', that is the economic entity responsible for the infringement penalised, and did so at the date when the decision is adopted, that the maximum permitted amount can be calculated on the basis of the overall turnover of that undertaking, that is to say of all of its constituent parts taken together. Conversely, if that economic entity has in the meantime been broken up, each addressee of the decision is entitled to have the maximum amount in question applied individually to it (judgment of 15 June 2005 in *Tokai Carbon and Others* v *Commission*, T-71/03, T-74/03, T-87/03 and T-91/03, EU:T:2005:220, paragraph 390).

162 However, the Commission calculated the 10% maximum amount on the basis of only Hit Groep's turnover, as that undertaking no longer formed an undertaking with Nedri at the time when the contested decision was adopted.

163 In so far as the applicant intends, by its argument, to dispute the reference year taken into consideration by the Commission, it must be stated that that argument overlaps with the first part of the fourth plea, which specifically concerns that question, and to which reference should therefore be made.

164 Consequently, this complaint should be rejected as unfounded, without there being any need to rule on its admissibility.

165 The second plea must therefore be rejected in its entirety.

Fourth plea, alleging various errors in the factors taken into consideration when setting the fine imposed on Hit Groep

First part, alleging that the Commission infringed Article 23(3) of Regulation No 1/2003 and breached the principles of proportionality and sound administration in erroneously taking Hit Groep's turnover for 2003 into consideration

– Arguments of the parties

166 Hit Groep maintains, in essence, that the Commission was wrong to rely on the case-law resulting from the judgment of 7 June 2007 in *Britannia Alloys & Chemicals* v *Commission* (C-76/06 P, ECR, EU:C:2007:326), concerning the situation in which the undertaking carried out no activity and had no turnover during the business year preceding the adoption of the contested decision, in order to take into consideration, in the applicant's case, the turnover for 2003, which was, for that business year, EUR 69 345 000, and not its turnover in 2009, which was EUR 152 257.

167 Hit Groep maintains that it is appropriate in that regard to take into account its nature as a holding company, whose normal activity consists in acquiring shares, owning them, receiving interest and selling those shares. Its situation is to be distinguished in that regard from that pertaining in the case giving rise to the judgment in *Britannia Alloys & Chemicals* v *Commission*, cited in paragraph 166 above (EU:C:2007:326), where the undertaking concerned was not a holding company but an operational undertaking.

168 In the applicant's submission, a holding company's turnover varies with its financial activity and the maintenance of a relatively small financial reserve and a minimal turnover during a number of years must be regarded as the normal exercise of the activities of a holding company.

169 Hit Groep states that its situation is also to be distinguished from that pertaining in the case giving rise to the judgment in *Britannia Alloys & Chemicals* v *Commission*, cited in paragraph 166 above (EU:C:2007:326), since, unlike in that case, in its case there was a period of almost seven years during which it had an activity which was admittedly just ticking over but must nonetheless be regarded as its normal activity.

170 The Commission was therefore wrong to depart from Article 23(2) of Regulation No 1/2003.

171 Furthermore, it follows, in the applicant's submission, from the judgment in *Britannia Alloys & Chemicals* v *Commission*, cited in paragraph 166 above (EU:C:2007:326), that the purpose of the 10% maximum amount provided for in Article 23(2) of Regulation No 1/2003 is to ensure that the fine is not disproportionate in the light of the size of the undertaking and that it presumes that the undertaking concerned is engaged in a commercial activity on the date on which the fine is imposed on it.

172 It follows, in Hit Groep's submission, that the Commission ought to have ascertained that the fine was proportionate, which, in spite of the fact that it had before it all the evidence necessary for that purpose, it failed to do, in breach of the principles of proportionality and sound administration.

173 The Commission disputes those arguments.

– Findings of the Court

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

175 The Court of Justice has stated that the limit relating to turnover laid down in Article 23(2) of Regulation No 1/2003 seeks to prevent fines imposed by the Commission from being disproportionate in relation to the size of the undertaking concerned (judgment in *Britannia Alloys & Chemicals* v *Commission*, cited in paragraph 166 above, EU:C:2007:326, paragraph 24).

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

177 In other words, the objective sought by the establishment, in Article 23(2), of an upper limit of 10% of the turnover of each undertaking participating in an infringement is, in particular, to ensure that the amount of the fine imposed is not such that it would exceed the capacity of the undertaking to pay as at the date on which it is held liable for the infringement and a financial penalty is imposed on it by the Commission (judgment of 4 September 2014 in *YKK and Others* v *Commission*, C-408/12 P, ECR, EU:C:2014:2153, paragraph 63).

178 As regards the 'preceding business year' within the meaning of the second subparagraph of Article 23(2) of Regulation No 1/2003, it refers, in principle, to the last complete business year for the undertakings concerned at the date on which the decision was adopted (judgment of 28 April 2010 in *Gütermann and Zwicky* v *Commission*, T-456/05 and T-457/05, ECR, EU:T:2010:168, paragraph 80; see also, to that effect, judgment in *Britannia Alloys & Chemicals* v *Commission*, cited in paragraph 166 above, EU:C:2007:326, paragraph 32).

