Reports of Cases

JUDGMENT OF THE GENERAL COURT (Third Chamber)

27 November 2014*

(Competition — Agreements, decisions and concerted practices — Market in power transformers — Decision finding an infringement of Article 81 EC and Article 53 of the EEA Agreement — Effect on trade between Member States — Concept of an 'undertaking' — Imputability of the infringing conduct — Presumption of a parent company's actual exercise of a decisive influence on the conduct of its subsidiary — Obligation to state reasons)

In Case T-517/09,

Alstom, established in Levallois-Perret (France), represented by J. Derenne and A. Müller-Rappard, lawyers,

applicant,

v

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

defendant,

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

THE GENERAL COURT (Third Chamber),

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

Registrar: C. Kristensen, Administrator,

having regard to the written procedure and further to the hearing on 9 July 2012,

gives the following

* Language of the case: French.

Judgment

Background to the dispute and the contested decision

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

2 During the period relevant to this case, that is to say from 9 June 1999 to 15 May 2003, Alstom T&D SA, was active in the field of power transformers. Throughout that period, the applicant, Alstom, held 100% of the capital of Alstom France SA (renamed Alstom Holdings in August 1999), which, in turn, held 100% of Alstom T&D SA.

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

4 On 8 August 2007 and 18 March 2008, the Commission of the European Communities sent requests for information from the applicant, to which the applicant replied on 7 September 2007 and 28 February 2008.

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

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

7 On 7 October 2009, the Commission adopted its Decision C(2009) 7601 final relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/39.129 — Power Transformers, 'the contested decision'), in which it found that Alstom T&D and the applicant had infringed Article 81 EC and Article 53 of the Agreement on the European Economic Area ('the EEA Agreement') and imposed a fine of EUR 16.5 million on Alstom, with joint and several liability attaching to the applicant in the sum of EUR 13.53 million.

8 In the contested decision, the Commission found that Areva T&D had participated, at least from 9 June 1999 to 15 May 2003, in the 'Gentlemen's Agreement (GA)', an unlawful agreement covering the entire European Economic Area (EEA) and made orally between European and Japanese power transformer producers whereby they respected each other's home markets and refrained from selling in each other's markets.

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

10 The contested decision concerns the market in power transformers, sold either as stand-alone equipment or as part of turnkey projects, but excludes power transformers sold as part of GIS-based substations, the sales of which had already been the subject of Commission Decision C(2006) 6762

final of 24 January 2007 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/38.899 — Gas Insulated Switchgear) (summary published in OJ 2008 C 5, p. 7).

11 In paragraph 5.5 of the contested decision, in recitals 171 to 174, the Commission stated that the Gentlemen's Agreement had had an impact on trade between Member States and between the contracting parties to the EEA Agreement.

12 In paragraph 6 of the contested decision, in recitals 183 to 205, the Commission found that the applicant and Areva T&D, then called Alstom T&D, were jointly and severally responsible for the infringement committed in the period from 9 June 1999 to 25 March 2003. In that connection, the Commission found, first, that, because the applicant owned 100% of Areva T&D, it was entitled to presume that the applicant had a decisive influence on the conduct of Areva T&D and, second, that the applicant had not put forward any arguments rebutting that presumption.

13 The difference between the amount of the fine imposed on the applicant and that imposed on Areva T&D is explained by the fact that the Commission reduced Areva T&D's fine by 18% on account of effective cooperation outside the scope of the 2002 Leniency Notice and the reduction of the amount thereof in the cartel cases (OJ 2002 C 45, p. 3).

14 The Commission notified the contested decision to the applicant by letter dated 8 October 2009, received on 9 October 2009.

Procedure and forms of order sought

15 By application lodged at the Registry of the General Court on 21 December 2009, the applicant brought the present action.

16 The applicant claims that the Court should:

— annul the contested decision;

— annul the accountant's letter of 10 December 2009;

— order the Commission to pay the costs.

17 The Commission first lodged a defence, received on the Registry of the Court on 19 April 2010, in which it contends that the Court should:

— dismiss the application for annulment of the contested decision;

— order the applicant to pay the costs.

18 Second, it filed an objection of inadmissibility, received at the Registry of the Court on 19 April 2010, relating to the claim for annulment of the accountant's letter. In that objection, the Commission contends that the Court should:

— dismiss the claim for annulment of the accountant's letter as manifestly inadmissible;

— in the alternative, hold that there is no need to adjudicate;

— in any case:

— order the applicant to pay the costs;

— in the alternative, order the parties to bear their own costs.

19 By a document lodged at the Registry of the Court on 18 June 2010, the applicant submitted its observations on the objection of inadmissibility. In that document, it contends that the Court should:

— dismiss the objection of inadmissibility and call on the Commission to lodge its defence on the substance;

— in the alternative, merge consideration of inadmissibility with that of the substance and call on the Commission to lodge its defence on the substance;

— order the Commission to pay the costs.

20 On 24 October 2011, the case was allocated to a new Judge-Rapporteur, a member of the Third Chamber.

21 By order of 24 April 2012, in *Alstom* v *Commission*, not published in the ECR, the Court (Third Chamber) decided that there was no longer any need to give a decision on the claim for annulment of the accountant's letter and that the costs should be reserved.

22 Upon hearing the report of the Judge-Rapporteur, the General Court (Third Chamber) decided, as a measure of organisation of procedure under Article 64 of its Rules of Procedure, to ask the parties to answer a number of questions, a request with which the parties complied within the time-limit set, and to open the oral procedure.

23 The parties presented oral argument and replied to the questions put by the Court at the hearing on 9 July 2012.

24 In view of the fact that the present case and Case T-521/09 *Alstom Grid* v *Commission* are connected, the Court decided to deliver its judgments in the two cases at the same time. In Case T-521/09 *Alstom Grid* v *Commission*, the Court suspended the procedure until a decision was given by the Court of Justice bringing the proceedings to a close in Case C-231/11 P *Commission* v *Siemens Österreich and Others*, namely 10 April 2014.

