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 the exchange of commercially sensitive information — Complex infringement — Single and continuous infringement — Distancing — Gravity of the infringement — Mitigating circumstances — Equal treatment — Principle that penalties must fit the offence — Appraisal of ability to pay — 2002 Commission Notice on cooperation — 2006 Guidelines on the method of setting fines — Unlimited jurisdiction)

In Case T-393/10,

Westfälische Drahtindustrie GmbH, established in Hamm (Germany),

Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG, established in Hamm,

Pampus Industriebeteiligungen GmbH & Co. KG, established in Iserlohn (Germany),

represented initially by C. Stadler and N. Tkatchenko, and subsequently by C. Stadler and S. Budde, lawyers,

applicants,

v

European Commission, represented by V. Bottka, R. Sauer and C. Hödlmayr, acting as Agents, and by M. Buntscheck, lawyer,

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, and also for annulment of the letter of the Director-General of the Directorate-General of the Commission of 14 February 2011,

THE GENERAL COURT (Sixth Chamber),

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

Registrar: K. Andová, Administrator,

having regard to the written procedure and further to the hearing on 10 July 2014,

* Language of the case: German.

gives the following

Judgment[1] …

II - *Admissibility of the claim for annulment of the letter of 14 February 2011*

92 It should be borne in mind that, in the course of the proceedings, the Director-General wrote to the applicants on 14 February 2011 rejecting their request for a reappraisal of their ability to pay, which they had submitted to the Commission on 12 August 2010, that is to say, between the adoption of the initial decision and the introduction of the present action.

93 In that letter, which was written after examination of the factual evidence submitted by the applicants and their answers to a number of questions put to them by the Commission's services between 12 August 2010 and 7 February 2011, the Director-General considered, for different reasons from those stated in the contested decision, that it was inappropriate to grant the applicants a reduction of the fine in consideration of their ability to pay.

94 In the reply, the applicants sought leave to extend the form of order sought to annulment of the letter of 14 February 2011 (see paragraph 66 above).

95 The Commission objects to that request, on the ground, first, that the letter does not alter their legal position and cannot therefore form the subject-matter of an action for annulment and, second, that the applicants did not submit any new substantial facts in support of their request for a reappraisal of their ability to pay. The letter of 14 February 2011 is therefore, in those circumstances, purely confirmatory in nature. The Commission maintains, moreover, that as the appraisal of the applicants' ability to pay falls within the unlimited jurisdiction of the Court, and that as the Court is required, when exercising that jurisdiction, to take account of the factual situation as it exists on the date on which it delivers judgment, the applicants have no interest in obtaining a ruling from the Court on the appropriateness of the appraisal of their ability to pay as set out in the letter of 14 February 2011.

96 It is indeed the case that the expression in writing of an opinion issued by an EU institution or a simple declaration of intent cannot constitute a decision against which an action for annulment under the first paragraph of Article 263 TFEU might be brought, since it is not capable of having legal effects or is not intended to have such effects (see, to that effect, judgments of 27 March 1980 in *Sucrimex and Westzucker* v *Commission*, 133/79, ECR, EU:C:1980:104, paragraphs 15 to 19, and of 27 September 1988 in *United Kingdom* v *Commission*, 114/86, ECR, EU:C:1988:449, paragraphs 12 to 15).

97 It has been held, moreover, as regards actions for annulment brought by individuals, that a letter sent by an EU body in response to a request made by the addressee did not constitute a measure of concern to him within the meaning of the fourth paragraph of Article 263 TFEU enabling him to bring an action for annulment (see, to that effect, order of 27 January 1993 in *Miethke* v *Parliament*, C-25/92, ECR, EU:C:1993:32, paragraph 10).

98 Conversely, according to settled case-law, any measure the legal effects of which are binding on, and capable of affecting the interests of, third parties by bringing about a distinct change in their legal position is an act which may be the subject of an action for annulment under Article 263 TFEU (judgment of 11 November 1981 in *IBM* v *Commission*, 60/81, ECR, EU:C:1981:264, paragraph 9; see also judgment of 17 April 2008 in *Cestas* v *Commission*, T-260/04, ECR, EU:T:2008:115, paragraph 67 and the case-law cited).

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

99 In addition, it is necessary to look to the substance of the measure annulment of which is sought in order to ascertain whether it may be the subject of an action for annulment, the form in which that measure was cast being, in principle, immaterial in that regard (judgment in *IBM* v *Commission*, cited in paragraph 98 above, EU:C:1981:264, paragraph 9; see also judgment in *Cestas* v *Commission*, cited in paragraph 98 above, EU:T:2008:115, paragraph 68 and the case-law cited).

100 Only the act whereby an EU body determines its position unequivocally and definitively, in a form enabling its nature to be identified, constitutes a decision that may form the subject-matter of an action for annulment, on condition, however, that that decision does not constitute confirmation of a prior act (see, to that effect, judgment of 26 May 1982 in *Germany and Bundesanstalt für Arbeit* v *Commission*, 44/81, ECR, EU:C:1982:197, paragraph 12).

101 Where the contested act merely confirms a prior act, the action is admissible only on condition that the act which it confirms was challenged within the prescribed period (see judgments of 14 July 1995 in *CB* v *Commission*, T-275/94, ECR, EU:T:1995:141, paragraph 27, and of 10 July 1997 in *AssiDomän Kraft Products and Others* v *Commission*, T-227/95, ECR, EU:T:1997:108, paragraph 29 and the case-law cited). An action against a confirmatory decision is inadmissible only if the confirmed decision has become final in relation to the person concerned because no action has been brought within the prescribed period. Where that is not the case, the person concerned is entitled to challenge either the confirmed decision, or the confirmatory decision, or both (judgments of 11 May 1989 in *Maurissen and Union syndicale* v *Court of Auditors*, 193/87 and 194/87, EU:C:1989:185, paragraph 26, and of 18 December 2007 in *Weißenfels* v *Parliament*, C-135/06 P, ECR, EU:C:2007:812, paragraph 54).

102 Conversely, where an applicant allows the time-limit for bringing an action against a decision unequivocally laying down a measure with legal effects which affect his interests and are binding on him to expire, he cannot cause time to begin to run afresh by asking the institution to reconsider its decision and by bringing an action against the refusal confirming the decision previously taken (see judgment of 15 March 1995 in *COBRECAF and Others* v *Commission*, T-514/93, ECR, EU:T:1995:49, paragraph 44 and the case-law cited).

103 It is in the light of the foregoing considerations that the Court must examine the admissibility of the applicants' claim for annulment of the letter of 14 February 2011, in which the Director-General rejected a request, submitted by the applicants after the adoption of the initial decision, for a reappraisal of their ability to pay (see paragraphs 60 and 61 above).

104 In that regard, the Commission's argument that is not required to give a ruling on a request for a reappraisal of an undertaking's ability to pay submitted after the adoption of decisions imposing fines is ineffective in the present case. It is common ground that the Commission's services made a determination on the new request submitted by the applicants, after examining new documents which they had produced in support of that request and putting a number of questions to them relating, in particular, to those documents.

105 Furthermore, following the examination of those documents, the Director-General based his refusal to grant the request for a reduction of the fine submitted by the applicants on grounds that contradicted those stated in the initial decision. Although, in the initial decision, the Commission had observed that the applicants' situation was so precarious that they were likely to disappear, irrespective of the amount of the fines imposed on them, in the letter of 14 February 2011, on the other hand, the Director-General considered that, in the light of WDI's projected cash flow supplied by the applicants after the initial decision had been adopted, they had not shown that that company alone was not in a position to obtain the finance necessary to pay the fines in full.

106 In addition, the amount of the fines in respect of which the Director-General made his appraisal of the applicants' ability to pay was the amount for which they were liable following the first amending decision. That amount, however, was different from the amount in respect of which the first appraisal of their ability to pay had been made in the initial decision.

107 It follows from the foregoing considerations that in the letter of 14 February 2011 the Director-General appraised the applicants' ability to pay taking into consideration different elements of fact and of law from those which had been examined in the initial decision and that the ground on which the Director-General refused to reduce the amount of the fine for which they were liable is distinct from the ground on which their first request for a reduction had been rejected in the initial decision. Accordingly, the letter of 14 February 2011 cannot be regarded, as the Commission claims, as merely confirmatory of the initial decision (see, to that effect, judgments of 7 February 2001 in *Inpesca* v *Commission*, T-186/98, ECR, EU:T:2001:42, paragraphs 44 to 51, and of 22 May 2012 in *Sviluppo Globale* v *Commission*, T-6/10, EU:T:2012:245, paragraphs 22 to 24).

108 In any event, it should be borne in mind that, within the period for bringing an action prescribed in the sixth paragraph of Article 263 TFEU, the applicants submitted their claim for annulment of the letter of 14 February 2011, and did so within the framework of the present action, which is also directed against the contested decision. Therefore, on the date on which the applicants requested to extend the subject-matter of the present action to the letter of 14 February 2011, the initial decision had not become final. It follows from the case-law referred to in paragraph 101 above that in those circumstances, even on the assumption that the letter of 14 February 2011 must be regarded as an act that merely confirms the initial decision, that circumstance is not such as to render such a claim for annulment inadmissible.

109 Last, it should be observed that the exercise by the Courts of the European Union of their unlimited jurisdiction does not preclude, but assumes that they will exercise, in so far as they are prompted to do so by the applicant and subject to pleas involving matters of public policy which they are required, in compliance with the *inter partes* principle, to raise of their own motion, review of the appraisals of law and of fact made by the Commission (see judgment of 10 July 2014 in *Telefónica and Telefónica de España* v *Commission*, C-295/12 P, ECR, EU:C:2014:2062, paragraphs 51 to 57 and the case-law cited). Although a Court exercising unlimited jurisdiction must, in principle, as the Commission rightly contends, take account of the legal and factual situation prevailing on the date on which it makes its determination where it considers that it should exercise its power to vary a decision (see, to that effect, judgments of 6 March 1974 in *Istituto Chemioterapico Italiano and Commercial Solvents* v *Commission*, 6/73 and 7/73, ECR, EU:C:1974:18, paragraphs 51 and 52; of 14 July 1995 in *CB* v *Commission*, T-275/94, ECR, EU:T:1995:141, paragraph 61; and of 5 October 2011 in *Romana Tabacchi* v *Commission*, T-11/06, ECR, EU:T:2011:560, paragraphs 282 to 285), that obligation does not have the consequence of depriving the undertakings penalised by the Commission for infringing Article 101 TFEU of any interest in the Court's review also covering the merits of the factual and legal appraisals made by the Commission, in the light of the legal and factual situation that prevailed on the date of those appraisals. Accordingly, the possibility that, as regards the appraisal of the applicants' ability to pay, the Court will decide to exercise its unlimited jurisdiction does not in itself have the consequence, as the Commission contends, of rendering a review of the appraisals contained in the letter of 14 February 2011 devoid of purpose.

110 It follows that the pleas of inadmissibility raised by the Commission against the claim for annulment of the letter of 14 February 2011 must be rejected.