179 It is clear both from the objectives of the system of which the second subparagraph of Article 23(2) forms part and from the case-law cited in paragraph 166 above that the application of the 10% upper limit thus presupposes, first, that the Commission has at its disposal the turnover figure for the last business year preceding the date of adoption of the decision and, second, that those data represent a full year of normal economic activity over a period of 12 months (judgments of 29 November 2005 in *Britannia Alloys & Chemicals* v *Commission*, T-33/02, ECR, EU:T:2005:428, paragraph 38, and in *Gütermann and Zwicky* v *Commission*, cited in paragraph 178 above, EU:T:2010:168, paragraph 95).

180 Although it follows from the judgment in *Britannia Alloys & Chemicals* v *Commission*, cited in paragraph 166 above (EU:C:2007:326, paragraph 32), that, for the purposes of calculating the upper limit of the fine provided for in Article 23(2) of Regulation No 1/2003, the Commission must, in principle, take into account the turnover achieved by the undertaking concerned in the last full business year at the date of adoption of the decision imposing the fine, it is apparent, however, from the context and the objectives pursued by the legislation of which that provision forms part, that where the turnover in the business year preceding the adoption of the Commission's decision does not represent a full year of normal economic activity over a period of 12 months and, thus, does not provide any useful indication as to the actual economic situation of the undertaking concerned and the appropriate level of fine to impose on it, that turnover cannot be taken into account in fixing the upper limit of the fine. In the latter situation, which will arise only in exceptional circumstances, the Commission is obliged, for the purposes of calculating the upper limit of the fine, to refer to the last full business year corresponding to a full year of normal economic activity (judgment of 12 December 2012 in *1. garantovaná* v *Commission*, T-392/09, EU:T:2012:674, paragraph 86, upheld on appeal by judgment of 15 May 2014 in *1. garantovaná* v *Commission*, C-90/13 P, EU:C:2014:326).

181 In the present case, it is common ground that in September 2009 Hit Groep informed the Commission, in reply to a question from the latter, that it had sold Nedri on 17 January 2002 and all its other shares on 1 November 2004 and that it had thereby ceased all operational activities as from the latter date (Annex A.13 to the application, pp. 223 and 224). Hit Groep also provided the Commission with its turnover for 2003 and 2004.

182 In the light of the case-law referred to in paragraphs 179 and 168 above, it must therefore be considered that the Commission did not err in taking the view that, as the turnover for the business year 2009 did not provide any useful indication as to the actual economic situation of the undertaking concerned, it was necessary, in order to calculate the maximum limit of 10% provided for in the second subparagraph of Article 23(2) of Article 1/2003, to refer to the turnover for 2003, during which the last full period of normal economic activity of the undertaking during a period of 12 months occurred.

183 It is also appropriate, for the remainder, to reject the applicant's allegations concerning its status as a holding company and the fact that the maintenance of a relatively small financial reserve and a minimal turnover for several years (from 2005 to 2009) might be regarded as the normal exercise of the activities of a holding company, which would justify referring to its turnover for 2009.

184 In fact, those allegations are contrary to the applicant's own statements concerning the cessation of its operational activities in 2004, which in reality confirm that the 'last full year of normal economic activity' of the undertaking during a period of 12 months did indeed occur in 2003 and not in 2009.

185 In addition, the applicant observes that the normal activity of a holding company consists in acquiring shares, owning them, receiving interest and selling those shares. However, it must be pointed out that the applicant had sold all of its shares in 2004 and that after that date it confined itself, in its own words, to maintaining a small financial reserve and a minimal turnover, which cannot suffice to constitute conclusive evidence of the existence of normal economic activity on the part of that company (see, to that effect, judgments in *Britannia Alloys & Chemicals* v *Commission*, cited in paragraph 179 above, EU:T:2005:428, paragraph 48 et seq., and *Gütermann and Zwicky* v *Commission*, paragraph 178 above, EU:T:2010:168, paragraph 102).

186 Consequently, the Commission did not infringe the second subparagraph of Article 23(2) of Regulation No 1/2003, as interpreted by the Court of Justice.

187 It follows that, in referring to the 2003 business year for the purposes of calculating the 10% maximum amount fixed in Article 23(2) of Regulation No 1/2003, the Commission did not breach either the principle of proportionality or the principle of sound administration, since it took into consideration, as it was required to do, the last full business year of normal economic activity of the applicant over a period of 12 months.

188 The first part of the fourth plea must therefore be rejected.

Second part, alleging that Hit Groep ought to have benefited from the reduction granted to Nedri under the Leniency Notice

– Arguments of the parties

189 Hit Groep maintains, in essence, that, as it is only jointly and severally liable for the fine imposed on its former subsidiary on account of the latter's participation in the infringement, it should automatically benefit from the reduction of the amount of the fine granted to Nedri under the leniency programme, which the Commission wrongly refused to grant to it. The fact that Nedri was sold in the meantime can have no consequence in that regard, just as that sale has no consequence for the applicant's joint and several liability.