Law

25 The action for annulment of the contested decision is based on three pleas. The first plea alleges infringement of the legal rules governing orders imposing joint and several liability on two companies. It is divided into two parts, concerning, first, failure to comply with the case-law applicable to joint and several liability and, second, a breach of the general principle of the individual and personal nature of penalties deriving from the unfounded imposition of joint and several liability. The second plea concerns breach of the obligation to state reasons. It is divided into three parts, alleging, first, insufficient reasoning regarding the impact on trade between Member States and the parties to the EEA Agreement; second, a defective statement of reasons concerning the Commission's conclusion that the applicant has not overturned the presumption of liability for the actions of its subsidiary; and, third, contradictory reasoning regarding the cumulative responsibility of the applicant and of its subsidiary. The third plea alleges an infringement of Article 81 EC concerning the rules on the imputability to parent companies of infringements committed by their subsidiaries.

26 The Court considers that it is appropriate to examine, first, the first part of the second plea, attacking the Commission's statement of reasons concerning the impact on trade between Member States, before going on to examine the pleas and submissions concerning the Commission's decision to impute to the applicant the conduct of its subsidiary, named Alstom T&D during the period of its participation in the Gentlemen's Agreement, Areva T&D at the time of adoption of the contested decision and Alstom Grid SAS as from January 2010, following its takeover by Alstom ('the T&D subsidiary').

1. *The first part of the second plea, alleging inadequacy of the statement of reasons concerning the effect on trade*

27 In support of the first part of its second plea, the applicant submits that the Commission did not give sufficient reasons for its conclusion that the Gentlemen's Agreement had affected trade between the Member States and the parties to the EEA Agreement.

28 In that connection, it must be borne in mind that the obligation to state reasons provided for in Article 253 EC is an essential procedural requirement, as distinct from the question whether the reasons given are correct, which goes to the substantive legality of the contested measure (judgments of 2 April 1998 in Case C-367/95 P *Commission* v *Sytraval and Brink's France*, ECR, EU:C:1998:154, paragraph 67; of 22 March 2001 in Case C-17/99 *France* v *Commission*, ECR, EU:C:2001:178, paragraph 35, and of 29 September 2011 in Case C-521/09 P *Elf Aquitaine* v *Commission*, ECR, EU:C:2011:620, paragraph 146).

29 To that end, the statement of reasons required by Article 253 EC must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community judicature to exercise its power of review (judgments in Case C-17/99 *France* v *Commission*, cited above in paragraph 28, ECR, EU:C:2001:178, paragraph 35, and *Elf Aquitaine* v *Commission*, cited above in paragraph 28 above, ECR, EU:C:2011:620, paragraph 147).

30 Thus, according to settled case-law, in the case of individual decisions the purpose of the obligation to state reasons for an individual decision is both to enable the Court to review the legality of the decision and to provide the person concerned with sufficient information to make it possible to ascertain whether the decision is vitiated by a defect which may permit its legality to be contested (judgments of 2 October 2003 in Case C-199/99 P *Corus UK* v *Commission*, ECR, EU:C:2003:531, paragraph 145; of 28 June 2005 in Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others* v *Commission*, ECR, EU:C:2005:408, paragraph 462, and *Elf Aquitaine* v *Commission*, cited in paragraph 28 above, ECR, EU:C:2011:620, paragraph 148).

31 It is also settled case-law that the requirements to be satisfied by the statement of reasons must be appraised having regard to the circumstances of the case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (judgments in *Commission* v *Sytraval and Brink's France*, cited in paragraph 28 above, ECR, EU:C:1998:154, paragraph 63; of 10 July 2008 in Case C-413/06 P *Bertelsmann and Sony Corporation of America* v *Impala*, ECR, EU:C:2008:392, paragraphs 166 and 178, and *Elf Aquitaine* v *Commission*, cited in paragraph 28 above, ECR, EU:C:2011:620, paragraph 150).

32 It is in the light of the abovementioned case-law that it is appropriate to examine the statement of reasons in the contested decision.

33 In the first place, it is necessary to consider the applicant's complaint that the Commission did not give adequate reasons for its conclusion regarding the existence of trade in power transformers between the Member States of the European Community and the parties to the EEA Agreement.

34 In that regard, it must be noted that, in recital 172 to the contested decision, the Commission stated that 'the power transformers business is characterised by substantial trade between Member States, as well as between the Community and the EFTA countries of the EEA.' In that context, it referred to the reasons set out by it in paragraph 2.4 of the contested decision (recital 38) where it noted, first, that customers existed in all Member States and in Norway, Iceland and Liechtenstein, while the main European producers were located in particular in Germany, Spain, France, Austria, Portugal and Switzerland.

35 Moreover, reference must be made to recital 172 and paragraph 2.4 of the contested decision as regards the context of this paragraph. In fact, in the foregoing paragraph, namely paragraph 2.3, the Commission described supply and demand in the sector concerned. With regard to supply, it noted in recitals 34 and 35 to the contested decision that the European suppliers sold power transformers in most European countries. With regard to demand, it noted in recital 36 to the contested decision that the main customers were public utility companies, regional governments and private companies active in the field of transmitting and distributing electricity. Next, it noted in recital 37 to the contested decision that sales of power transformers made by the EEA parties to the procedure accounted for around EUR 105 million in 2001, representing about 65% of the total value of power transformer sales in the EEA.

36 The facts and points of law on which the Commission based its conclusion that there was trade between the Member States and the parties to the EEA Agreement are thus clearly apparent from the statement of reasons for the contested decision.

37 Consequently, the complaint alleging inadequate reasons for the existence of trade in power transformers between the Member States and the parties to the EEA Agreement must be rejected.

38 Second, it is necessary to consider the applicant's complaint that the Commission did not give sufficient reasons for its conclusion regarding the influence of the Gentlemen's Agreement on trade between Member States and parties to the EEA.

39 In that regard, it must be observed that, in recital 174 to the contested decision, the Commission noted that the Gentlemen's Agreement provided for allocation of markets and protected EEA producers from Japanese power transformer producers. That recital must be read in conjunction with recitals 88 to 90 to the contested decision, where the Commission established that the Japanese producers had committed themselves to refraining from selling power transformers in Europe and European producers had committed themselves to not selling them in Japan.

40 It is clear from recitals 165, 166 and 174 to the contested decision that the Commission considered that a cartel pursuing that purpose must have had, or been capable of having, the effect of automatically diverting trade patterns from the course they would otherwise have followed.