…

A — *First and second pleas, alleging that the Commission was wrong to consider that the applicants participated continuously in a single and continuous infringement from 1 January 1984*

121 In the context of the first part of the first plea, the applicants claim that, owing to the interruption of almost one and a half years between the end of the Zurich Club and the beginning of Club Europe and also to the differences in the organisation and functioning of those two arrangements, the Commission was not entitled to consider that those two separate infringements constituted a single and continuous infringement. It follows that the infringements committed before the commencement of Club Europe, on 12 May 1997, were time-barred under Article 25(1)(b) of Regulation No 1/2003.

122 In the context of the second part of the first plea, the applicants maintain that the Commission failed to take account of the fact that, as confirmed by the notebooks containing the notes taken by Emesa, WDI distanced itself, in a manner that was clear to all the other undertakings attending the meeting of 9 January 1996, from the agreements implemented in the context of the Zurich Club. Accordingly, all the infringements committed by WDI before 12 May 1997 are for that reason also time-barred under Article 25(1)(b) of Regulation No 1/2003.

123 By the second plea, put forward in the alternative, the applicants claim that the infringement which they are found to have committed ought at least to have been regarded as a repeated infringement and that, when determining duration for the purpose of calculating the fines, the Commission ought to have taken account of the interruption of the cartel during the transitional period.

124 The Court must therefore examine, first of all, whether the Commission was entitled to find that WDI participated in a single and continuous infringement.

1. The existence of a single and continuous infringement

a) Components of the cartel and characterisation of the single infringement in the contested decision

125 Although the Commission maintains, in the defence and in the rejoinder, that the infringement at issue in the present case is ‘continuous or repeated’, it should be borne in mind at the outset that in the contested decision the infringement is characterised only as ‘single and continuous’ (recital 609 to the contested decision) and not as repeated. Thus, the applicants were penalised for an infringement committed, without interruption, by Klöckner Draht, which became WDI, from 1 January 1984 and by WDV and Pampus from the dates on which those companies acquired control of WDI (see paragraphs 54 to 57 above).

126 In recital 122 to the contested decision, the Commission described the cartel in which the applicants are found to have participated as a ‘pan-European arrangement, consisting of a Zurich and a European phase and/or, as the case may be, in national-regional arrangements’.

127 Recitals 123 to 135 to the decision set out briefly those various agreements and concerted practices, which are subsequently described in greater detail and assessed in the light of Article 101(1) TFEU and Article 53 of the EEA Agreement. According to the Commission, as mentioned in paragraphs 40 to 53 above, the cartel is composed, in particular and in chronological order, of seven essential components.

128 First, the Zurich Club, or the first phase of the pan-European agreement, lasted from 1984 until 9 January 1996 and concerned quota-fixing by country (Germany, Austria, Benelux, France, Italy and Spain), customer-allocation, price-allocation and the exchange of commercially sensitive information. Its members were initially Tréfileurope, Nedri, WDI, DWK and Redaelli (Redaelli also represented several other Italian undertakings) — at least from 1993 –, and were then joined by Emesa in 1992 and Tycsa in 1993.

129 Second, Club Italia, a national arrangement which lasted from 5 December 1995 until 19 September 2002, concerned quota-fixing for Italy and also exports from that country to the rest of Europe. Its members were the Italian undertakings Redaelli, ITC, CB and Itas, subsequently joined by Tréfileurope and Tréfileurope Italia, on 3 April 1995; by SLM, on 10 February 1997; by Trame, on 4 March 1997; by Tycsa, on 17 December 1996; by DWK, on 24 February 1997; and by Austria Draht, on 15 April 1997.

130 Third, the Southern Agreement is a regional arrangement negotiated and concluded in 1996 by the Italian undertakings Redaelli, ITC, CB and Itas, with Tycsa and Tréfileurope, in order to determine the penetration rate of each of the participants in the Southern countries (Spain, Italy, France, Belgium and Luxembourg) and give a commitment to negotiate quotas jointly with the other Northern European producers.

131 Fourth, Club Europe, or the second phase of the pan-European agreement, consisted, in May 1997, of Tréfileurope, Nedri, WDI, DWK, Tycsa and Emesa. The Club Europe meetings, in which other European producers may have occasionally participated (see paragraph 48 above), ceased in September 2002. The agreement was intended to overcome the crisis in the Zurich Club and concerned the allocation of new quotas (calculated over the period between the fourth quarter of 1995 and the first quarter of 1997), customer-allocation and price-fixing. The permanent members agreed on coordination rules, including the appointment of coordinators responsible for implementing the arrangements in several countries and for coordinating with other interested companies active in the same countries or in respect of the same customers. Their representatives met regularly at different levels, in order to monitor the implementation of the arrangements. They exchanged commercially sensitive information. In the event of discrepancy with the agreed trade behaviour, a compensation scheme was applied.

132 Fifth, in the context of the pan-European aspects of the cartel, the six permanent members, occasionally joined by the Italian producers and Fundia, also had bilateral or multilateral contacts and participated in price-fixing and customer-allocation on an ad hoc basis, if it was in their interest to do so. Thus, Tréfileurope, Nedri, WDI, Tycsa, Emesa, CB and Fundia coordinated together prices and volumes for the customer Addtek. Those projects mainly concerned Finland, Sweden and Norway, but also the Netherlands, Germany, the Baltic States and Central and Eastern Europe. The coordination in respect of Addtek began during the Zurich Club phase of the pan-European arrangement and continued at least until the end of 2001.

133 Sixth, during the period from at least September 2000 until September 2002, the six permanent members, plus ITC, CB, Redaelli, Itas and SLM, met regularly with the aim of integrating the Italian undertakings into Club Europe as permanent members. The Italian undertakings wished to increase their quotas in Europe, whereas Club Europe was in favour of maintaining the status quo. To that end, a number of meetings were held within Club Italia, with the aim of defining a common position for the Italian undertakings, as were meetings within Club Europe, in order to examine the Italian undertakings' claims, and meetings between participants in Club Europe and Italian representatives, in order to reach an accommodation between the members of those two arrangements. In the course of those negotiations, the undertakings involved exchanged commercially sensitive information. For the purposes of the redistribution of the European quotas with the aim of including the Italian producers, those undertakings agreed to use a new reference period (30 June 2000 to 30 June 2001). They also agreed on a global export quota for the Italian undertakings to the rest of Europe. At the same time, they discussed prices, as the members of Club Europe sought to extend, on a Europe-wide scale, the price-fixing mechanism applied by the Italian producers within Club Italia.

134 Seventh, the Commission also mentioned the existence of Club España, an arrangement parallel to the other elements of the cartel and concerning the Spanish and Portuguese markets (see paragraph 52 above).

135 In recitals 610 to 612 to the contested decision, the Commission set out the reasons why it considered that all of those unlawful elements had constituted a coherent set of measures having the single purpose of restricting competition on the PS market at European and national levels. Thus, the Commission considered that all of the anti-competitive arrangements identified formed a single anti-competitive commercial aim, namely to distort or eliminate normal competitive conditions on the PS market and to establish an overall equilibrium by means of mechanisms common to the different levels on which the infringement was committed, that is to say, price-fixing, quota-allocation, customer-allocation and the exchange of commercially sensitive information.

136 More particularly, in recital 613 to the contested decision, the Commission set out the reasons why the Zurich Club and Club Europe phases had constituted a single infringement, in spite of the transitional period. In particular, the Commission observed that meetings having the object of interfering with free competition and putting a lasting pan-European arrangement in place took place even after the end of the Zurich Club. It also observed that the effects of the contracts concluded under the aegis of the Zurich Club had continued during the transitional period and that the functioning of the regional arrangements, which contributed to the same single aim as that pursued by each of the components of the cartel, had continued during that period.

137 In recitals 614 and 615 to the contested decision, the Commission stated that specific mechanisms for the functioning of the various elements of the cartel ensured coordination between the pan-European arrangements and the various national agreements. Thus, according to the Commission, the quota system put in place within Club Italia inspired the system used by the Zurich Club. Furthermore, the coordination between Club Europe and the Italian producers was ensured by Tréfileurope and the coordination between Club Europe and Club España was ensured by Tycsa and by Emesa, which participated in both clubs.

138 In sum, according to recitals 616 to 621, all the participants in the anti-competitive arrangements participated, to various degrees, in a joint anti-competitive plan, the implementation of which continued, both in its objectives and in its essential characteristics, from 1984 until the end of 2002.

139 In recital 622 to the contested decision, the Commission observed that, although the participants in the cartel had not all participated in every element of the infringement, they had all benefited from the exchange of information between the participants and were aware that their participation was part of an overall plan.

140 The applicants dispute the finding that the Zurich Club and Club Europe, in which they do not deny having participated, constitute two elements of a single infringement.

b) Concept of a single infringement

141 According to a consistent line of decisions, an infringement of Article 101(1) TFEU can result not only from an isolated act, but also from a series of acts or from continuous conduct, even if one or more aspects of that series of acts or continuous conduct could also, in themselves and taken in isolation, constitute an infringement of that provision. Thus, when the different actions form part of an overall plan because their identical object distorts competition within the common market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole (judgments of 8 July 1999 in *Commission* v *Anic Partecipazioni*, C-49/92 P, ECR, EU:C:1999:356, paragraph 81; 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 258; and of 6 December 2012 in *Commission* v *Verhuizingen Coppens*, C-441/11 P, ECR, EU:C:2012:778, paragraph 41).

142 An undertaking which has participated in such a single and complex infringement, by its own conduct, which met the definition of an agreement or concerted practice having an anti-competitive object within the meaning of Article 101(1) TFEU and was intended to help to bring about the infringement as a whole, may thus also be responsible for the conduct of other undertakings followed in the context of the same infringement throughout the period of its participation in the infringement. That is the position where it is shown that the undertaking intended, through its own conduct, to contribute to the common objectives pursued by all the participants and that it was aware of the offending conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen that conduct and was prepared to take the risk (judgments in *Commission* v *Anic Partecipazioni*, cited in paragraph 141 above, EU:C:1999:356, paragraphs 83, 87 and 203; *Aalborg Portland and Others* v *Commission*, cited in paragraph 141 above, EU:C:2004:6, paragraph 83; and *Commission* v *Verhuizingen Coppens*, cited in paragraph 141 above, EU:C:2012:778, paragraph 42).

143 An undertaking may thus have participated directly in all the forms of anti-competitive conduct comprising the single and continuous infringement, in which case the Commission is entitled to attribute liability to it in relation to that conduct as a whole and, therefore, in relation to the infringement as a whole. Equally, an undertaking may have participated directly in only some of the forms of anti-competitive conduct comprising the single and continuous infringement, but have been aware of all the other unlawful conduct planned or put into effect by the other participants in the cartel in pursuit of the same objectives, or could reasonably have foreseen that conduct and have been prepared to take the risk. In such a case, the Commission is also entitled to attribute liability to that undertaking in relation to all the anti-competitive conduct comprising such an infringement and, accordingly, in relation to the infringement as a whole (judgment in *Commission* v *Verhuizingen Coppens*, cited in paragraph 141 above, EU:C:2012:778, paragraph 43).