190 Hit Groep claims that, if the establishment of liability for an infringement is based on the concept of an undertaking and it is jointly and severally liable owing to its 100% shareholding in Nedri, then the consequences to which that liability gives rise should be established in the same way when the amount of the fine is set. The applicant disputes in that regard the Commission's argument that such an approach would be incompatible with the scheme of the Leniency Notice and maintains that, contrary to the Commission's contention, it is not 'another undertaking' as regards the setting of the amount of the fine.

191 The applicant maintains, moreover, that the Commission cannot rely on the case-law resulting from the judgment of 30 September 2009 in *Hoechst* v *Commission* (T-161/05, ECR, EU:T:2009:366), which does not concern a case comparable to the applicant's.

192 In fact, the infringement in the present case was not committed successively by the applicant and by Nedri, but exclusively by Nedri during the period 1 January 1998 to 17 January 2002.

193 Hit Groep maintains, moreover, that it cannot be criticised for not having submitted a leniency application, since it was not aware of anything and therefore had no relevant information at its disposal.

194 The fact that it may have been aware of the procedure at issue in 2003 and 2004, following the Commission's requests for information, is immaterial in that regard, because it had itself sold Nedri in 2002 and no longer had access to any information after that time.

195 The Commission disputes those arguments.

– Findings of the Court

196 It follows from the case-law that only an undertaking which has cooperated with the Commission on the basis of the Leniency Notice can be granted, under that notice, a reduction of the fine that would have been imposed without that cooperation. That reduction cannot be extended to a company which, for part of the duration of the infringement in question, had formed part of the economic unit constituted by an undertaking, but no longer formed part of it at the time when the undertaking cooperated with the Commission. In the light of the objective pursued by the Leniency Notice, consisting in promoting the detection of conduct contrary to EU competition law, and in order to ensure effective application of that law, there is nothing to justify extending a fine reduction granted to an undertaking in respect of its cooperation with the Commission to an undertaking which, while having controlled, in the past, the area of activity involved in the infringement in question, did not itself contribute to the detection of the infringement (judgments of 30 April 2014 in *FLSmidth* v *Commission*, C-238/12 P, ECR, EU:C:2014:284, paragraphs 83 and 85, and in *Hoechst* v *Commission*, cited in paragraph 191 above, EU:T:2009:366, paragraph 76).

197 In the present case, Hit Groep no longer controlled Nedri when the latter sought to benefit from the Leniency Notice and did not contribute to the detection of the infringement. The applicant itself states that it was not informed of anything and therefore did not have any relevant information that it could have disclosed to the Commission.

198 The applicant cannot therefore benefit from the reduction of the amount of the fine granted to Nedri.

199 For the remainder, it should be borne in mind that Hit Groep was correctly (see paragraphs 119 and 147 above) held liable for the commission of the infringement between 1 January 1998 and 17 January 2002, owing to the decisive influence which it exercised over its subsidiary, as is apparent from Article 1(9)(b) of the contested decision. Both companies, which constituted one and the same undertaking for the purposes of competition law, were then held jointly and severally liable for a part of the fine imposed on them.

200 Hit Groep's argument that only Nedri committed the infringement and that Hit Groep should be held liable only on the basis of joint and several liability is therefore based on a misreading of the contested decision.

201 The second part of the fourth plea must therefore be rejected.

Third part of the fourth plea, alleging that, having been held jointly and severally liable for the fine imposed on Nedri, Hit Groep ought to have been held, prorata temporis, liable for payment of only a fraction of the fine that Nedri was ordered to pay and, furthermore, that the Commission erred in calculating separately the amount of the fine imposed on Hit Groep; and fourth part of the fourth plea, alleging breach of the principles of proportionality and equal treatment

– Arguments of the parties

202 Hit Groep submits, in essence, that it was held liable only as the parent company of Nedri and not on the basis of an infringement of Article 101 TFEU which it itself committed. It maintains that it follows from the contested decision that the Commission confined itself to finding the applicant liable for payment of the fine imposed on Nedri in respect of the period from 1 January 1998 until 17 January 2002.

203 Hit Groep contends that it is not consistent with that assessment that it received a higher fine than that imposed on Nedri, as its liability cannot exceed that of Nedri, in accordance with the judgment of 24 March 2011 in *Tomkins* v *Commission* (T-382/06, ECR, EU:T:2011:112).

204 In the applicant's submission, it ought in fact to have been ordered jointly and severally to pay 48 two hundred and twenty fourths of the fine imposed on Nedri, prorata temporis. Such a proportionate calculation would be consistent with the case-law (judgment in *Akzo Nobel and Others* v *Commission*, cited in paragraph 126 above, EU:C:2009:536). The fine imposed on the applicant is therefore disproportionate.

205 The applicant observes that the Commission did indeed rely on various judgments of the Court of Justice and of the General Court as a basis for its position (judgments of 16 November 2000 in *Stora Kopparbergs Bergslags* v *Commission*, C-286/98 P, ECR, EU:C:2000:630 and in *Cascades* v *Commission*, C-279/98 P, ECR, EU:C:2000:626; 17 December 1991 in *Enichem Anic* v *Commission*, T-6/89, ECR, EU:T:1991:74; and in *HFB and Others* v *Commission*, cited in paragraph 151 above, EU:T:2002:70), but, in the applicant's submission, that case-law is irrelevant, since in those cases the parent company was co-author of the infringement, unlike in the applicant's own situation.