41 Moreover, it must be stated that, in recitals 167 to 169 to the contested decision, the Commission rejected the arguments that the undertakings concerned had put forward to demonstrate that there were barriers preventing all competition between Japanese and European producers. In that context the Commission first observed that adherence to the Gentlemen's Agreement had been regularly confirmed by the undertakings concerned. Second, it pointed out that a Korean producer had entered the European market. Third, it concluded that Japanese producers had entered the American market during the period of the Gentlemen's Agreement and that the parties had not demonstrated that the barriers to entry into that market were very different from those relating to the European market.

42 The matters of fact and of law on which the Commission based its conclusion that the Gentlemen's Agreement had, or was capable of having, an influence on trade between the Member States and the parties to the EEA Agreement are thus clearly apparent from the reasons given for the contested decision.

43 Consequently, the first part of the second plea must be rejected.

2. *The joint and several liability of the applicant and its T&D subsidiary*

44 The other pleas and submissions all concern the Commission's decision to hold the applicant and its T&D subsidiary jointly and severally liable for payment of the fine. In that connection, the applicant raises in essence three objections to the Commission's decision to hold it liable. First, as part of the first part of the first plea, it submits that the Commission disregarded the case-law on joint and several liability. Second, in relation to the second part of the second plea, it contends that the Commission did not give sufficient reasons for its conclusion that the applicant had not put forward sufficient arguments to overturn the presumption of effective exercise of a decisive influence on the conduct of its T&D subsidiary in the market. Third, in the event of the Commission's being entitled to rely upon the case-law governing joint and several liability in order to hold it liable, the applicant contends, in connection with the third plea, the second part of the first plea and the third part of the second plea, that that case-law is in itself contradictory and contrary to Article 81 EC and to the principles of Union law.

The first part of the first plea, alleging disregard of the case-law concerning joint and several liability

45 In relation to the first part of the first plea, the applicant accuses the Commission of disregarding the case-law on joint and several liability. This part of the plea is twofold. First, it is asserted that the applicant and its T&D subsidiary do not form an economic unit. In its second complaint, the applicant criticises the Commission for failing to establish that those two companies are interchangeably liable.

46 The first part of the first plea in law is admissible. Contrary to the Commission's contention, the applicant has an interest in raising it. First, as regards the complaint of inadmissibility by virtue of the fact that the first plea is not independent from the third plea, it need merely be pointed out that, in relation to the first part of the first plea, the applicant submits that the Commission disregarded the case-law on joint and several liability, whereas, in its third plea, it submits that that case-law itself is contrary to Article 81 EC and to the principles of Union law (see paragraph 44 above). Second, as regards the argument that the applicant has no interest in challenging the imputation of joint and several liability for a fine, because such imputation is favourable to it, it need merely be observed that the applicant is putting forward both the abovementioned complaints in order to call in question its own liability.

The first complaint: the applicant and its T&D subsidiary did not form an economic unit

47 In support of its first complaint in the first part of its first plea, the applicant submits that the Commission disregarded the case-law concerning joint and several liability by making an order against it and its T&D subsidiary jointly and severally, even though they did not form an economic unit, either during its T&D subsidiary's participation in the Gentlemen's Agreement or when the contested decision was adopted.

– The lack of any economic unit during the Gentlemen's Agreement

48 The applicant maintains that it and its T&D subsidiary did not form an economic unit during the period of the latter's participation in the Gentlemen's Agreement. It considers that, according to the case-law, two companies cannot be regarded as an economic unit and therefore an undertaking within the meaning of Article 81 EC and Article 53 of the EEA Agreement unless a detailed examination enables it to be demonstrated that, by reason of unity of conduct or unity of action, one of the companies takes decisions for both, and the other loses its autonomy. However, in this case, the Commission relied solely on the fact that the applicant held 100% of the capital of its T&D subsidiary during the period of the latter's participation in the Gentlemen's Agreement and inferred from this that it exercised a decisive influence on the latter's conduct.

49 In this context, it should be borne in mind that European competition law refers to the activities of 'undertakings' (Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and Others* v *Commission*, ECR, EU:C:2004:6, paragraph 59), and that the concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed (judgments in *Dansk Rørindustri and Others* v *Commission*, cited in paragraph 30 above, ECR, EU:C:2005:408, paragraph 112; of 10 January 2006 in Case C-222/04 *Cassa di Risparmio di Firenze and Others*, ECR, EU:C:2006:8, paragraph 107, and of 11 July 2006 in Case C-205/03 P *FENIN* v *Commission*, ECR, EU:C:2006:453, paragraph 25).

50 The Court has also made it clear that the concept of an undertaking, in this same context, must be understood as designating an economic unit even if, in law, that economic unit consists of several persons, natural or legal (judgments of 14 December 2006 in Case C-217/05 *Confederación Española de Empresarios de Estaciones de Servicio*, ECR, EU:C:2006:784, paragraph 40; of 10 September 2009 in C-97/08 P *Akzo Nobel and Others* v *Commission*, ECR, EU:C:2009:536, paragraph 55, and of 20 January 2011 in Case C-90/09 P *General Química and Others* v *Commission*, ECR, EU:C:2011:21, paragraph 53).

51 When such an economic entity infringes the competition rules, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement (see, to that effect, the judgments of 8 July 1999 C-49/92 P *Commission* v *Anic Partecipazioni*, ECR, EU:C:1999:356, paragraph 145; of 16 November 2000 in Case C-279/98 P *Cascades* v *Commission*, ECR, EU:C:2000:626, paragraph 78; *Akzo Nobel and Others* v *Commission*, cited in paragraph 50 above, ECR, EU:C:2009:536, paragraph 56, and *General Química and Others* v *Commission*, cited in paragraph 50 above, ECR, EU:C:2011:21, paragraph 36).

52 Moreover, it is clear from settled case-law that the conduct of a subsidiary may be imputed to the parent company in particular where that subsidiary, despite having a separate legal personality, does not decide independently upon its own conduct on the market, but carries out, in all material respects, instructions given to it by the parent company, regard being had in particular to the economic, organisational and legal links between those two legal entities (judgments in *Akzo Nobel and Others* v *Commission*, cited in paragraph 50 above, ECR, EU:C:2009:536, paragraph 58, and *Elf Aquitaine* v *Commission*, cited in paragraph 28 above, ECR, EU:C:2011:620, paragraph 54).