144 Conversely, if an undertaking has directly taken part in one or more of the forms of anti-competitive conduct comprising a single and continuous infringement, but it has not been shown that that undertaking intended, through its own conduct, to contribute to all the common objectives pursued by the other participants in the cartel and that it was aware of all the other offending conduct planned or put into effect by those other participants in pursuit of the same objectives, or that it could reasonably have foreseen all that conduct and was prepared to take the risk, the Commission is entitled to attribute to that undertaking liability only for the conduct in which it had participated directly and for the conduct planned or put into effect by the other participants, in pursuit of the same objectives as those pursued by the undertaking itself, where it has been shown that the undertaking was aware of that conduct or was able reasonably to foresee it and prepared to take the risk (judgment in *Commission* v *Verhuizingen Coppens*, cited in paragraph 141 above, EU:C:2012:778, paragraph 44).

145 That cannot, however, relieve the undertaking of liability for conduct in which it has undeniably taken part or for conduct for which it can undeniably be held responsible. However, a Commission decision categorising a global cartel as a single and continuous infringement can be divided in that manner only if the undertaking in question has been put in a position, during the administrative procedure, to understand that it is also alleged to have engaged in each of the forms of conduct comprising that infringement, hence to defend itself on that point, and only if the decision is sufficiently clear in that regard (judgment in *Commission* v *Verhuizingen Coppens*, cited in paragraph 141 above, EU:C:2012:778, paragraphs 45 and 46).

146 In that regard a number of criteria have been identified in the case-law as being relevant for the assessment of the single nature of an infringement, namely the identity of the objectives of the practices in question, the identity of the goods and services concerned, the identity of the undertakings that took part in the practices and the identity of the means of implementing it. Furthermore, whether the natural persons involved on behalf of the undertakings are identical and whether the geographical scope of the practices at issue is identical are also factors that may be taken

into consideration for the purposes of that examination (see judgment of 17 May 2013 in *Trelleborg Industrie and Trelleborg* v *Commission*, T-147/09 and T-148/09, ECR, EU:T:2013:259, paragraph 60 and the case-law cited).

147 Last, the fact that an undertaking has not taken part in all aspects of a cartel or that it played only a minor role in the aspects in which it did participate must be taken into consideration when the gravity of the infringement is assessed and if and when it comes to determining the fine (judgments in *Commission* v *Anic Partecipazioni*, cited in paragraph 141 above, EU:C:1999:356, paragraph 90, and in *Aalborg Portland and Others* v *Commission*, cited in paragraph 141 above, EU:C:2004:6, paragraph 86).

c) Factors taken into account as regards the applicants

148 In recitals 796 to 799, the Commission stated that the applicants were held liable in respect, first, of Klöckner Draht's, then of WDI's, participation in the Zurich Club from 1 January 1984 to 9 January 1996 (see paragraph 128 above); second, of WDI's participation in the meetings held during the transitional period (from 9 January 1996 to 12 May 1997); third, of WDI's participation in Club Europe from 12 May 1997 to 19 September 2002 (see paragraph 131 above), in particular as coordinator for Germany; and, fourth, of coordination with regard to the customer Addtek from 1984 to 2002.

149 In the light of the criteria laid down in the case-law referred to in paragraphs 141 to 147 above, the applicants do not deny either having participated in the Zurich Club and Club Europe or having been aware of the various aspects of the infringement. On the other hand, they maintain that those various unlawful aspects do not form part of an overall plan and that WDI interrupted its anti-competitive activities during the transitional period.

The existence of an overall plan

150 The applicants submit that, in order to demonstrate the existence of an overall plan, the Commission was not entitled to observe that the different elements of the infringement related to the same economic sector without establishing a relationship of complementarity between the different elements concerned, for example the existence of a framework agreement. In that regard, the Commission cannot rely on the presence of common participants. Conversely, the Commission was wrong to draw no conclusion from the fact that the geographic scope of the decisions taken concerning quotas related to national markets in the framework of the Zurich Club and to the entire European market in the framework of Club Europe. Furthermore, the means of coordination were different, since the sales directors participated in meetings of Club Europe, whereas only the management attended meetings of the Zurich Club. Furthermore, national coordinators were put in place within Club Europe, whereas the Zurich Club operated with a single central notification office.

151 However, none of those arguments is capable of undermining the proof set out in the contested decision.

152 As the Commission observed, the cartel penalised in the contested decision consisted of a set of successive agreements at both local (national or regional) and European level, having the common objective of ensuring a non-competitive equilibrium in the European PS market, which was characterised by excess capacity.

153 It is also common ground that the means employed to achieve that objective, namely price-fixing, quota-allocation, customer-allocation and the exchange of commercially sensitive information, were common to all aspects of the cartel. The main participants in the Zurich Club and Club Europe,

including the applicants, were the same undertakings. The Commission claims, without being contradicted, that those undertakings were in most cases represented by the same individuals in the context of the Zurich Club and then in the context of Club Europe.

154 In addition, coordination mechanisms between, on the one hand, the Zurich Club, and then Club Europe, and, on the other, the national and regional arrangements (the Southern Agreements, Club Italia and Club España), while not being strictly identical, were set up in every case. It is common ground that the Italian producers participated directly in the Zurich Club, whereas coordination between Club Europe and Club Italia was ensured by Tréfileurope; and coordination between Club España and Club Europe was effected by the integration of Emesa and Tycsa within Club Europe.

155 It may be concluded from those findings of fact, made by the Commission in the contested decision and not disputed by the parties, that there was a single infringement consisting of a number of aspects within the meaning of the case-law cited in paragraph 146 above.

156 As for the differences between the Zurich Club and Club Europe on which the applicants rely, and which, moreover, were mentioned in the contested decision, it should be observed, that, far from precluding the finding of a single infringement, they represent the intention to put more effective means in place in order to achieve the same objective as that pursued by all the participants in the various cartel arrangements, namely to limit the effects of competition in a market with structural excess capacity, notably by means of agreements on prices, production quotas and the allocation of the main customers.

157 That finding explains what the applicants claim to be the apparent contradiction between recitals 186 and 629 to the contested decision. Although the single nature of the general object pursued by the cartel in its successive components is established, each of the agreements, which together constitute the single infringement, was characterised by its more or less restrictive geographic dimension and also by the methods used to ensure that the commitments — which remained identical and related to prices, delivery quotas, customer-allocation and exchanges of commercially sensitive information — were followed up.

158 The differences between the ways in which the two successive phases of the pan-European arrangements functioned therefore do not preclude recognition of the existence of an overall plan, characterised by the identical nature of its anti-competitive object, to which the Zurich Club and Club Europe successively subscribed (see, to that effect, judgment in *Aalborg Portland and Others* v *Commission*, cited in paragraph 141 above, EU:C:2004:6, paragraph 258; 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 110; and judgment in *Trelleborg Industrie and Trelleborg* v *Commission*, cited in paragraph 146 above, EU:T:2013:259, paragraph 60 and the case-law cited).

The impact of the applicants' assertions concerning the interruption of the cartel on the characterisation of the infringement and whether the proceedings are time-barred

159 The applicants maintained in their written pleadings that following strong dissent within the Zurich Club in 1995, that club ceased to function before Club Europe began. There was therefore an interruption, lasting one year and four months, in the operation of the cartel, the Zurich Club and Club Europe cannot therefore be regarded as separate elements of a single infringement.

160 Without there even being any need to have regard to the fact that the applicants acknowledged, both in their reply to the statement of objections and at the hearing, that the regional and national arrangements had not been interrupted during the transitional period, it should be observed that, for the reasons stated in paragraphs 152 to 158 above, the common objectives pursued and the common

means implemented by each of the anti-competitive agreements identified by the Commission and, *a fortiori* in the case of the Zurich Club and Club Europe, the presence of the same main producers make it possible to characterise the existence of an overall plan, within the meaning of the case-law referred to in paragraphs 141 to 147 above, of which those two clubs successively formed part.

161 The applicants do not deny having participated in the Zurich Club until 9 January 1996 and they acknowledge having participated in Club Europe as from 12 May 1997. Accordingly, even on the assumption that the transitional period constitutes a break in the functioning of the cartel or only a period during which the applicants ceased all unlawful activity, it is right, taking into account the continuous nature of the objectives and means established above, that they were held liable for having participated in a single infringement. In addition, as the duration of the transitional period was less than the period of five years laid down in Article 25(1)(b) of Regulation No 1/2003, the single infringement in which the applicants participated should at most, if it were accepted that that period constituted an interruption, be regarded as a repeated infringement rather than as a continuous infringement (see, to that effect, judgment in *Trelleborg Industrie and Trelleborg* v *Commission*, cited in paragraph 146 above, EU:T:2013:259, paragraphs 70 to 95 and the case-law cited).

162 It follows that, since the first plea alleges that the proceedings were time-barred so far as the period before 12 May 1996 is concerned, it must be rejected in its entirety, irrespective of whether or not the transitional period constituted an interruption of the infringement.

163 However, if the argument which the applicants derive from the interruption of the infringement during the transitional period were well founded, they might in that case claim that they should not be penalised in respect of the period during which the infringement was interrupted (see, to that effect, judgment in *Trelleborg Industrie and Trelleborg* v *Commission*, cited in paragraph 146 above, EU:T:2013:259, paragraph 88). It is therefore appropriate to make a determination on that argument as well and to examine, first, the claims relating to the interruption of the cartel in general and, second, those relating to the cessation of the applicants' participation in the cartel.

2. The merits of the applicants' claims relating to the interruption of their participation in the cartel

164 In order to find that the anti-competitive activities of the participants in the Zurich Club had continued during the transitional period, the Commission relied, in recital 613 to the contested decision, on the arguments set out in paragraph 136 above. Furthermore, Annex 2 to the contested decision mentions 11 meetings during which information was exchanged and agreements on prices and quota-allocation were reached. The applicants had the opportunity to consult the documentary evidence to which the Commission referred in Annex 2, first at the Commission's premises following the statement of objections and again at the Court Registry following measures of inquiry addressed to the Commission before the hearing.

165 It should be borne in mind that at the hearing the applicants submitted that they did not deny that the regional agreements had continued during the transitional period, but that they maintained that the pan-European aspect of the cartel had been interrupted between the end of the Zurich Club and the commencement of Club Europe.

a) Principles applicable to the burden of proof and the evaluation of evidence

166 According to consistent case-law on the burden of proof, it is for the party or the authority alleging an infringement of the competition rules to prove its existence by establishing, to the requisite legal standard, the facts constituting an infringement, and it is for the undertaking invoking the benefit of a defence against a finding of an infringement to demonstrate that the conditions for applying such defence are satisfied, so that the authority will then have to resort to other evidence (judgment of 16 November 2006 in *Peróxidos Orgánicos* v *Commission*, T-120/04, ECR, EU:T:2006:350,

paragraph 50; see also, to that effect, judgments of 17 December 1998 in *Baustahlgewebe* v *Commission*, C-185/95 P, ECR, EU:C:1998:608, paragraph 58, and in *Aalborg Portland and Others* v *Commission*, cited in paragraph 141 above, EU:C:2004:6, paragraph 78). The duration of the infringement is an intrinsic element of an infringement under Article 101(1) TFEU, the burden of proof of which is borne principally by the Commission (judgments of 7 July 1994 in *Dunlop Slazenger* v *Commission*, T-43/92, ECR, EU:T:1994:79, paragraph 79, and in *Peróxidos Orgánicos* v *Commission*, EU:T:2006:350, paragraph 51).