206 Furthermore, Hit Groep claims in essence that the application of the maximum amount of 10% of turnover is not sufficient, in the present case, to render the amount of the fine proportionate and that the duration of its personal liability ought to have been taken into consideration after that maximum amount had been applied. It observes in that regard that the judgment of 3 March 2011 in *Siemens and VA Tech Transmission & Distribution* v *Commission* (T-122/07 to T-124/07, ECR, EU:T:2011:70), confirms that the calculation of the fine does not cease with the application of the 10% maximum amount and that the Commission still has, at that stage, an obligation to assess the final amount of the fines imposed in the light of the principle of proportionality.

207 Hit Groep submits that the fine imposed on it, which relates to an infringement that lasted for four years, is 27% higher than that imposed on Nedri, in whose case an infringement period of 18 years and 8 months was taken into consideration.

208 In the applicant's submission, the mere application of the 10% maximum amount does not suffice to settle or remove the discrimination that is applied between it and Nedri.

209 That correction could have been applied by the Commission in the context of the assessment of Hit Groep's ability to pay, but, even outside that possibility, the Commission had the possibility to provide a remedy for the problem in application of the principle of proportionality and the principle of equal treatment.

210 The Commission disputes those arguments.

– Findings of the Court

211 First, Hit Groep was properly held liable for having committed the infringement between 1 January 1998 and 17 January 2002, on account of the decisive influence which it exercised over its subsidiary, as is clear from Article 1(9)(b) of the contested decision. The two companies, constituting one and the same undertaking for the purposes of competition law, were then held jointly and severally liable for a fine of EUR 5 056 500, while Hit Groep was also ordered to pay a fine of EUR 1 877 500.

212 For the reasons set out in paragraphs 146 and 187 above, Hit Groep's argument that only Nedri committed the infringement and that Hit Groep should be held only jointly and severally liable, which is based on a misreading of the contested decision, should be rejected.

213 Second, it has indeed been held that, where the parent company did not materially participate in the cartel and its liability is based solely on its subsidiaries' participation in the cartel, the parent company's liability is to be analysed as purely derivative and secondary and as depending on that of its subsidiary, and cannot therefore exceed that of the subsidiary (judgment in *Tomkins* v *Commission*, cited in paragraph 203 above, EU:T:2011:112, paragraph 38, upheld on appeal by judgment of 22 January 2013 in *Commission* v *Tomkins*, C-286/11 P, ECR, EU:C:2013:29, paragraph 39).

214 However, that case-law is without prejudice to the circumstance that, when the amount of the fine is being calculated, where two separate legal persons, such as a parent company and its subsidiary, no longer constitute an undertaking for the purposes of Article 101 TFEU on the date of adoption of a decision imposing a fine on them, elements specific to each of them may be taken into consideration.

215 Thus, where two separate legal persons, such as a parent company and its subsidiary, no longer constitute an undertaking within the meaning of Article 101 TFEU on the date on which a decision imposing a fine on them for breach of the competition rules is adopted, each of them is entitled to have the 10% maximum amount applied individually to itself (judgment of 26 November 2013 in *Kendrion* v *Commission*, C-50/12 P, ECR, EU:C:2013:771, paragraph 57).

216 The same applies as regards the possible benefit of leniency, which cannot be claimed by a company which, during part of the period of the infringement in question, had formed part of the economic unit constituted by an undertaking, but no longer did so at the time when the undertaking cooperated with the Commission (see the case-law referred to in paragraph 196 above).

217 Third, it should be pointed out that, in the present case, the Commission initially determined the basic amount of the fine (Section 19.1 of the contested decision). In the course of doing so, it considered that separate infringement periods should be taken into consideration for Nedri (18 years and 8 months) and Hit Groep (4 years) (recital 956 to the contested decision).

218 On that basis, it considered that the amount of the fine to be imposed on Nedri was EUR 113 000 000 and the amount of the fine to be imposed on Hit Groep was EUR 29 000 000 (recital 963 to the contested decision in the version resulting from the first amending decision).

219 In the absence of aggravating or mitigating circumstances, the Commission then considered that the amount of the fines to be imposed remained at EUR 113 000 000 for Nedri and EUR 29 000 000 for Hit Groep (recital 1057 to the contested decision in the version resulting from the first amending decision).

220 It then correctly applied the 10% maximum of the turnover of each of the two undertakings (recital 1060 to the contested decision; see also the case-law referred to in paragraph 215 above).

221 The Commission then considered that the amount of the fine to be imposed on Nedri was EUR 6 742 000 (or 10% of Nedri's turnover in 2009) and that the amount of the fine to be imposed on Hit Groep was EUR 6 934 000, or 10% of Hit Groep's turnover in 2003 (recital 1071 to the contested decision in the version resulting from the first amending decision).

222 It then correctly reduced the amount of Nedri's fine by 25% for its cooperation, a reduction from which the applicant could not benefit (recital 1087 to the contested decision; see also the case-law referred to in paragraph 196 above).