53 That is the case because, in such a situation, the parent company and its subsidiary are part of a single economic unit and therefore form a single undertaking for the purposes of the abovementioned case-law. Thus, the fact that a parent company and its subsidiary constitute a single undertaking within the meaning of Article 81 EC and Article 53 of the EEA Agreement enables the Commission to address a decision imposing fines to the parent company, without having to establish the personal involvement of the latter in the infringement (*Akzo Nobel and Others* v *Commission*, cited in paragraph 50 above, ECR, EU:C:2009:536, paragraph 59; *General Química* and *Others* v *Commission*, cited in paragraph 50 above, ECR, EU:C:2011:21, paragraph 38, and *Elf Aquitaine* v *Commission*, cited in paragraph 28 above, ECR, EU:C:2011:620, paragraph 55).

54 In the specific case where a parent company has a 100% shareholding in a subsidiary which has infringed the Community competition rules, first, the parent company can exercise a decisive influence over the conduct of the subsidiary and, second, there is a rebuttable presumption that the parent company does in fact exercise a decisive influence over the conduct of its subsidiary (see *Akzo Nobel and Others* v *Commission*, cited in paragraph 50 above, paragraph 60; *General Química and Others* v *Commission*, cited in paragraph 50 above, ECR, EU:C:2011:21, paragraph 39, and *Elf Aquitaine* v *Commission*, cited in paragraph 28 above, ECR, EU:C:2011:620, paragraph 56).

55 In those circumstances, it is sufficient for the Commission to prove that the subsidiary is wholly owned by the parent company in order to presume that the parent exercises a decisive influence over the commercial policy of the subsidiary. The Commission will then be able to regard the parent company as jointly and severally liable for 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 in the market (judgments in *Akzo Nobel and Others* v *Commission*, cited in paragraph 50 above, ECR, EU:C:2009:536, paragraph 61; *General Química and Others* v *Commission*, cited in paragraph 50 above, ECR, EU:C:2011:21, paragraph 40, and *Elf Aquitaine* v *Commission*, cited in paragraph 28 above, ECR, EU:C:2011:620, paragraph 57).

56 In such circumstances, the presumption mentioned above is not subject to the production of additional indicia (judgments in *Akzo Nobel and Others* v *Commission*, cited in paragraph 50 above, ECR, EU:C:2009:536, paragraph 62, and *General Química and Others* v *Commission*, cited in paragraph 50 above, ECR, EU:C:2011:21, paragraph 41).

57 In specific cases where a holding company holds 100% of the capital of an interposed company which, in turn, holds the entire capital of a subsidiary of its group which has committed an infringement of Union competition law, there is a rebuttable presumption that that holding company exercises a decisive influence over the conduct of the interposed company and also indirectly, via that company, over the conduct of that subsidiary (judgment in *General Química and Others* v *Commission*, cited in paragraph 50 above, ECR, EU:C:2011:21, paragraphs 86 to 89).

58 It is clear from the above-mentioned case-law that, by finding in recitals 189 to 195 to the contested decision that 100% of the capital of its T&D subsidiary belonged to the applicant and that it could therefore be presumed that the applicant exercised a decisive influence over the conduct of its T&D subsidiary on the market, the Commission did not disregard the rules governing the liability of a parent company for the conduct of its subsidiary. The Commission was not under any obligation to produce other information to demonstrate the existence of an economic unit comprising the applicant and its T&D subsidiary, contrary to the applicant's contention, but was entitled to rely on that presumption alone.

59 Contrary to the applicant's assertion, that conclusion is not called in question by paragraphs 99 and 101 of the judgment of the Court of 2 October 2003 in Case C-196/99 P *Aristrain* v *Commission*, ECR, EU:C:2003:529 or by paragraph 391 of the judgment of the General Court of 15 June 2005 in Joined Cases T-71/03, T-74/03, T-87/03 and T-91/03 *Tokai Carbon and Others* v *Commission*, ECR, EU:T:2005:220. In fact, the paragraphs of those judgments to which the applicant refers do not concern a vertical relationship as in this case, where it is necessary to appraise the exercise of a decisive influence by a parent company on the conduct of its subsidiary. On the contrary, they concern cases in which the Commission has had to consider whether there was any exercise by one company of a decisive influence over another in a horizontal relationship, namely, first, in a relationship between two 'sister companies' and, second, between two companies that are 'cousins', that is to say two subsidiaries belonging to two distinct parent companies.

60 Consequently, the Commission did not disregard the case-law governing joint and several liability of a subsidiary and of its parent company by presuming that the applicant and its T&D subsidiary formed an economic unit in reliance on the fact that the applicant held, through Alstom France, renamed Alstom Holdings in August 1999 (see paragraph 2 above), 100% of the shares in its T&D subsidiary.

– The lack of any economic unit when the contested decision was adopted

61 The applicant submits that the Commission disregarded the case-law concerning joint and several liability of a subsidiary and its parent company by holding it jointly and severally liable with its T&D subsidiary, even though they did not constitute an economic unit when the contested decision was adopted.

62 In this context, regard must be had to the case-law according to which it falls, in principle, to the legal or natural person managing the undertaking in question when the infringement was committed to answer for that infringement, even if, when the decision finding the infringement was adopted, operation of the undertaking was no longer its responsibility (judgments of 16 November 2000 in Case C-248/98 P *KNP BT* v *Commission*, ECR, EU:C:2000:625, paragraph 71; Case C-286/98 P *Stora Kopparbergs Bergslags* v *Commission*, ECR, EU:C:2000:630, paragraphs 37 to 40; Case C-297/98 P *SCA Holding* v *Commission*, ECR, EU:C:2000:633, paragraph 27, and of 29 March 2011 in Case C-352/09 P *ThyssenKrupp Nirosta* v *Commission*, ECR, EU:C:2011:191, paragraph 143).

63 It follows that, in recital 194 to the contested decision, the Commission properly stated that the finding of the existence of an economic unit between a parent company and a subsidiary at the time of the infringement justified imputing joint and several liability for a fine to the two companies, even if they no longer constituted an economic unit when the decision imposing the fine was adopted.