167 That apportionment of the burden of proof may vary, however, in so far as the factual evidence on which a party relies may be of such a kind as to require the other party to provide an explanation or justification, failing which it is permissible to conclude that the burden of proof has been discharged (see, to that effect, judgment in *Aalborg Portland and Others* v *Commission*, cited in paragraph 141 above, EU:C:2004:6, paragraph 79, and judgment in *Peróxidos Orgánicos* v *Commission*, cited in paragraph 166 above, EU:T:2006:350, paragraph 53).

168 As regards the evidence which the Commission can rely on, the principle which prevails in competition law is that of the unfettered evaluation of evidence (judgments of 25 January 2007 in *Dalmine* v *Commission*, C-407/04 P, ECR, EU:C:2007:53, paragraph 63, and of 8 July 2004 in *JFE Engineering and Others* v *Commission*, T-67/00, T-68/00, T-71/00 and T-78/00, ECR, EU:T:2004:221, paragraph 273). Since the prohibition on participating in anti-competitive agreements and the penalties which offenders may incur are well known, it is normal for the activities entailed by those practices and those agreements to take place clandestinely, for meetings to be held in secret, most frequently in a non-member country, and for the associated documentation to be reduced to a minimum. Even if the Commission discovers evidence explicitly showing unlawful contact between operators, such as the minutes of a meeting, it will normally be only fragmentary and sparse, so that it is often necessary to reconstitute certain details by deduction. In most cases, the existence of an anti-competitive practice or agreement must be inferred from a number of coincidences and indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of competition law (judgment in *Aalborg Portland and Others* v *Commission*, cited in paragraph 141 above, EU:C:2004:6, paragraphs 55 to 57). Such indicia and coincidences may reveal not just the existence of anti-competitive practices or agreements, but also the duration of a continuous anti-competitive practice or the period of application of an agreement concluded in breach of competition law (judgment of 21 September 2006 in *Technische Unie* v *Commission*, C-113/04 P, ECR, EU:C:2006:593, paragraph 166).

169 The Commission must produce precise and consistent evidence to support the firm conviction that the infringement was committed (see judgments of 6 July 2000 in *Volkswagen* v *Commission*, T-62/98, ECR, EU:T:2000:180, paragraphs 43 and 72 and the case-law cited, and of 25 October 2005 in *Groupe Danone* v *Commission*, T-38/02, ECR, EU:T:2005:367, paragraph 217). However, it is not necessary for every item of evidence produced by the Commission to satisfy those criteria in relation to every aspect of the infringement. It is sufficient if the body of evidence relied on by the institution, viewed as a whole, meets that requirement (judgments in *JFE Engineering and Others* v *Commission*, cited in paragraph 168 above, EU:T:2004:221, paragraph 180, and in *Groupe Danone* v *Commission*, EU:T:2005:367, paragraph 218; see also, to that effect, judgment of 20 April 1999 in *Limburgse Vinyl Maatschappij and Others* v *Commission*, '*PVC II*', 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, paragraphs 768 to 778). As regards the duration of the infringement, the case-law requires that, if there is no evidence directly establishing the duration of an infringement, the Commission should adduce at least evidence of facts sufficiently proximate in time for it to be reasonable to accept that that infringement continued uninterruptedly between two specific dates (judgments in *Technische Unie* v *Commission*, cited in paragraph 168 above, EU:C:2006:593, paragraph 169; in *Dunlop Slazenger* v *Commission*, cited in paragraph 166 above, EU:T:1994:79, paragraph 79; and in *Peróxidos Orgánicos* v *Commission*, cited in paragraph 166 above, EU:T:2006:350, paragraph 51).

170 As regards the probative value to be placed on the various pieces of evidence, it should be emphasised that the only relevant criterion for the purpose of assessing the evidence freely produced relates to its credibility (judgment in *Dalmine* v *Commission*, cited in paragraph 168 above, EU:C:2007:53, paragraph 63; see also judgments of 8 July 2004 in *Mannesmannröhren-Werke* v *Commission*, T-44/00, ECR, EU:T:2004:218, paragraph 84 and the case-law cited, and in *JFE Engineering and Others* v *Commission*, cited in paragraph 168 above, EU:T:2004:221, paragraph 273). According to the general rules regarding evidence, the reliability and, thus, the probative value of a document depends on its origin, the circumstances in which it was drawn up, the person to whom it is addressed and its content (judgment of 15 March 2000 in *Cimenteries CBR and Others* v *Commission*, T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95 to T-88/95, T-103/95 and T-104/95, paragraph 1053; and Opinion of Judge Vesterdorf acting as Advocate General in *Rhône-Poulenc* v *Commission*, T-1/89, ECR, EU:T:1991:38). It is necessary, in particular, to attach great importance to the fact that documents were drawn up in close connection with the events (judgment of 11 March 1999 in *Ensidesa* v *Commission*, T-157/94, ECR, EU:T:1999:54, paragraph 312) or by a direct witness of those events (see, to that effect, judgment in *JFE Engineering and Others* v *Commission*, cited in paragraph 168 above, EU:T:2004:221, paragraph 207). Documents from which it is evident that contacts took place between a number of undertakings and that they in fact pursued the aim of removing in advance any uncertainty as to the future conduct of their competitors demonstrate, to the requisite legal standard, the existence of a concerted practice (see, to that effect, judgment of 16 December 1975 in *Suiker Unie and Others* v *Commission*, 40/73 to 48/73, 50/73, 54/73 to 56/73, 111/73, 113/73 and 114/73, ECR, EU:C:1975:174, paragraphs 175 and 179). Furthermore, statements which run counter to the interests of the declarant must in principle be regarded as particularly reliable evidence (see, to that effect, judgment in *JFE Engineering and Others* v *Commission*, cited in paragraph 168 above, EU:T:2004:221, paragraphs 207, 211 and 212).

171 Furthermore, it has consistently been held that the disclosure of information to competitors in preparation for an anti-competitive agreement was sufficient to prove the existence of a concerted practice within the meaning of Article 101 TFEU (judgments of 5 December 2013 in *Solvay* v *Commission*, C-455/11 P, EU:C:2013:796, paragraph 40; of 6 April 1995 in *Trefilunion* v *Commission*, T-148/89, ECR, EU:T:1995:68, paragraph 82; and of 8 July 2008 in *BPB* v *Commission*, T-53/03, ECR, EU:T:2008:254, paragraph 178).

172 Last, it should be borne in mind that the role of a Court hearing an application for annulment of a Commission decision finding the existence of an infringement of competition law and imposing fines on the addressees consists in assessing whether the evidence relied on by the Commission in its decision is sufficient to establish the existence of the infringement (judgment in *JFE Engineering and Others* v *Commission*, cited in paragraph 168 above, EU:T:2004:221, paragraphs 174 and 175; see also, to that effect, judgment in *PVC II*, cited in paragraph 169 above, EU:T:1999:80, paragraph 891). Where there is doubt in the mind of the Court, the benefit of that doubt must be given to the parties to whom the decision is addressed, and consequently the Court cannot conclude that the Commission has established the infringement at issue to the requisite legal standard if it still entertains doubts on that point (judgments in *JFE Engineering and Others* v *Commission*, cited in paragraph 168 above, EU:T:2004:221, paragraph 177, and in *Groupe Danone* v *Commission*, cited in paragraph 169 above, EU:T:2005:367, paragraph 215). In the latter situation, it is necessary to take account of the principle of the presumption of innocence resulting in particular from Article 6(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, which is one of the fundamental rights which, according to the case-law of the Court of Justice, reaffirmed in Article 47 of the Charter of Fundamental Rights, are protected in the legal order of the European Union. Given the nature of the infringements in question and the nature and degree of severity of the ensuing penalties, the principle of the presumption of innocence applies in particular to the procedures relating to infringements of the competition rules that may result in the imposition of fines or periodic penalty payments (judgments of 8 July 1999 in *Hüls* v *Commission*, C-199/92 P, ECR,

EU:C:1999:358, paragraphs 149 and 150, and in *Montecatini* v *Commission*, C-235/92 P, ECR, EU:C:1999:362, paragraphs 175 and 176, and judgment in *Groupe Danone* v *Commission*, cited in paragraph 169 above, EU:T:2005:367, paragraph 216).

b) The meetings held during the transitional period and the continuation of the infringement during that period

173 The continuation of meetings having as their object the exchange of information, price-fixing and quota-allocation is considered to be proved in the contested decision and Annex 2 to the contested decision mentions 11 meetings at which information was exchanged and agreements on prices and quotas were reached. The applicants, after acknowledging in their reply to the statement of objections that certain other participants in the Zurich Club, in particular DWK and Tréfileurope France, had continued their anti-competitive activities during the transitional period, submit no detailed account of those meetings, but merely maintain that the evidence put forward by the Commission is not sufficient to show that the infringement continued during the transitional period.

174 In that regard, it should be borne in mind that it is by no means unusual that, in the light of the conflicts of interests inherent in agreements of that type, a cartel pursued over a long period should undergo changes in both the identity of the participants and the forms and intensity of their collusive behaviour.

175 In the contested decision (recital 613), in order to assert that the anti-competitive activities of the former members of the Zurich Club had continued during the transitional period, the Commission made reference to six meetings.

176 First, according to the Commission, a meeting was held in Paris (France) on 1 March 1996. At that meeting quotas and prices in Europe were discussed.

177 It follows from the leniency application submitted by ITC, in which that undertaking refers to a minute of the meeting drawn up on 12 March 1996, that is to say, shortly after the meeting itself, that a meeting was held in Paris on that date between representatives of ITC, Tycsa, Tréfileurope, DWK, Redaelli, Nedri and WDI. According to ITC's leniency application, the topics addressed at that meeting concerned prices and quotas in Europe and also the stock situation of the undertakings present. It follows from the case-law referred to in paragraph 170 above that that statement by ITC, which is self-incriminating and based on a contemporaneous record of the facts described, has a high degree of probative value. The applicants have not adduced any evidence to the contrary and the inaccuracy of that information is not apparent from the documents in the file placed before the Court. The existence of that meeting, the identity of the participants and the topics addressed must therefore be held to have been established.

178 Second, according to the Commission, a meeting was held in Rosmalen (Netherlands) on 8 October 1996.

179 That meeting is confirmed by Nedri in the leniency application which it submitted to the Commission. According to Nedri, that meeting was attended by, in addition to itself, representatives of DWK, Fontaine Union and WDI and discussions related to the situation on the Netherlands market. That self-incriminating statement is not contradicted by any evidence to the contrary submitted by the applicants or by any of the documents in the file. The existence of that meeting, the identity of the participants and the subject addressed must therefore be regarded as established.