223 On that basis, the Commission considered that the amount of the fine to be imposed on Nedri was EUR 5 056 000 and that the amount of the fine to be imposed on Hit Groep was EUR 6 934 000 (recital 1057 to the contested decision), Hit Groep and Nedri being jointly and severally liable for payment of the first fine, amounting to EUR 5 056 000 (Article 2 of the contested decision).

224 Hit Groep maintains, in essence, that the amount of the fine imposed on it, which is higher than the amount that Nedri was ordered to pay, does not properly reflect the duration of the infringements which they were respectively found to have committed, namely 18 years and 8 months for Nedri and only 4 years for Hit Groep.

225 However, it is necessary to have regard to the fact that the final amount of the fines imposed on those two companies results from the levelling effect of the application of the ceiling of 10% of their turnover (judgment in *Kendrion* v *Commission*, cited in paragraph 215 above, EU:C:2013:771, paragraphs 57 and 58) and also from the reduction of the amount of the fine granted to Nedri under the leniency programme.

226 Before that maximum amount was applied, the fine to be imposed on each of the two companies took due account of the respective duration of their liability and, correctly, of different reference years for the turnover to be taken into consideration for the application of the 10% ceiling.

227 The principle of equal treatment was therefore observed by the Commission, since the differences that appeared between the respective situations of the two companies were properly taken into account (see, to that effect, judgment in *Dansk Rørindustri and Others* v *Commission*, cited in paragraph 176 above, EU:C:2005:408, paragraphs 321 to 323).

228 As for the breach of the principle of proportionality, it must be considered that, apart from the fact that the Commission took into consideration the respective duration of the infringement period of each of the companies, in such a way as to ensure that the penalty which it imposed on them was proportionate, such a breach cannot result from the mere allegation of a difference in the final amount of the fines imposed on the two companies (see, to that effect, judgment of 4 July 2006 in *Hoek Loos* v *Commission*, T-304/02, ECR, EU:T:2006:184, paragraphs 85 and 86).

229 It is appropriate, therefore, to reject the third and fourth parts of the fourth plea and, accordingly, the fourth plea in its entirety.

Fifth plea, submitted in the alternative, alleging breach of the 'reasonable time' principle by the Commission

Arguments of the parties

230 Hit Groep claims that respect for a reasonable time in administrative procedures in competition matters is a general principle of law.

231 It further submits that where a reasonable time is exceeded the final decision may be annulled and that, if annulment is not possible, the amount of the fine may be reduced where equity so requires or in order to arrive at fair compensation.

232 Hit Groep observes that the reasonableness of the time taken must be assessed on the basis of the circumstances of the case, regard being had in particular to the context, to the conduct of the parties during the proceedings, to the complexity of the case and to the interest which the case has for the parties concerned. It also observes that the starting point of the relevant time is the date of the Commission's first measure of investigation, which has a significant impact on the situation of the undertakings concerned. A further relevant factor is the average time taken in similar cases.

233 In the present case, 94 months elapsed between the inspections, in September 2002, and the adoption of the final decision, in June 2010. Hit Groep maintains that that period is all the more unreasonable because the case is based on leniency applications that enabled the Commission to prove the infringement. In addition, Hit Groep's attitude is not in any way the cause of any delay in the proceedings. However, the Commission did not grant any reduction of the amount of the fine on the ground that the reasonable time was exceeded. Hit Groep therefore asks the Court to grant it such reduction as it may deem appropriate.

234 Last, Hit Groep maintains that it is not for it to demonstrate that there has been a breach of its rights of defence, as that requirement concerns only the annulment of the contested decision; in fact, it seeks only a reduction of the amount of the fine on account of the breach of the 'reasonable time' principle.

235 Likewise, the applicant contends that it is not incumbent on it to rely on the particular circumstances that justify reducing the amount of the fine — possibly to zero — in so far as the fact that a reasonable time was exceeded constitutes in itself an infringement of Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and of Article 41(1) of the Charter of Fundamental Rights of the European Union. The applicant is not seeking an additional reduction by reference to that granted by the Commission. It is therefore incumbent on the Commission to demonstrate that there are particular circumstances of such a kind as to justify exceeding a reasonable time in the present case.

236 Last, Hit Groep observes that where the administrative procedure has taken a comparable time in previous cases the Commission has granted a reduction of the amount of the fine on its own initiative.

237 The Commission disputes those arguments.

Findings of the Court

– Outline of the principles

238 First, compliance with the reasonable time requirement in the conduct of administrative procedures relating to competition policy constitutes a general principle of EU law whose observance the Courts of the European Union ensure (see judgment of 19 December 2012 in *Heineken Nederland and Heineken* v *Commission*, C-452/11 P, EU:C:2012:829, paragraph 97 and the case-law cited).

239 The principle that an administrative procedure must be conducted within a reasonable time has been reaffirmed by Article 41(2) of the Charter of Fundamental Rights, under which '[e]very person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union' (judgment of 5 June 2012 in *Imperial Chemical Industries* v *Commission*, T-214/06, ECR, EU:T:2012:275, paragraph 284).