64 Contrary to the applicant's contention, that approach is not called in question by paragraphs 390 to 393 of the judgment in *Tokai Carbon and Others* v *Commission*, cited in paragraph 59 above, ECR, EU:T:2005:220. It cannot be inferred from that judgment that an economic unit comprising a parent company and a subsidiary must still exist when the decision imposing the fine is adopted. In fact, in the paragraphs mentioned above, the General Court ruled on the application of the ceiling of 10% of total turnover under Article 15(2) of Council Regulation No 17: First Regulation implementing Articles [81 EC] and [82 EC]. As the General Court properly held in paragraph 389 of that judgment, that ceiling aims inter alia to protect undertakings against excessive fines which could destroy them commercially. Consequently, it must be applied at a time close to the date of imposition of the fine and does not therefore relate to the period of the infringements penalised. Paragraphs 390 to 393 of that judgment are not therefore relevant to this case because they are not concerned with whether the conduct of a subsidiary may be imputed to its parent company. On the contrary, it must be pointed out that, in paragraph 387 of that judgment, the Court accepted by implication that a joint and several fine could be imposed on two companies that formed an economic unit when the infringement was committed, even if it had not been demonstrated that they still formed an economic unit when the decision imposing the fine was adopted.

65 It follows that the first complaint in the first part of the first plea must be rejected in its entirety.

The second complaint: the interchangeability of liability

66 By its second complaint in the first part of its first plea, the applicant criticises the Commission for failing to establish its share of individual, direct and formal responsibility for the infringement. It considers that, in order to be entitled to order that responsibility for payment of the fine is to be attributed to the applicant and its T&D subsidiary jointly and severally, the Commission should have

demonstrated not only the real implication of its T&D subsidiary in the infringement but also its own. In its view, the Commission should have ascertained the infringement on an independent basis, not merely in the case of the applicant's T&D subsidiary but also in its case.

67 In that regard, it must be pointed out first of all that, according to the case-law mentioned in paragraphs 49 to 57 above, the joint and several liability of a parent company and a wholly-owned subsidiary thereof derives from the presumption that those two companies form part of the same undertaking within the meaning of Article 81 EC. Consequently, the Commission is authorised to address the decision imposing a fine both to the parent company and to its subsidiary if it demonstrates that they constitute an undertaking and that that undertaking participated in the infringement. Contrary to the applicant's contention, it is not therefore necessary to establish a parent-subsidiary relationship in which the parent company instigates the infringement, or, *a fortiori*, the parent company's involvement in the infringement (judgment in *Elf Aquitaine* v *Commission*, cited in paragraph 28 above, ECR, EU:C:2011:620, paragraph 88).

68 Contrary to the applicant's assertion, that approach is not called in question by paragraph 43 of the judgment of 14 May 1998 in Joined Cases T-339/94 to T-342/94 *Metsä-Serla and Others* v *Commission*, ECR, EU:T:1998:100. It is true that in that judgment the Court held that an undertaking cannot be declared jointly liable with another undertaking for the payment of a fine unless the Commission demonstrates that the infringement is ascertainable with regard to both undertakings. However, it is apparent in particular from paragraph 58 of that judgment that such a finding by the Court concerns cases in which the Commission penalises two distinct undertakings within the meaning of Article 81 EC and Article 53 of the EEA Agreement, that is to say two autonomous economic units, and not cases where the Commission penalises two companies which form part of the same economic unit and therefore of the same undertaking within the meaning of those provisions.

69 The second complaint in the first part of the first plea likewise being unfounded, the first part of the first plea must be rejected in its entirety.

The second part of the second plea, alleging insufficiency of the statement of reasons for the rejection of the arguments put forward by the applicant to overturn the presumption that it had decisive influence on the conduct of its T&D subsidiary

70 In support of the second part of its second plea, the applicant submits that the Commission did not adequately state the reasons for its conclusion that it had not succeeded in overturning the presumption of its decisive influence on the conduct in the market of its T&D subsidiary.

71 In that context, reference must be made, first of all, to the case-law on the obligation to state reasons mentioned in paragraphs 28 to 31 above.

72 Next, it should be borne in mind that, where a decision concerning the application of the Union competition rules affects several addressees and relates to whether and how liability for the infringement can be attributed, the decision must contain an adequate statement of reasons with respect to each of the addressees, particularly those of them who, according to that decision, must bear liability for that infringement. Thus, with regard to a parent company held liable for the offending behaviour of its subsidiary, such a decision must, in principle, contain a detailed statement of reasons for imputing the infringement to that company (judgment in *Elf Aquitaine* v *Commission*, cited in paragraph 28 above, ECR, EU:C:2011:620, paragraph 152).

73 As regards, more specifically, a Commission decision which relies exclusively, with respect to certain addressees, on the presumption that they actually exercised a decisive influence, the Commission is in any event required to explain adequately to those addressees the reasons why the elements of fact and

of law put forward did not suffice to rebut that presumption. The Commission's duty to state reasons for its findings on that point flows primarily from the fact that that presumption is open to rebuttal, for the purposes of which it is necessary for those concerned to produce evidence relating to the economic, organisational and legal links between the companies concerned (see, to that effect, the judgment in *Elf Aquitaine* v *Commission*, cited in paragraph 28 above, ECR, EU:C:2011:620, paragraph 153).

74 Moreover, it must be noted that the Commission's statement of reasons must enable the Court to exercise its review, the latter being required to assess any evidence relating to the economic and legal organisational links between the parent company and the subsidiary apt to demonstrate that the subsidiary operates independently of its parent company and that those two companies thus do not constitute a single economic entity (judgment in *General Química and Others* v *Commission*, cited in paragraph 50 above, ECR, EU:C:2011:21, paragraph 76).

75 Such verification is required all the more since a subsidiary's independence in implementing its commercial policy thus forms part, as is apparent from the case-law of the Court of Justice, of the set of relevant factors enabling the parent company to rebut the presumption of its decisive influence over its subsidiary, factors whose character and importance may vary depending on the specific characteristics of each individual case (see, to that effect, the judgments in *Akzo Nobel and Others* v *Commission*, cited in paragraph 50 above, ECR, EU:C:2009:536, paragraph 77, and *General Química and Others* v *Commission*, cited in paragraph 50 above, ECR, EU:C:2011:21, paragraph 77).