180 Third, the Commission refers to a meeting held in Düsseldorf on 4 November 1996.

181 In that regard, it follows from Nedri's leniency application that the participants in that meeting were the same as those who had participated in a meeting held in that town on 8 January 1996 and that object of the two meetings was the same. It follows from that leniency application that the first meeting, in which DWK, Nedri, Tréfileurope, Tycsa and WDI had participated, had dealt with the situation following the difficulties encountered since May 1995 in implementing the market agreements concluded in the context of the Zurich Club. Conversely, it does not follow from Nedri's leniency application, which is the only evidence put forward in that regard by the Commission, that the meeting of 4 November also concerned the situation on the market in the Netherlands, as indicated in the contested decision.

182 Fourth, the Commission mentions a meeting, held in Brussels (Belgium) on 4 December 1996, which concerned a 'new quota system'.

183 Nedri stated in its leniency application that that meeting had been held between itself, Emesa, DWK, Tréfileurope, Tycsa and WDI. According to Nedri, the object of the meeting was to discuss the implementation of a new pan-European quota system. Those discussions were not successful, however. Those self-incriminating statements are not contradicted by any evidence to the contrary.

184 Fifth, the Commission refers in the contested decision to a meeting held in Paris on 3 April 1997, concerning a 'new quota system'.

185 It follows from the leniency application submitted by DWK that that meeting was held on the initiative of Nedria and Tréfileurope. That meeting was attended by, in addition to those three undertakings, Tycsa, Emesa and WDI. At that meeting, according to DWK, discussions on the implementation of a new quota system continued, but were inconclusive. DWK adds that, at that meeting and subsequently, commercially sensitive information was exchanged between the participants. In their reply to the statement of objections and in an answer to a written question put to them by the Court in the context of the present proceedings, the applicants confirmed that they attended that meeting.

186 Sixth, and last, the Commission referred to a meeting held in Düsseldorf on 9 April 1997, also relating to a 'new quota system'.

187 The existence of that meeting is confirmed by Nedri in its leniency application. Nedri thus confirms that the participants in the meeting of 3 April 1997 (see paragraphs 184 and 185 above) continued to discuss the implementation of a new pan-European quota system, including Norway and Switzerland, but excluding the United Kingdom and Ireland. In their reply to the statement of objections and in an answer to a written question put to them by the Court in the context of the present proceedings, the applicants confirmed that they attended that meeting.

188 It follows from the foregoing that it must be regarded as established that on at least six occasions during a period of one year and four months the main European producers, that is to say, the members of both the Zurich Club until its dissolution and of Club Europe from its formation, including the applicants, met in order to exchange commercially sensitive information and to attempt to put in place a new binding pan-European system of quotas. It follows from the case-law (see paragraph 171 above) that such actions are sufficient to establish an infringement of Article 101 TFEU. Accordingly, the argument which the applicants derive from the fact that each of the European producers adopted autonomous conduct on the market during the transitional period is not such as to refute the Commission's assertion that the single infringement in which they participated continued during the transitional period.

189 In addition, the applicants do not deny that during the transitional period the meetings of Club Italia and Club España continued (see Annexes 3 and 4 to the contested decision). As stated in paragraphs 152 to 154 above, those regional agreements, because of the common objective and means and also of the existence of mechanisms designed to ensure coordination between the various elements

of the cartel, formed part of an overall plan that characterises a single infringement. During the transitional period itself, moreover, members of Club Italia participated in the meeting of 1 March 1996 (see paragraphs 176 and 177 above) and members of Club España were involved in all the meetings the existence of which was considered to be established, apart from the meeting held in Rosmalen on 8 October 1996. For that additional reason, the Commission was entitled to consider, as it did in the contested decision, that the single infringement was not interrupted.

190 Furthermore, the Commission was correct to maintain that the continuation of the effects of the agreements concluded between the PS producers and their customers at the time of the Zurich Club is sufficient to demonstrate that the infringement continued after that club had been dissolved. In that regard, the argument which the applicants derive from the fact that the contracts at issue were negotiated on variable dates during the year and that certain of those contracts expired at the beginning of 1996 cannot undermine the Commission's analysis, since the applicants have neither demonstrated, nor even maintained, that no contract had been concluded shortly before the dissolution of the Zurich Club.

191 It follows from all of the foregoing that the Commission was correct to consider that the cartel which it characterised in the contested decision had not been interrupted during the transitional period and that it therefore constituted a single and continuous infringement of Article 101 TFEU.

192 It is now appropriate, therefore, to examine the applicants' claim that they at least put an end to any unlawful actions during the transitional period.

c) The alleged interruption of the applicants' participation in the infringement

193 As regards WDI's participation in anti-competitive acts during the transitional period, the applicants claim, first, that WDI distanced itself within the meaning of the case-law at the meeting of 9 January 1996 and, second, that the Commission has not succeeded in adducing evidence that WDI participated in anti-competitive acts during that period.

The alleged distancing

– The principles applicable to distancing

194 It should be borne in mind that, according to the case-law, in order to put an end to its liability, the undertaking must distance itself openly and unequivocally from the cartel, in such a way that the other participants are aware that it no longer supports the general objectives of the cartel. Furthermore, the burden of proof of such distancing is borne by the undertaking claiming to have distanced itself (judgments of 27 September 2006 in *GlaxoSmithKline Services* v *Commission*, T-168/01, ECR, EU:T:2006:265, paragraph 86, and of 3 March 2011 in *Siemens* v *Commission*, T-110/07, ECR, EU:T:2011:68, paragraph 176; see also, to that effect, judgments of 6 January 2004 in *BAI and Commission* v *Bayer*, C-2/01 P and C-3/01 P, ECR, EU:C:2004:2, paragraph 63, and in *Aalborg Portland and Others* v *Commission*, cited in paragraph 141 above, EU:C:2004:6, paragraphs 81 to 84).

– The merits of the applicants' assertion

195 The applicants maintain that WDI validly distanced itself from the cartel within the meaning of the case-law, since its representative at the meeting of 9 January 1996 stated:

'At the present time the club makes no sense for us.'

196 It should be stated at the outset that the veracity of that statement, which, moreover, is not disputed by the Commission, is confirmed by Emesa, an extract from whose bundle of notes has been produced by the applicants and by the Commission. Such a statement, however, cannot be regarded as a clear and unequivocal proof of WDI's intention to distance itself from the cartel.

197 In fact, it is clear on reading the notes taken by Emesa at the meeting of 9 January 1996 that the statement by WDI's representatives was made in the context of a discussion of the remedies which the participants in that meeting could envisage in order to overcome the crisis in the Zurich Club. Thus, after expressing doubts as to whether the commitments of the Zurich Club could be applied again, WDI's representative stated, during a round table discussion of whether a new system of quotas should be established and in answer to the position expressed by Tréfileurope's representatives, who proposed sticking to the existing system — namely, at the time, the Zurich Club –, that in his view the Zurich Club no longer made sense. For that reason, WDI was counted by Emesa's representative among the undertakings which were at the time in favour of establishing a new system. Such a statement cannot therefore be interpreted as proof of WDI's intention to put an end to its participation in the infringement and to adopt competitive conduct on the PS market.

198 That interpretation of WDI's representative's statement is also supported by fact that, following the notes relating to the discussion of whether it was appropriate to put a new quota system in place, Emesa's representative drew up a table presenting the outcome of a discussion of the allocation of quotas, in which WDI appears. Contrary to the applicants' contention, the Commission's interpretation, according to which the fact that that table was drawn up by Emesa's representatives after the notes describing the statement by WDI's representative indicates that the discussion of those quotas followed that statement, is the most plausible interpretation, as such notes are generally taken in chronological order.

199 It follows that the applicants have not discharged their burden of proving that WDI distanced itself from the cartel at the meeting of 9 January 1996.

The applicants' participation in the meetings held during the transitional period

200 Although the applicants do not formally deny having been present at the meetings referred to in recital 613 to the contested decision, they claim that they did not adopt anti-competitive conduct at those meetings.

201 It should be borne in mind, however, that, as stated in paragraphs 173 to 188 above, the applicants participated during the transitional period in six meetings at which commercially sensitive information was exchanged and the introduction of a new quota system to overcome the failure of the Zurich Club was discussed. According to the case-law referred to in paragraph 171 above, the object of those meetings is sufficient to characterise an infringement of Article 101 TFEU. Accordingly, the Commission must be considered to have succeeded in showing that the applicants, which have not established that they distanced themselves from the cartel at the meeting of 9 January 1996 and which, like the other participants, were mentioned in the leniency applications submitted by ITC, DWK and Nedri mentioning those meetings, did not interrupt their participation in the infringement during the transitional period. Consequently, they cannot claim any reduction of the fine on the basis of the duration taken into consideration in the contested decision.

3. Conclusion on the first two pleas in the action

202 It follows from the foregoing that the Commission was correct to find the existence of a single infringement, consisting of an overall plan of which the various agreements in the context of which that infringement was implemented formed part.

203 Furthermore, the Commission established that that single infringement was not interrupted during the transitional period between the end of the Zurich Club and the beginning of Club Europe, since, first, during that period the participants in the Zurich Club held anti-competitive meetings; second, the local and regional components of the cartel continued; and, third, the anti-competitive effects of the measures adopted in the context of the Zurich Club continued after that element of the cartel had ceased.

204 In addition, the Commission has also shown that WDI, which has not established that it validly distanced itself from the cartel at the last meeting of the Zurich Club, on 9 January 1996, had continued its anti-competitive acts during the transitional period.

205 Consequently, the first plea in the action, and also the second, put forward in the alternative, must be rejected.

…

E — *Appraisal of the applicants' ability to pay*

267 The applicants dispute the appraisal of their ability to pay in four pleas put forward in the action.

268 First, they question the formal legality of the contested decision. To that end, in the context of the seventh plea, they claim that the reasoning set out in the contested decision as regards the application of point 35 of the 2006 Guidelines is insufficient. In the eighth plea, they claim that, by not holding a hearing and not allowing them to put forward their point of view on the position that the Commission envisaged taking on the appraisal of their ability to pay before adopting the contested decision, the Commission infringed Article 27 of Regulation No 1/2003 and Article 41(2) of the Charter of Fundamental Rights.

269 Second, they question the merits of the appraisals of their ability to pay in both the contested decision (sixth plea) and the letter of 14 February 2011 (ninth plea).

270 In that regard, it should be recalled that, for the reasons set out in paragraphs 96 to 100 above, the letter of 14 February 2011 is an act amenable to appeal. However, as the Commission claimed in answer to the written questions put to it by the Court and at the hearing, the decision contained in that letter, which constitutes an appraisal of the applicants' position made after that which had been envisaged in the contested decision, and made by the Director-General and not by the College of Members of the Commission, which adopted the contested decision, cannot be substituted for the contested decision. It follows that the appraisals made in the contested decision and in the letter of 14 February 2011 must be reviewed separately by the Court and that the intervention of the letter of 14 February 2011 did not render the forms of order sought and the pleas directed against the contested decision devoid of purpose.