240 Second, whether the time taken for the procedure is reasonable must be assessed in relation to the individual circumstances of each case, and in particular its context, the conduct of the parties during the procedure, what is at stake for the various undertakings concerned and its complexity (see, to that effect, judgment in *Limburgse Vinyl Maatschappij and Others* v *Commission*, cited in paragraph 131 above, EU:T:1999:80, paragraph 126) and also, where relevant, to information or justification which the Commission may provide concerning the measures of investigation carried out during the administrative procedure.

241 Third, the Court of Justice has held that the administrative procedure may give rise to the examination of two successive periods, each corresponding to its own internal logic. The first stage, covering the period up to notification of the statement of objections, begins on the date on which the Commission, exercising the powers conferred on it by the EU legislature, takes measures which imply an accusation of an infringement and must enable the Commission to adopt a position on the course which the procedure is to follow. The second stage covers the period from notification of the statement of objections to adoption of the final decision. It must enable the Commission to reach a final decision on the infringement concerned (judgment of 21 September 2006 in *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied* v *Commission*, C-105/04 P, ECR, EU:C:2006:592, paragraph 38).

242 Fourth, it follows from the case-law that breach of the reasonable time principle may have two types of consequences.

243 Where the failure to comply with the reasonable time requirement has affected the outcome of the proceedings, such a breach may entail annulment of the contested decision (see, to that effect, judgment of 21 September 2006 in *Technische Unie* v *Commission*, C-113/04 P, ECR, EU:C:2006:593, paragraph 48 and the case-law cited).

244 It should be pointed out that, for the purposes of the application of the competition rules, a failure to act within a reasonable time can constitute a ground for annulment only in the case of a decision finding infringements, where it has been proved that the breach of that principle has adversely affected the rights of defence of the undertakings concerned. Except in that specific circumstance, failure to comply with the obligation to adopt a decision within a reasonable time cannot affect the validity of the administrative procedure under Regulation No 1/2003 (see judgment of 16 December 2003 in *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied* v *Commission*, T-5/00 and T-6/00, ECR, EU:T:2003:342, paragraph 74 and the case-law cited, upheld on appeal on that point in the judgment in *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied* v *Commission*, cited in paragraph 241 above, EU:C:2006:592, paragraphs 42 and 43).

245 However, as respect for the rights of the defence, a principle whose fundamental nature has been emphasised on many occasions in the case-law of the Court of Justice (judgment of 9 November 1983 in *Nederlandsche Banden-Industrie-Michelin* v *Commission*, 322/81, ECR, EU:C:1983:313, paragraph 7), is of crucial importance in procedures such as that followed in the present case, it is essential to prevent those rights from being irremediably compromised on account of the excessive duration of the investigation phase and to ensure that the duration of that phase does not impede the establishment of evidence designed to refute the existence of conduct susceptible of rendering the undertakings concerned liable. For that reason, examination of any interference with the exercise of the rights of the defence must not be confined to the actual phase in which those rights are fully effective, that is to say, the second phase of the administrative procedure. The assessment of the source of any undermining of the effectiveness of the rights of the defence must extend to the entire procedure and be carried out by reference to its total duration (judgment in *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied* v *Commission*, cited in paragraph 241 above, EU:C:2006:592, paragraph 50).

246 Furthermore, where the breach of the reasonable time requirement does not affect the outcome of the procedure, such a breach may lead the Court, in the exercise of its unlimited jurisdiction, to provide an appropriate remedy for the breach resulting from failure to observe the reasonable time requirement by reducing, where appropriate, the amount of the fine imposed (see, to that effect, judgment in *Technische Unie* v *Commission*, cited in paragraph 243 above, EU:C:2006:593, paragraphs 202 to 204, and judgment of 16 June 2011 in *Heineken Nederland and Heineken* v *Commission*, T-240/07, ECR, EU:T:2011:284, paragraphs 429 and 434, upheld on appeal in the judgment in *Heineken Nederland and Heineken* v *Commission*, cited in paragraph 238 above, EU:C:2012:829, paragraph 100).

– Assessment in the present case

247 It follows from the foregoing that, in order for an administrative procedure of long duration to be capable of entailing annulment of the contested decision or a reduction of the amount of the fine, the duration of that procedure must be characterised as excessive.

248 In the present case, the administrative procedure consisted of four successive phases.

249 The first phase began on 9 January 2002, with the communication to the Commission by the Bundeskartellamt of the documents referred to in paragraph 26 above, and ended on 30 September 2008 with the adoption of the statement of objections.

250 The second phase was then opened (see paragraphs 37 to 42 above) and was completed by the adoption of the initial decision, on 30 June 2010.

251 Following the initiation of a first series of actions (referred to in paragraph 10 above), the Commission on 30 September 2010 adopted a first amending decision (see paragraph 4 above) in order to correct various errors which it had found in the initial decision; that marked the close of the third phase of the administrative procedure.

252 Last, on 4 April 2011, the fourth phase of the administrative procedure ended when the Commission adopted the second amending decision, whereby it granted a reduction of the amount of the fines imposed on (i) ArcelorMittal, ArcelorMittal Verderio, ArcelorMittal Fontaine and ArcelorMittal Wire France and (ii) SLM and Ori Martin (see paragraph 6 above).