76 That said, it should be borne in mind that the Commission is not however required in such a context to adopt a position on factors which are manifestly irrelevant, unimportant or clearly ancillary (judgment in *Elf Aquitaine* v *Commission*, cited in paragraph 28 above, ECR, EU:C:2011:620, paragraph 154).

77 Finally, the statement of reasons must in principle be notified to the person concerned at the same time as the act adversely affecting him. A failure to state the reasons cannot be remedied by the fact that the person concerned learns the reasons for the decision during the proceedings before the Union judicature (judgments of 26 November 1981 in Case 195/80 *Michel* v *Parliament*, ECR, EU:C:1981:284, paragraph 22; of 26 September 2002 in Case C-351/98 *Spain* v *Commission*, ECR, EU:C:2002:530, paragraph 84; of 29 April 2004 in Joined Cases C-199/01 P and C-200/01 P, ECR, EU:C:2004:249, *IPK-München* v *Commission*, paragraph 66, and *Elf Aquitaine* v *Commission*, cited in paragraph 28 above, ECR, EU:C:2011:620, paragraph 149).

78 It is in the light of the above-mentioned case-law that the statement of reasons of the contested decision must be assessed.

The statement of reasons for the contested decision

79 It is apparent from recitals 175 to 178 and 183 to 195 to the contested decision that the Commission imposed a fine on the applicant because the latter and its T&D subsidiary formed an undertaking within the meaning of Article 81 EC and Article 53 of the EEA Agreement during the T&D subsidiary's participation in the Gentlemen's Agreement. In that context, the Commission relied on the presumption that it could be inferred from the fact that the applicant held 100% of the capital of a company which, in its turn, held 100% of the capital of its T&D subsidiary, that the former exercised a decisive influence on the latter's conduct on the market.

80 The applicant contends that, in the contested decision, the Commission did not sufficiently explain the reasons for which it considers that the factors put forward by the applicant in order to overturn that presumption should be rejected.

81 This part of the plea must be examined in three stages. In the first stage, it is necessary to establish which arguments the applicant put forward in order to overturn the presumption of its decisive influence on the conduct of its T&D subsidiary. In the second stage, it is necessary to identify the part of the statement of reasons for the contested decision in which the Commission responded to those arguments. In the third stage, it is necessary to consider whether, on that basis, the Commission failed in its obligation to state reasons.

– The arguments put forward by the applicant

82 As regards the matters relied on by the applicant in order to overturn the presumption of its decisive influence on the conduct of its T&D subsidiary in the market, in must be pointed out that, in its reply to the statement of objections, it relied on eight arguments, the essential elements of which are set out below.

83 In the first place, the applicant submitted that the relationship between it and its T&D subsidiary was shaped by the principle of operational decentralisation. The Alstom group was based on a 'totally decentralised organisation'. The group's various sectors of activity were profit centres around which the subsidiaries of the group evolved. Each business is entirely responsible for its statement of earnings and fully controls its technologies, its pricing policies, its sales objectives, its gross margins, its selling expenses, its cash flow and its stocks. Its T&D subsidiary was the subsidiary responsible for the production and sale of power transformers.

84 Second, the applicant maintained that, in 1992, the Alstom group had been reorganised around its subsidiaries, evolving according to business sector, the aim of the reorganisation being to give to staff, and to third parties, a truer picture of the existing allocation of responsibilities within the group. Consequently, it could not have been implicated in decisions concerning the infringing conduct of its T&D subsidiary, the structure of the group not enabling it to be informed thereof.

85 Third, the applicant considers itself to be a company whose sole object was the holding and management of participations, and coordination of very limited policies and frameworks. The relationship with its T&D subsidiary did not affect its commercial conduct and in particular did not in any way shape its conduct in the power transformer market.

86 In the fourth place, the applicant submitted that commercial policy was defined by the management organs of the subsidiaries. The applicant itself did not have the means, if only in terms of personnel, organisation and expertise, to influence the commercial policy of its subsidiaries. It did not have any employees, a commercial manager or commercial research departments. On the contrary, the subsidiaries, for their part, each had a commercial manager and also directorates for legal, financial, communication and human resources matters. All decisions were thus taken at subsidiary level.

87 Fifth, the applicant maintained that its executive committee had not given any instruction capable of affecting the conduct of its subsidiaries in the market. Only the overall strategy of the group had been decided by the Alstom executive committee. The commercial policy of its subsidiaries, in particular that of its T&D subsidiary, had never been discussed within the executive committee. In that context, in particular, the applicant referred to factors which in its view demonstrated 'the impossibility for the [executive committee] to have any influence on the conduct of the subsidiaries in the market'.

88 Sixth, the applicant contends that it carried out only a limited and *ex post facto* review of important financial commitments concerning key decisions liable to imperil the financial situation of the group. No project linked to the power transformer business had been the subject of any such financial review.

89 Seventh, the applicant maintained that only the employees of its T&D subsidiary were implicated in the alleged infringements. In that context, it contends that the Commission had made mistakes regarding the status of certain persons as employees of an Alstom human resources management company.

90 Eighth, the applicant maintained that the overlapping functions of certain executives of its T&D subsidiary was not relevant, since those persons had not been capable, for operational reasons, of becoming involved in matters relating to the conduct of its T&D subsidiary in the power transformer market, and it has not been demonstrated that those persons were implicated in the cartels.

– The statement of reasons for the contested decision

91 As regards the statement of reasons given by the Commission, it must be concluded that it gave reasons for the choice of the addressees of the contested decision in paragraph 6 thereof.

92 In paragraph 6.1 of the contested decision, that is to say in recitals 175 to 181, the Commission referred to the general principles governing the selection of the addressees of a decision finding an infringement of Article 81 EC and Article 53 of the EEA Agreement. In recital 177 to the contested decision, it stated that it was incumbent upon a parent company holding 100% of the capital of a subsidiary to produce sufficient evidence to overturn the presumption that it controls the latter's commercial conduct.