1. The appraisal of the applicants' ability to pay in the contested decision

271 The specific appraisal of the applicants' ability to pay was set out in section 19.5.11 of the contested decision (recitals 1176 to 1179), reproduced below:

'19.5.11 [WDI], [WDV] and [Pampus]

1176 Given that [WDI], [WDV] and [Pampus] submitted an inability to pay claim, these claims are assessed together at the level of [Pampus], which consolidates WDI and [WDV]. Hence, to assess [Pampus]'s financial capacity, the global amount of the fines imposed under this decision

on WDI, [WDV] and [Pampus] are taken into account, regardless of whether [Pampus] is liable for those fines or not. This total amounts to EUR 56 050 000, which is the sum of EUR 15 485 000 for which WDI, [WDV] and [Pampus] should be held jointly liable, EUR 30 115 000 for which WDI and [WDV] should be held jointly liable, and EUR 10 450 000 for which WDI alone should be held liable.

1177 The inability to pay claims submitted by [Pampus], [WDV] and WDI should be rejected for the reasons set out in recitals 1178 and 1179.

1178 The following elements point towards such serious financial difficulties for [Pampus] and WDI that they appear unable to pay the fine: (i) [Pampus] has no equity left; (ii) [Pampus] has a negative working capital or around EUR 100 million with the fine; (iii) [Pampus] has given loans to other companies in the group totalling about EUR 140 million, which have not been written off but for which [Pampus] expects not to be repaid as all the debtors have negative equity and (iv) WDI had to take an additional short term loan of EUR 20 million in February 2010 to keep operations going. A reconstruction plan is due by the end of June 2010 to help the banks decide to maintain credit lines until the end of 2010.

1179 A reduction of the fine under point 35 of the 2006 Guidelines … can only be granted if there is a causal link between the financial difficulty and the fine. The information submitted by [Pampus], [WDV] and WDI does not indicate that this causal link is present. First, the financial information summarised in recital 1178 indicates that PIB and WDI most likely will not survive regardless of whether a fine is imposed. In other words, it does not appear likely that a reduction of the fine would in turn increase the likelihood that the undertaking will survive in the foreseeable future. Survival of the company does not depend on the amount of the fine but rather on the decisions which the shareholders — who include at the level of WDI ArcelorMittal for one third — will take. Second, a large part of the financial problems [Pampus] and WDI are facing were caused by relatively recent shifts of funds from [Pampus] to other companies owned by the same shareholders. In view of established case-law and practice, according to which the Commission is entitled to consider to what extent shareholders can financially assist undertakings invoking difficulties to pay a fine, there is no reason to grant a reduction in a situation where financial means are transferred to related companies after receipt of a statement of objections with the apparent desire or effect to negate the Commission's fining policy.'

a) Seventh plea, alleging failure to state reasons as regards the appraisal of the applicants' ability to pay

272 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; of 30 September 2003 in *Germany* v *Commission*, C-301/96, ECR, EU:C:2003:509, paragraph 87; and of 22 June 2004 in *Portugal* v *Commission*, C-42/01, ECR, EU:C:2004:379, paragraph 66).

273 It should be observed that the criticisms which the applicants make in their seventh plea of the appraisal of their ability to pay relate to the contestation of the merits of the Commission's appraisals and for that reason must be attached to the sixth plea.

274 On the other hand, a reading of the recitals to the contested decision set out in paragraph 271 above shows, as does, moreover, the detailed challenge to the merits of those reasons put forward by the applicants, that the Commission stated, with sufficient precision to enable the applicants to understand them and the Court to exercise its review, the reasons why it considered that it must not grant a reduction of the fine under point 35 of the 2006 Guidelines.

275 It follows that the seventh plea must be rejected.

b) Eighth plea, alleging that, by not hearing the applicants before refusing to grant their request that their inability to pay be taken into account in the contested decision, the Commission infringed Article 27 of Regulation No 1/2003 and Article 41(2)(a) of the Charter of Fundamental Rights

276 In the context of the eighth plea, the applicants claim that, by not hearing them on the reasons for refusing to take their inability to pay into account before adopting the contested decision, the Commission improperly denied them the right to be heard under Article 27(1) of Regulation No 1/2003 and Article 47(2)(a) of the Charter of Fundamental Rights.

277 Under Article 27(1) of Regulation No 1/2003, before taking decisions as provided for in Articles 7, 8 and 23 and Article 24(2) of that regulation, the Commission is to give the undertakings which are the subject of the proceedings the opportunity of being heard on the matters to which the Commission has taken objection. In the words of that provision, the Commission is to base its decisions only on objections on which the parties concerned have been able to comment.

278 Furthermore, Article 41(2)(a) of the Charter of Fundamental Rights provides that the right of every person to have his affairs handled impartially, fairly and within a reasonable time, which is guaranteed in Article 41(1), is to include the right to be heard before any individual measure which would affect him adversely is taken.

279 In the first place, it should be pointed out that the applicants do not deny that a hearing was held before the contested decision was adopted, in which, moreover, they participated (see paragraph 34 above). They claim, however, that a new hearing ought to have been held concerning the position which the Commission proposed to adopt with regard to their request for a reduction based on the appraisal of their ability to pay.

280 The organisation of such a hearing is not provided for in Article 27(1) of Regulation No 1/2003, since all that is recognised in that provision is the right of undertakings to make known their opinion concerning the 'objections' on which the Commission envisages basing its decisions. However, the appraisal of the undertakings' ability to pay is not an objection that could serve as the basis of a decision penalising an infringement of Article 101 TFEU, but it enables the Commission to take into consideration a number of matters put forward in support of a request for a reduction of the fine based on grounds that are independent of the component elements of the infringement.

281 Nor, in the second place, does Article 41(2)(a) of the Charter of Fundamental Rights provide a basis for a right of undertakings to be heard before a decision is taken on their request for a reduction based on the appraisal of their inability to pay in the light of the information supplied by them.

282 Such a decision is indeed an individual measure which would adversely affect the undertakings in question. The fact none the less remains that the right to be heard provided for in Article 41(2)(a) must be considered to have been respected in situations in which, as in the present case, the decision

taken is based only on matters communicated by the person making the request and in the light of a legal and factual context known to that person (see, to that effect, judgment of 30 April 2014 in *Euris Consult* v *Parliament*, T-637/11, ECR, EU:T:2014:237, paragraph 119). In fact, it is clear from the documents in the file placed before the Court, and it is not disputed by the parties, that the information on which the Commission based its appraisal of the applicants' ability to pay is that supplied to it by the applicants in reply to the questionnaire sent to them by the Commission or on their own initiative.

283 It is the case that, under Article 41(2)(a) of the Charter of Fundamental Rights, the Commission is required to allow an undertaking which has submitted a request for a reduction based on its ability to pay to express its views on the matters of fact or of law which it would take into consideration when refusing that request, where those matters were not communicated to it by that undertaking. On the other hand, the mere fact that the Commission considers that the matters submitted to it are not convincing does not oblige it to communicate that appraisal before determining the request.

284 It follows that the eighth plea must be rejected.

c) Sixth plea, alleging that in the contested decision the Commission failed to have regard to Article 23(3) of Regulation No 1/2003, in that it 'misused its discretion' and breached the principle of proportionality by not taking the applicants' inability to pay into consideration

285 In the context of the sixth plea, the applicants dispute the grounds on which the Commission, in the initial decision, rejected their request for a reduction of the fine when their ability to pay was taken into account.

General considerations relating to the appraisal of the ability to pay of undertakings penalised for having infringed Article 101 TFEU

286 Point 35 of the 2006 Guidelines deals with the impact which the ability to pay of an undertaking penalised for having infringed Article 101 TFEU may have on the calculation of the fine that may be imposed on it. It reads as follows:

'In exceptional cases, the Commission may, upon request, take account of the undertaking's inability to pay in a specific social and economic context. It will not base any reduction granted for this reason in the fine on the mere finding of an adverse or loss-making financial situation. A reduction could be granted solely on the basis of objective evidence that imposition of the fine as provided for in these Guidelines would irretrievably jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value.'

287 According to a consistent line of decisions, in adopting such rules of conduct and announcing by publishing them that they will henceforth apply to the cases to which they relate, the Commission imposes a limit on the exercise of its margin of discretion and cannot depart from those rules without running the risk of suffering the consequences of being in breach of general principles of law, such as equal treatment or the protection of legitimate expectations (judgments in *Dansk Rørindustri and Others* v *Commission*, cited in paragraph 251 above, EU:C:2005:408, paragraph 211, and of 12 December 2012 in *Ecka Granulate and non ferrum Metallpulver* v *Commission*, T-400/09, EU:T:2012:675, paragraph 40).

288 It should be observed at the outset that a reduction of the fine can be granted under point 35 of the 2006 Guidelines only in exceptional circumstances and on the conditions defined in those Guidelines. Thus, it must be shown that the fine imposed 'would irretrievably damage the economic viability of the

undertaking concerned and cause its assets to lose all their value'. In addition, the existence of a 'specific social and economic context' must also be established. It should further be borne in mind that those two sets of conditions were initially identified by the Courts of the European Union.

289 As regards the first set of conditions, it has been held that, in principle, the Commission is not required, when determining the amount of the fine, to take into account the poor financial situation of an undertaking concerned, since recognition of such an obligation would be tantamount to giving an unjustified competitive advantage to undertakings least well adapted to the market conditions (judgments in *Dansk Rørindustri and Others* v *Commission*, cited in paragraph 251 above, EU:C:2005:408, paragraph 327, and in *Ecka Granulate and non ferrum Metallpulver* v *Commission*, cited in paragraph 287 above, EU:T:2012:675, paragraph 94).

290 If that were the case, those undertakings might well be favoured at the expense of other, more effective and better managed, undertakings. For that reason, the mere finding that the undertaking concerned is in an unfavourable or poor financial situation cannot substantiate a request that the Commission should take account of its inability to pay in order to grant a reduction of the fine.

291 Furthermore, it has consistently been held that the fact that a measure adopted by a European Union authority leads to the insolvency or liquidation of a given undertaking is not prohibited as such by EU law. Although such insolvency or liquidation may adversely affect the financial interests of the owners or shareholders, that does not mean that the personal, tangible and intangible elements represented by the undertaking would also lose their value (judgments of 29 April 2004 in *Tokai Carbon and Others* v *Commission*, T-236/01, T-244/01 to T-246/01, T-251/01 and T-252/01, ECR, EU:T:2004:118, paragraph 372, and in *Ecka Granulate and non ferrum Metallpulver* v *Commission*, cited in paragraph 287 above, EU:T:2012:675, paragraph 50).

292 It may be inferred from that case-law that only the hypothesis of a loss of the value of the personal, tangible and intangible elements represented by an undertaking, in other words, of its assets, might justify its possible insolvency or liquidation being taking into consideration when setting the amount of the fine (judgment in *Ecka Granulate and non ferrum Metallpulver* v *Commission*, cited in paragraph 287 above, EU:T:2012:675, paragraph 51).