253 It should be observed at the outset that the applicant's plea relates only to the first two phases of the administrative procedure.

254 On 17 December 2013, in the context of the measures of organisation of procedure provided for in Article 64 of the Rules of Procedure of 2 May 1991, the Court addressed a written question to the Commission, in order to obtain a detailed description of the steps which the Commission had carried out following the inspections, which took place on 19 and 20 September 2002, and up to the adoption of the initial decision.

255 The Commission complied with that request by a document lodged at the Court Registry on 6 February 2014.

256 A copy of the Commission's reply was communicated to the applicant by the Court Registry on 7 February 2014.

257 The Commission sets out in its reply, in detail and convincingly, the tasks which it completed throughout the administrative procedure and the reasons why the procedure lasted from 2002 until 2010.

258 A number of factors explain the length of the administrative procedure in the present case.

259 It is appropriate, in that respect, to have regard to the duration of the cartel (more than 18 years), to its particularly wide geographic scope (the cartel concerned most of the Member States), to the organisation of the cartel at geographic level and over time (the different clubs described in paragraphs 46 to 58), to the number of meetings held within the framework of the different clubs (more than 500), to the number of undertakings involved (17), to the number of leniency applications (see paragraphs 27 and 32 et seq. above) and to the particularly large volume of documents, supplied in connection with the leniency applications or obtained in the course of the inspections and in various languages, which had to be examined by the Commission, to the various requests for further information that had to be addressed by the Commission to the various companies involved, as understanding of the cartel developed (see paragraph 29 et seq. and paragraph 42 et seq. above), to the number of addressees of the statement of objections (more than 40), to the number of languages of the case (8) and also to the various applications relating to ability to pay (14).

260 On the basis of the information supplied by the Commission, which confirms the particular complexity of the case, the Court considers that, in spite of the particular length of the first two phases of the procedure, the procedure cannot be characterised as excessive. Consequently, the Commission did not fail to comply with the reasonable time requirement and the fifth plea must therefore be rejected.

Sixth plea, submitted by Hit Groep in its reply and alleging that the Commission relied on an incorrect period when calculating the amount of the fine

Arguments of the parties

261 Hit Groep claims that, for the first time in paragraphs 23 to 25 of the defence, the Commission provides a comprehensive and detailed account of how it calculated the amount of the fine it imposed on the applicant.

262 Hit Groep maintains that that calculation method is not apparent from either the statement of objections or the contested decision.

263 Hit Groep submits that the basic amount on which the Commission relied when calculating the fine imposed on it is EUR 30 584 561. It is apparent from the footnote in paragraph 25 of the defence that that amount represents the value of goods sold for the period from 9 January 1996 to 19 September 2002.

264 That footnote states:

‘This is the value of goods sold during the period from 9.1.1996 to 19.9.2002. For each of the five cartel periods (1.1.1984 to 31.12.1985; 1.1.1986 to 14.12.1992; 15.12.1992 to 31.12.1993; 1.1.94 to 8.1.1996; 9.1.1996 to 19.9.2002), the Commission determined the value of sales, then multiplied that value by the corresponding factor for duration. In the interest of clarity, the amending decision sets out those values of sales in a table added to recital 935 to the decision.’

265 Hit Groep adds that the first amending decision added a table to recital 935 to the contested decision, but that its name is not included in that table.

266 It maintains that it was therefore only in the defence that that information first appeared.

267 Hit Groep points out that it is held jointly and severally liable for the infringement committed by Nedri between 1 January 1998 and 17 January 2002, whilst the Commission relied on the period from 9 January 1996 to 19 September 2002.

268 It maintains that it therefore received a fine based on a significantly longer period than the period in respect of which it ought to have been held liable.

269 In Hit Groep's submission, the number of years in respect of which the undertaking is held liable must be taken into consideration in the calculation of the amount of the fine.

270 Hit Groep adds, last, that it follows from recital 5 to the second amending decision that the Commission holds the parent companies jointly and severally liable 'only for that part of the fine that corresponds to the period during which the parent company formed a single undertaking with the subsidiaries concerned', whereas the fine imposed on the applicant is greater than the fine imposed on Nedri.

271 The Commission disputes those arguments.

Findings of the Court

272 By letters of 6 May and 26 July 2011, Hit Groep asked the Court for leave to supplement its pleadings after it allegedly became aware of information relating to the method of calculating the amount of the fine for the first time in the Commission's defence.

273 The letter of 6 May 2011 arrived during the period within which Hit Groep was able to lodge the reply, which ended on 17 May 2011.

274 The Commission contends, in essence, that the information at issue was already available both in the initial decision (recital 927 et seq.) and in the first amending decision (recitals 930 and 932 and table annexed to that decision) and that this plea is new and therefore inadmissible.

275 It should be pointed out that recitals 930, 932 and 933 to the contested decision read as follows:

'930 In accordance with the findings on the duration of the involvement in the infringement (see Chapters VI and VII), the last full business year of participation in the infringement is 2000 for DWK and 2001 for all other undertakings addressed by this Decision.