93 In paragraph 6.2 of the contested decision, in recitals 183 to 195, the Commission applied that principle to the applicant. In recitals 185 to 188 to the contested decision, the Commission summarised the arguments put forward by the applicant before appraising them in recitals 189 to 195.

94 In that regard, it must be pointed out that in most of the Commission's statement of reasons reference is made not to the arguments put forward by the applicant in order to overturn the 'shareholding presumption', but rather to other arguments. In fact, the Commission's statement of reasons specifically covering the arguments put forward to overturn the 'shareholding presumption' is very succinct:

— in recital 189 to the contested decision, the Commission confined itself to noting that the applicant 'has not provided arguments to reverse that presumption by demonstrating that the subsidiary acted independently';

— in recital 190 to the contested decision, the Commission asserted that 'as shown, the arguments put forward by [the applicant] to demonstrate an alleged autonomy of its subsidiary [were] not sufficient in this regard'.

95 Furthermore, in recital 191 to the contested decision, the Commission held that the attribution of an infringement by a subsidiary to the parent company does not require the Commission to establish knowledge of the subsidiary's infringement on the part of the executives of the parent company.

96 As regards recital 198 to the contested decision, to which the Commission referred at the hearing, it must be pointed out that it merely reiterates an argument put forward by Areva and is not therefore a part of the Commission's statement of reasons.

– Appraisal of the Commission's statement of reasons

97 It is on the basis, first, of the arguments put forward by the applicant and, second, of the Commission's statement of reasons regarding those arguments, that an appraisal of the adequacy or otherwise of the contested decision's statement of reasons must be carried out.

98 At the outset, it must be noted that, as stated above, the Commission's statement of reasons regarding the eight arguments put forward by the applicant is limited to the conclusion arrived at in paragraphs 189 and 190 of the contested decision, to the effect that the applicant did not put forward arguments overturning the 'shareholding presumption' and demonstrating that its T&D subsidiary had acted independently. In the contested decision, the Commission thus confined itself to indicating the results of its examination, without however setting out the reasons for which the arguments put forward by the applicant were not capable of overturning the presumption of its decisive influence over the conduct of its T&D subsidiary in the market.

99 As regards recital 191 to the contested decision, at most it amounts to a reply to the applicant's argument summarised in paragraph 89 above and some of the arguments summarised in paragraph 92 above, but it does not respond to the other arguments put forward by the applicant. Whilst it is true that the 'shareholding presumption' is not undermined by the mere fact that the parent company had no knowledge of its subsidiary's participation in an infringement of the competition rules, it nevertheless presupposes that the subsidiary in question does not autonomously determine its conduct in the market but, essentially, follows the instructions of its parent company. However, it is precisely the latter condition that the applicant disputed by its other arguments, which, consequently, necessitated a reply from the Commission.

100 In this context, the Commission cannot contend that the obligation to state reasons did not require it to express its views on the arguments put forward by the applicant because they were irrelevant, unimportant or clearly ancillary.

101 Indeed, none of the arguments mentioned in paragraphs 83 to 90 above can be regarded as manifestly irrelevant, unimportant or clearly ancillary as regards overturning the presumption that the applicant had decisive influence on its T&D subsidiary's commercial policy.

102 As stated above, that presumption is open to rebuttal and can therefore be overturned by a parent company producing sufficient evidence such as to prove that its subsidiary conducts itself autonomously on the market. Consequently, it is incumbent upon the Commission to examine in each particular case all matters put to it concerning the organisational, economic and legal links between the parent company and the subsidiary which might establish that the latter operated autonomously from its parent company and that those two companies did not therefore constitute a single economic entity (judgments of 16 June 2011 in Case T-185/06, *L'Air liquide* v *Commission*, ECR, EU:T:2011:275, paragraphs 71 to 75, and Case T-196/06 *Edison* v *Commission*, ECR, EU:T:2011:281, paragraphs 76 and 77).

103 In this case the applicant put forward arguments specifically designed to demonstrate that, during the period of the Gentlemen's Agreement, its subsidiary operated autonomously on the market. In that context, it did not rely solely on the fact that its object was limited to the holding and management of participations but it also referred to particular circumstances characterising its links with its T&D subsidiary, such as the principle of operational decentralisation of the group, the exclusive responsibility of the subsidiaries for determining commercial policy and the fact that, by reason of the group's structure, control by it of the commercial policy of its T&D subsidiary was a structural impossibility. In that regard, the applicant produced detailed information on the functioning of the group.

104 Therefore, none of the arguments put forward by the applicant can be regarded as manifestly irrelevant, unimportant or clearly ancillary.

105 Moreover, the Commission cannot successfully assert that it was not obliged to respond to the arguments put forward by the applicant because the burden of proof lay upon the latter and it was not therefore required to give more detailed reasons, particularly because the applicant had not put forward arguments to overturn that presumption.

106 In this context, a distinction must be drawn between the rules on burden of proof, on the one hand, and the obligation to state reasons, on the other. As a rule, so far as the burden of proof is concerned, the 'shareholding presumption' governs the question of what facts the Commission must establish to show that a parent company and a subsidiary constitute a single economic unit and therefore an undertaking within the meaning of Article 81 EC and Article 53 of the EEA Agreement. On the other hand, the obligation to state reasons, which is one of a formal nature, requires that the reasoning on which the Commission bases its conclusions appears clearly and unequivocally in the contested decision in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community judicature to exercise its power of review (see the case-law mentioned in paragraph 29 above). Thus, even if the Commission considers that the matters put forward by the parent company are not sufficient to overturn the presumption that it influenced the conduct of its subsidiary in the market, it is nevertheless obliged to state the reasons therefor, in so far as the matters expressed are not merely irrelevant or insignificant. In that regard, its duty to state reasons for its decision on this issue derives from the rebuttable nature of the presumption at issue (judgments in *L'Air liquide* v *Commission*, cited in paragraph 102 above, ECR, EU:T:2011:275, paragraphs 71 to 75, and *Edison* v *Commission*, cited in paragraph 102 above, ECR, EU:T:2011:281, paragraphs 76 and 77).

107 Consequently, the Commission was required to explain, in the contested decision, the reasons for which it considered that, despite the arguments put forward by the applicant, the autonomy of its subsidiary's conduct in the market had not been demonstrated.