293 In fact, the liquidation of a company does not necessarily entail the disappearance of the undertaking in question. That undertaking may continue to exist as such, either where it is re-capitalised or where all the elements of its assets are taken over by another entity. Such a takeover may arise either by a voluntary purchase or by a forced sale of the assets of the company as a going concern (see, to that effect, judgment in *Ecka Granulate and non ferrum Metallpulver* v *Commission*, cited in paragraph 287 above, EU:T:2012:675, paragraph 97).

294 The reference in point 35 of the 2006 Guidelines to the deprivation of the assets of the undertaking concerned of all value must therefore be understood as envisaging the situation in which a takeover of the undertaking in the circumstances described in the preceding paragraph seems unlikely, or indeed impossible. In such a situation, the elements of that undertaking's assets will be offered for sale separately and it is likely that many of them will not find a buyer or, at best, will be sold only at a considerably reduced price (judgment in *Ecka Granulate and non ferrum Metallpulver* v *Commission*, cited in paragraph 287 above, EU:T:2012:675, paragraph 98).

295 As for the second set of conditions, relating to the existence of a specific economic and social context, it refers, according to the case-law, to the consequences which payment of the fine could have, in particular by leading to an increase in unemployment or deterioration in the economic sectors upstream and downstream of the undertaking concerned (judgments of 29 June 2006 in *SGL Carbon* v *Commission*, C-308/04 P, ECR, EU:C:2006:433, paragraph 106, and in *Ecka Granulate and non ferrum Metallpulver* v *Commission*, paragraph 287 above, EU:T:2012:675, paragraph 99).

296 Accordingly, if the cumulative conditions envisaged above are satisfied, the imposition of a fine that might cause the disappearance of an undertaking would be contrary to the objective pursued by point 35 of the 2006 Guidelines. The application of that point to the undertakings concerned thus constitutes a specific interpretation of the principle of proportionality in relation to penalties for infringements of competition law (see, to that effect, judgment in *Ecka Granulate and non ferrum Metallpulver* v *Commission*, cited in paragraph 287 above, EU:T:2012:675, paragraph 100).

297 Thus, as the Commission correctly observed before the President of the Court and on a number of occasions in the course of the written and oral proceedings before the Court, since the application of point 35 of the 2006 Guidelines is the last factor taken into account in determining the amount of the fines imposed for a breach of the competition rules applicable to undertakings, the appraisal of the ability to pay of the undertakings on which penalties have been imposed falls within the unlimited jurisdiction provided for in Article 261 TFEU and Article 31 of Regulation No 1/2003.

298 As regards the scope of that jurisdiction, it should be borne in mind that it constitutes a means of implementing the principle of effective judicial protection, a general principle of EU law to which expression is now given by Article 47 of the Charter of Fundamental Rights and corresponds, in EU law, to Article 6 of the ECHR (judgments of 8 December 2011 in *Chalkor* v *Commission*, C-386/10 P, ECR, EU:C:2011:815, paragraph 51; of 6 November 2012 in *Otis and Others*, C-199/11, ECR, EU:C:2012:684, paragraph 47; and of 18 July 2013 in *Schindler Holding and Others* v *Commission*, C-501/11 P, ECR, EU:C:2013:522, paragraph 36).

299 According to the case-law, the obligation to comply with Article 6 of the ECHR does not preclude a 'penalty' from being imposed by an administrative authority in the first instance. For that to be possible, however, decisions taken by administrative authorities which do not themselves satisfy the requirements laid down in Article 6(1) of the ECHR must be subject to subsequent review by a judicial body that has full jurisdiction. The characteristics of such a body include the power to quash in all respects, on questions of fact and of law, the contested decision. Such a body must in particular have jurisdiction to examine all questions of fact and of law relevant to the dispute before it (judgment in *Schindler Holding and Others* v *Commission*, cited in paragraph 298 above, EU:C:2013:522, paragraph 35; see ECtHR, *Menarini Diagnostics v. Italy*, no. 43509/08, § 59, 27 September 2011, and *Segame v. France*, no. 4837/06, § 55, 7 June 2012).

300 Moreover, failure to review the whole of the contested decision of the Court's own motion does not contravene the principle of effective judicial protection. Compliance with that principle does not require that the General Court — which is indeed obliged to respond to the pleas in law raised and to carry out a review of both the law and the facts — should be obliged to undertake of its own motion a new and comprehensive investigation of the file (judgment in *Chalkor* v *Commission*, cited in paragraph 298 above, EU:C:2011:815, paragraph 66).

301 Thus, subject to the pleas relating to matters of public interest which they must examine and, where appropriate, raise of their own motion, the Courts of the European Union must carry out their review on the basis of the evidence adduced by the applicant in support of the pleas in law put forward and cannot use the Commission's discretion as regards the evaluation of that evidence as a basis for dispensing with the conduct of an in-depth review of the law and of the facts (see, to that effect, judgment in *Chalkor* v *Commission*, cited in paragraph 298 above, EU:C:2011:815, paragraph 62).

302 Last, as was observed in paragraph 109 above, and as the Commission correctly contends, the Court exercising unlimited jurisdiction must, in principle and subject to examination of the evidence submitted to it by the parties, take account of the legal and factual situation that prevails on the date on which it makes its determination where it considers it proper to exercise its power to vary a decision (see, to that effect, judgments of 6 March 1974 in *Istituto Chemioterapico Italiano and Commercial Solvents* v *Commission*, 6/73 and 7/73, ECR, EU:C:1974:18, paragraphs 51 and 52; of 14 July 1995 in *CB* v *Commission*, T-275/94, ECR, EU:T:1995:141, paragraph 61; and of 5 October

2011 in *Romana Tabacchi* v *Commission*, T-11/06, ECR, EU:T:2011:560, paragraphs 282 to 285). *A fortiori*, that must be so where, as in the present case, the amount of the fine that the company concerned must pay taking into account its ability to pay is the amount resulting from the decision taken by the Court following the action brought by that company, actual payment of the fine having been deferred.

303 It is by reference to those general considerations, and in the light of the pleas in fact and in law submitted by the parties before the Court, that the reasoning set out in the contested decision must be assessed.

The merits of the appraisal of the applicants' ability to pay in the contested decision

304 In recitals 1176 to 1178 to the contested decision (see paragraph 271 above), the Commission rejected the applicants' requests, observing that WDI and Pampus were experiencing such serious financial difficulties that they appeared unable to pay the fine. That diagnosis was based on the following factors.

305 First, WDI had been required to take a short-term loan of EUR 20 million in February 2010, which was essential in order for it to keep its activities going. A reconstruction plan was expected by the banks by the end of June 2010, when the banks would decide whether to maintain credit lines until the end of the year.

306 Second, Pampus no longer had any capital left. According to the Commission, Pampus's working capital had a negative value of around EUR 100 million, including the fine.

307 Third, Pampus had lent money to other companies in the group, totalling around EUR 140 million. Although those loans had not been written off, Pampus did not expect to be repaid, since all the debtor companies had negative equity.

308 In consideration of that estimate of the applicants' financial situation, the Commission, in recital 1179 to the contested decision (see paragraph 271 above), rejected their request for a reduction of the fine, for the following three reasons.

309 First, the Commission considered that any reduction of the amount of the fine would not increase the prospect that the group would survive in the foreseeable future. Thus, even if the fine were reduced to zero, Pampus and WDI would probably not survive.

310 Second, according to Commission, irrespective of the amount of the fine imposed, the survival of the group would depend on the decisions taken by the shareholders, including ArcelorMittal, which owned one third of the WDI's capital.

311 Third, a large part of the financial problems faced by Pampus and WDI originated in recent shifts of funds from Pampus to other companies in the group. In the Commission's view, there is no reason to grant a reduction in a situation where, following receipt of a statement of objections, the financial means are transferred to related companies with the 'apparent desire or effect to negate the Commission's fining policy'. At the hearing, the Commission asserted that the last reason was in itself sufficient to justify rejecting any request for a reduction of the fine submitted by the applicants, as the alleged inability to pay was caused by discretionary management decisions taken by the applicants themselves.

312 Contrary to what was forecast in the contested decision, the applicants did not disappear after June 2010. That circumstance admittedly does not affect the legality of the appraisal carried out in the contested decision. The fact none the less remains that it may give rise to doubt, at least in the mind

of the Court, as to the reliability and the merits of the analysis of the prospects presented by the applicants' financial situation on the date of adoption of the contested decision, in the light of the content of the information which had then been communicated to the Commission.

313 In that regard, the applicants themselves convincingly explain the reasons why, in the light of the content of the evidence which they submitted in support of their request concerning the appraisal of their ability to pay, the appraisals made by the Commission do not correspond to what was then the most likely scenario.

314 In the first place, the applicants establish to the requisite standard that their medium- and long-term prospects were positive and thus enabled them to secure the support of their creditors throughout the period of crisis that began in 2009. The pertinent documents produced by the applicants demonstrate the significant efforts made to reduce their costs and restructure the Pampus group after their turnover fell as a result of the economic crisis. It is also apparent from those documents that the Pampus group was always able to maintain a good relationship with its banks, continuously seeking to obtain the best financial terms in order to maintain and continue its business in spite of the serious difficulties which it faced.

315 That is the case of the loan of EUR 20 million granted to the applicants by the banks in February 2010, which enabled them to obtain the necessary funds to avoid ceasing payments. That standstill agreement, the extension of which was seriously envisaged before the adoption of the contested decision and was implemented on 2 July 2010, was an example of the financial institutions' willingness to overcome the cash-flow problems faced by the group. In the contested decision, however, the Commission drew no inferences from the possibility that that loan would be renewed. In the context of the aftermath of the general economic crisis in 2008, however, the ongoing support given to the applicants by their banks could give the impression that the banks did not consider that the Pampus group was facing a structural lack of profitability, but rather liquidity problems. In spite of those considerations, the Commission manifestly failed in its analysis to envisage it as sufficiently likely that the funding facilities granted to the applicants by their banks would be maintained if their profitability did not significantly deteriorate. On the other hand, the imposition of a fine in an amount such as that envisaged in the initial decision was likely to give rise to a deterioration of that type. Accordingly, it is also wrong that, on appraising that element of the context which it took into consideration among the grounds for rejecting the applicants' request for a reduction of the fine, the Commission considered that the amount of the fine ultimately imposed on the applicants was immaterial.

316 In the second place, first, the applicants also explain, in detail and convincingly, the reasons why the transfers corresponding to sums of more than EUR 100 million (the loan from Pampus to Pampus Stahlbeteiligungsgesellschaft mbH ('PSB'), corresponding to a debt owed by PSB to the Ovako group) and of more than EUR 140 million (debts owed to Pampus to Pampus Automotive GmbH & Co. KG ('PAM'), for around EUR 55 million, TSW Trierer Stahlwerk GmbH ('TSW'), for EUR 79 million, and Speralux SA, for EUR 10 million) could not, on the evidence submitted in support of their requests, be regarded as simple losses, which, none the less, is how the Commission regarded them in the contested decision. The Commission could not, in order to arrive at the radical conclusion that the value of the credits held by Pampus over the other companies in the group would be totally lost, be satisfied with an analysis of the financial situation of the debtor companies confined to examining their annual balance sheets, without even seeking to evaluate their profitability, even in the short term. In failing to carry out such an analysis, the Commission neglected an essential determining factor of the prospect of the loans in question being repaid.