…

932 The relevant geographic area evolved over time. From 1984 to 1995 (Zurich Club period), it included Germany, France, Italy, the Netherlands, Belgium, Luxembourg, Spain and Austria. It also included Portugal as from 1992 (under the Club España arrangements). From 1996 to 2002 (Zurich Club crisis period (when the Club Europe quota arrangement was prepared, Club Europe period and expansion period), the geographic area covered the same countries as during the Zurich Club period, including Portugal, and in addition Denmark, Sweden, Finland and Norway (see sections 9.1.1 to 9.1.5). This is taken into account in the calculation of the value of sales by excluding the sales in Portugal before 15 December 1992 and excluding the sales in Denmark, Sweden, Finland and Norway before 9 January 1996.

933 The Commission further notes that the value of sales in Spain, Austria, Finland, Sweden and Norway cannot be taken into account for the entire duration of the infringement since Spain only joined the EU on 1 January 1986 and the EEA Agreement only entered into force on 1 January 1994. Hence, the sales in those countries before 1 January 1986 and 1 January 1994 respectively are excluded in the calculation of the value of sales. This is taken into account in section 19.1.6.'

276 Furthermore, in the first amending decision, the Commission stated the following:

> '(5) To clarify the values of sales calculation underlying the Decision over the different periods as indicated in Section 19.1.2, the following should have appeared at the end of recital 935:
>
> …
>
> — 9. Nedri (reply dated 30 June 2009):
>
> — 01.01.1984 — 31.12.1985: [EUR] 30 157 611
>
> — 01.01.1986 — 14.12.1992: [EUR] 30 389 997
>
> — 15.12.1992 — 31.12.1993: [EUR] 30 389 997
>
> — 01.01.1994 — 08.01.1996: [EUR] 30 389 997
>
> — 09.01.1996 — 19.09.2002: [EUR] 30 584 561.'

277 It is clear from Article 3(22) of the first amending decision, moreover, that that decision is addressed to Hit Groep.

278 The Commission is therefore correct to contend that the information at issue was not brought to Hit Groep's attention for the first time in the defence.

279 Hit Groep could indeed have sought leave to amend the form of order sought following the first amending decision, but within the two-month time limit for bringing proceedings.

280 In fact, in order to be admissible, a request to amend the form of order sought must be submitted within the time limit for bringing proceedings laid down in the sixth paragraph of Article 263 TFEU (judgments of 16 December 2011 in *Enviro Tech Europe and Enviro Tech International* v *Commission*, T-291/04, ECR, EU:T:2011:760, paragraph 96, and 6 September 2013 in *Bank Melli Iran* v *Council*, T-35/10 and T-7/11, ECR, EU:T:2013:397, paragraph 55).

281 In the present case, the time limit for bringing proceedings had long expired when the applicant submitted its request, by letter of 6 May 2011.

282 It follows that this plea is inadmissible.

283 In any event, it is also unfounded, since the Commission did not err in considering, for the purposes of calculating the amount of the fine imposed on Hit Groep, that the value of sales was EUR 30 584 561 and then multiplying that amount by a coefficient of 4 to take account of the duration of the infringement imputable to Hit Groep. Contrary to the applicants' allegations, it was not penalised in respect of a longer period than that in respect of which it was held liable (see paragraphs 217 and 226 above).

284 Consequently, the plea must be rejected.

Seventh plea, alleging breach of the 'reasonable time' principle by the Court

285 At the hearing, the applicant maintained, in essence, that the Court had failed to deal with its action within a reasonable time and that it was appropriate to draw the necessary inferences for the amount of the fine for which the applicant was liable.

286 It must be held that where such a complaint is submitted in the context of the same action as that in respect of which the proceedings are alleged to have entailed a breach of the 'reasonable time' principle is inadmissible.

287 In fact, the composition dealing with the action would, if it examined that complaint, be required to rule on the defective or unlawful nature of its own conduct, which could cause the applicant to have legitimate doubts as to the objective impartiality of that composition (see judgment of 16 September 2013 in *CEPSA* v *Commission*, T-497/07, EU:T:2013:438, under appeal, paragraph 268 and the case-law cited).

288 Consequently, the sanction for a breach by a Court of the European Union of its obligation under the second paragraph of Article 47 of the Charter of Fundamental Rights to adjudicate on the cases before it within a reasonable time must be an action for damages brought before the General Court (judgments in *Kendrion* v *Commission*, cited in paragraph 215 above, EU:C:2013:771, paragraph 94, and of 26 November 2013 in *Groupe Gascogne* v *Commission*, C-58/12 P, ECR, EU:C:2013:770, paragraph 83).

289 It follows from the foregoing that the seventh plea must be rejected.

290 It is apparent from all of the foregoing considerations that none of the pleas raised by the applicant can be upheld. The action for annulment must therefore be rejected in its entirety, and there is no need, in the circumstances of the case, for the Court to exercise its unlimited jurisdiction to vary the fine imposed on the applicant.

Costs

291 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. Dismisses the action;

2. Orders Hit Groep BV to bear its own costs and to pay those incurred by the European Commission.

Frimodt Nielsen Dehousse Collins

Delivered in open court in Luxembourg on 15 July 2015.

[Signatures]