108 In view of the foregoing, it must be held that the Commission breached the obligation to state reasons laid down in Article 253 EC by not sufficiently setting out the reasons for which the arguments put forward by the applicant had not sufficed to rebut the presumption of its decisive influence on the conduct of its T&D subsidiary in the market.

The consequences of the breach of the obligation to state reasons

109 The Commission submits that, in any event, since, in this case, it would have been entitled to find that the 'shareholding presumption' had not been overturned, its breach of the obligation to state reasons should not give rise to annulment of the contested decision. During the proceedings, it explained the reasons for which, in its opinion, the arguments put forward by the applicant should be rejected.

110 In this context, it should be borne in mind, in the first place, that the statement of reasons must in principle be notified to the person concerned at the same time as the decision adversely affecting him. A failure to state the reasons cannot be remedied by the fact that the person concerned learns the reasons for the decision during the proceedings (judgment in *Dansk Rørindustri and Others* v *Commission*, cited in paragraph 30 above, ECR, EU:C:2005:408, paragraph 463; judgment of 12 September 2007 in Case T-25/04 *González y Díez* v *Commission*, ECR, EU:T:2007:257, paragraph 220; see the case-law mentioned in paragraph 77 above).

111 Consequently, the statement of reasons given by the Commission during the proceedings cannot be taken into account in any assessment of any breach of its obligation to state reasons.

112 In the second place, the Commission cannot rely on the case-law to the effect that General Court's unlimited jurisdiction regarding fines may justify the production and consideration of additional information that is not required, by virtue of the duty to state reasons, to be set out in the decision (judgment in *SCA Holding* v *Commission*, cited in paragraph 62 above, ECR, EU:C:2000:633, paragraphs 54 and 55). In fact, the imputation to the applicant of the infringement by its T&D subsidiary raises the question of the existence of an economic unit between the former and the latter and also, without doubt, the question of the applicant's participation in the infringement penalised by the contested decision. That question falls within the scope of the review of the legality of that

decision and not the assessment as to whether the amount of the fine imposed on the applicant was appropriate. It is only in relation to the latter question that the General Court enjoys unlimited jurisdiction (judgment in *SCA Holding* v *Commission*, cited in paragraph 62 above, ECR, EU:C:2000:633, paragraphs 54 and 55).

113 In the third place, the Commission refers to case-law according to which a defective statement of reasons does not give rise to the annulment of a contested decision where the annulment could only give rise to the adoption of a new decision, identical in substance to the annulled decision.

114 In that connection, the Commission cannot legitimately rely on the judgment of the General Court of 13 December 2006 in Joined Cases T-217/03 and T-245/03 *FNCBV and Others* v *Commission*, ECR, EU: 2006:391, paragraphs 362 and 363), in which the General Court found an infringement of the duty to state reasons committed by the Commission when determining of fines imposed for infringements of Article 81(1) EC, while stating that, in so far as the measure or decision upheld by that institution was to be confirmed as to its substance, that infringement did not lead either to the annulment of the contested decision or to an alteration of the amount of the fines.

115 That last appraisal, which was made in the context of the unlimited jurisdiction of the General Court regarding pecuniary sanctions, cannot be transposed to the present case, concerning the review of the legality of the contested decision, in so far as in it the Commission upheld the applicant's liability for the infringement at issue (see paragraph 112 above; judgment in *Edison* v *Commission*, cited in paragraph 102 above, ECR, EU:T:2011:281, paragraphs 91 to 93).

116 Furthermore, the Commission cannot rely on the case-law to the effect that an applicant has no legitimate interest in alleging breach of the obligation to state reasons in a case where it is already certain that, following annulment of the contested decision, an identical decision would have to be adopted (judgments of 29 September 1976 in Case 9/76 *Morello* v *Commission*, ECR, EU:C:1976:129, paragraph 11, and of 20 May 1987 in Case 432/85 *Souna* v *Commission*, ECR, EU:C:1987:236, paragraph 20; judgments of 9 October 1992, in Case T-50/91 *De Persio* v *Commission*, ECR, EU:T:1992:104, paragraphs 10 and 24, and of 3 December in Case T-16/02 *Audi* v *OHIM (TDI)*, ECR, EU:T:2003:327, paragraphs 97 and 98).

117 In this case, the Commission has not given sufficient reasons to explain why the arguments put forward by the applicant were not capable of demonstrating that its T&D subsidiary determined its conduct in the market autonomously. This question must be examined by reference to every factor concerning the organisational, economic and legal links between the applicant and its T&D subsidiary. The examination will therefore be complex and its result cannot be anticipated. In the absence of any such examination, it cannot be presumed that it is already certain at this stage that an identical decision will be adopted. Moreover, to accept that, in such circumstances, the General Court must analyse the explanations put forward by the Commission for the first time during the proceedings would directly conflict with the case-law cited in paragraphs 73 to 75 above.

118 Consequently, in this case, contrary to the Commission's contention, the defective statement of reasons entails annulment of the contested decision.

119 It is therefore appropriate to annul the contested decision without there being any need to give a decision on the second part of the first plea, the third part of the second plea or the third plea.

Costs

120 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. With regard to the applicant's request for annulment of the contested decision, the Commission has been unsuccessful and the applicant has asked for costs.

121 As regards the request for annulment of the accountant's letter of 10 December 2009, it must be borne in mind that the Court decided that there was no longer any need to give a decision on that point and that the costs were reserved (see paragraph 16 above). Under Article 87(6) of the Rules of Procedure, where a case does not proceed to judgment the costs are to be in the discretion of the Court. The Court considers that, in this case, it is fair for the Commission also to bear the costs concerning the claim for annulment of the accountant's letter.

122 The Commission should therefore be ordered to pay all the costs.

On those grounds,

THE GENERAL COURT (Third Chamber)

hereby:

1. Annuls, to the extent to which it concerns Alstom, Commission Decision C(2009) 7601 final of 7 October 2009 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement — Case COMP/39.129 — Power Transformers;

2. Orders the European Commission to pay the costs.

Czúcz Labucka Gratsias

Delivered in open court in Luxembourg on 27 November 2014.

[Signatures]