317 Furthermore, the facts subsequent to the adoption of the contested decision — although they cannot be taken into consideration for the purpose of assessing the legality of that decision — bear out the lack of substance of the Commission's analysis. Thus, it is common ground that the loan from Pampus to PSB did not depreciate entirely, but only by half, or an amount of EUR 50.5 million,

which, as the Commission acknowledges, gave rise to a 'significant improvement in the state of Pampus's own capital'. It is likewise common ground that the amount owed to Pampus by PAM depreciated only by EUR 26.5 million, or by half and not all of the loan granted.

318 Second, the applicants are correct to maintain that the Commission could not consider, without making an error of assessment, that any request by them for a reduction of the fine had to be rejected on account of the financial transfers made between Pampus and other companies in the group after notification of the statement of objections.

319 The Commission was not entitled to refuse, as it did, to take into account the reasons why those intra-group transfers were made. It is apparent from the factual evidence communicated to the Commission before the adoption of the contested decision that the financing granted to the companies in the group was in response to the need to finance acquisitions made before the statement of objections was issued and also, as regards the transfers made after notification of the statement of objections, to enable those companies to continue their operations.

320 In fact, although the statement of objections was adopted on 30 September 2008 (recital 115 to the contested decision), it was notified to the applicants, according to their statements, which are not disputed by the Commission, on 2 October 2008. It is apparent from the information provided by the applicants in answer to the questions addressed to them by the Commission during the administrative procedure that the Ovako group had been acquired in 2006, and that the financial transfers made in order to allow that acquisition, including the loan at issue granted to PSB, had taken place in 2007. Likewise, PAM had been acquired in 2007 and TSW in 2005. The transfers at issue that were made after the statement of objections, such as the loans granted to Speralux, were thus intended to cover the cash-flow needs of companies which, on the date on which the statement of objections was notified, were part of the Pampus group.

321 Furthermore, the Commission, as the applicants rightly claim, was not entitled to refrain from taking the financial situation of the Pampus group as a whole and the viability of that group into consideration. It is apparent that, as the applicants informed the Commission before it adopted the contested decision, apart from TSW, all of the companies that benefited from the financial transfers at issue were under the exclusive control of family holding companies, such as Pampus, which were all owned, in the same proportions, by the same shareholders, namely Mr Pa. and his two daughters. As for TSW, it was directly owned as to two thirds by Mr Pa. and one of his two daughters and could thus be regarded, for the purposes of the appraisal of Pampus's ability to pay, as part of the same group. In the circumstances of present case, the Commission ought therefore to have considered that the financial transfers made for the benefit of other companies in the same group had no impact on the appraisal of Pampus's ability to pay.

322 In the third place, it follows from the errors of assessment just pointed out that the Commission was not entitled to take the view, as it did in the contested decision, that the amount of the fine which it envisaged imposing on the applicants could have no impact on their viability. The Commission was therefore also wrong to consider that the amount in question was of no relevance in the appraisal of their ability to pay.

323 Last, and in the fourth place, the arguments whereby the applicants seek to show that the intervention of their shareholders was unlikely are based on a misreading of the contested decision and on that basis are inoperative. In the contested decision, the Commission did not consider that such intervention was likely, but merely made the incidental observation that in its view the applicants' survival could depend only on such intervention (see recital 1179 to the contested decision, reproduced in paragraph 271 above).

324 It follows from the foregoing that, in appraising the applicants' ability to pay, the Commission made errors of such a kind as to vitiate the contested decision with illegality. Such a finding in principle constitutes a reason for the Court to assess whether, in consequence and as the applicants invite it to do, it should vary the amount of the fines imposed on them. However, that might not be the case, as the Commission claimed at the hearing, if the analysis made by the Director-General in his letter of 14 February 2011 could provide a basis in fact and in law for rejecting the applicants' request for a reduction of the fine. As the applicants also dispute that second analysis, it is appropriate to examine whether it is well founded.

2. The merits of the appraisal of the applicants' ability to pay set out in the letter of 14 February 2011

325 It should be borne in mind that the applicant's new request for an appraisal of the ability to pay was again rejected, in the letter of 14 February 2011, for reasons different from those which had been taken into consideration in the contested decision. The relevant passages of the letter of 14 February 2011 read as follows:

'On 12 August 2010, WDI, WDV and [Pampus] … sought a reduction of the amount of their fines, in accordance with the conditions set out in point 35 of the 2006 Guidelines on the setting of fines, as those conditions would in their submission apply by analogy owing to their alleged insolvency.

On the basis of that request and the other information supplied by the parties up to 7 February 2011, the competent services of the Commission reviewed that information and those data and ascertained that the three abovementioned undertakings would not be in a position to pay the fines, as they claim. In particular, the Commission's services analysed the effects of the fines on the viability of the three undertakings and also took into account their relationships with the banks and their shareholders and also the shareholders' capacity to assist the undertakings financially in order to enable them to pay the fines imposed by the [contested decision].

It follows from that examination that WDI supplied no new information or evidence to show that paying the fine of EUR 46 550 000 would irremediably jeopardise its viability. On the contrary, it follows from the information supplied by WDI up to 7 February 2011 that it is capable of paying the total amount of the fine. We refer, in particular, to the net cash flow forecasts for the coming years which you sent us for WDI: EUR 13.3 million for 2011 (including [EUR] 1.37 million to repay a long-term loan), EUR 17.7 million for 2012 (including EUR 0.7 million to repay a long-term loan), EUR 14.8 million for 2013, EUR 21.5 million for 2014, EUR 22.3 million for 2015 and EUR 25.4 million for 2016. Those net cash flow forecasts are the result of the analysis of the positive cash flow of current activities and limited investments. WDI has not shown that with such solid cash flow forecasts it would not be in a position to pay the fine.

Those net cash flow forecasts do not take account of the repayment, albeit partial, of the loans granted by WDI to companies owned by it, although such repayments cannot be ruled out. It follows, moreover, from the information supplied that WDI's banks may take a charge over WDI's tangible assets to secure other land charges.

We also consider that there is no need to examine the ability to pay of WDV and [Pampus] in this instance, since WDI, which is the only company in the Pampus group to have been ordered to pay the entire fine of EUR 46 550 000, is in a position to finance the whole of that fine or to obtain a bank guarantee for the total amount. We consider that a provisional payment or a guarantee acceptable to the Commission's accounts department covering the amount of EUR 46 550 000 for the duration of the judicial proceedings will suffice to the Commission to guarantee the joint and several debt of the three undertakings concerned until the judicial proceedings have been closed.

I would also emphasise that in our view none of the undertakings has thus far shown a causal or clear link, within the meaning of [recital] 1179 [to the contested decision], between the fine imposed and what is alleged to be WDI's very delicate financial situation. The new information supplied to the Commission between the adoption of the [contested decision] and 7 February 2011 clearly shows, on the contrary, that after notification of the statement of objections WDI granted loans to third undertakings in the Pampus group without having imposed repayment plans on the beneficiaries. Those loans, amounting to approximately EUR 115 million, clearly exceed the amount of the fine imposed on WDI.

I must therefore inform you that, after careful examination of the new information and data which you supplied to us between the date on which you received the contested decision and 7 February 2011, we see no reason to review or reduce the amount of the fines imposed on WDI, WDV and [Pampus] by Article 2 of the [contested decision] and are therefore unable to accede to your request.'

326 In order to challenge the reasoning set out in the letter of 14 February 2011, which takes into consideration mainly WDI's net cash flow forecasts, the applicants claim essentially that that criterion alone cannot serve as the basis for the analysis of an undertaking's ability to pay in the light of point 35 of the 2006 Guidelines.

327 It is true that the net cash flow forecasts have a distinctly uncertain nature which cannot form the sole basis of the analysis of an undertaking's ability to pay. Contrary to the applicants' contention, however, that uncertain nature cannot suffice to undermine the inferences that might be drawn from that information, which the applicants supplied in the context of their request for a reappraisal of their ability to pay, concerning WDI's likely ability to make a profit.

328 On the contrary, the applicants are correct to claim that, in order to reject their request for a reduction of the fine, the Director-General was not entitled to overlook the fact that they had sufficiently established, by producing numerous refusals from banks which had already granted them loans and also by producing several financial analysis reports, that they were unable to pay in a single payment the total amount of the fines eventually imposed on them, as determined in the first amending decision, or to obtain finance or even a bank guarantee for that amount.

329 In that regard, as the President of the Court has already found (order in *Westfälische Drahtindustrie and Others* v *Commission*, cited in paragraph 65 above, EU:T:2011:178, paragraphs 35 and 43), the applicants produced more than 10 reasoned loan refusals and it must be presumed that a bank, when adopting a positive or negative decision on credit and guarantee questions, always pursues its own interests as a credit institution and must also act in that way for the benefit of its shareholders.

330 In addition, the reasons why the ground based on the intervention of intra-group financial transfers could not suffice in the present case to justify rejecting the applicants' request for a reduction of their fines were set out in paragraphs 316 to 321 above.

331 It follows that, in order to reject the applicants' request for a reappraisal of their ability to pay, the Director-General made errors of such a kind as to vitiate the letter of 14 February 2011 with illegality.

332 It follows from the foregoing that the Commission erred when, on two occasions, it appraised the applicants' ability to pay. Those errors are of such a kind as to entail the annulment of the contested decision in that it imposes a fine on the applicants, and also of the letter of 14 February 2011 and, in addition, to justify the Court's exercise of its unlimited jurisdiction.

3. The Court's exercise of its unlimited jurisdiction

333 As observed in paragraphs 286 to 303 above, the conditions laid down in point 35 of the 2006 Guidelines originated in the case-law and there is nothing to prevent the Court — although it is not bound by the general guidelines adopted by the Commission (see paragraph 227 above) — from applying those conditions in the exercise of its unlimited jurisdiction.

334 As examination of the first four pleas revealed no error of such a kind as to vitiate the contested decision with illegality, and as the Court sees no reason to consider that the amount of the fines imposed on the applicants as resulting from Article 2(8) of the contested decision is inappropriate, it is therefore by reference to that amount that the applicants' ability to pay must be appraised afresh.

335 Furthermore, in order to ensure that the appraisal of an undertaking's ability to pay in the light of the amount of the fine to be imposed on it is effective, the Court, when it intends to exercise its unlimited jurisdiction, should assess the situation prevailing on the date on which it adopts its decision (see paragraphs 109 et 302 above), in the light of the documents which the parties may submit to it, subject to the conditions of admissibility provided for in Article 48 of the Rules of Procedure of the General Court of 2 May 1991, up to the closure of the oral procedure.

336 In that regard, the parties had the opportunity to place on the case-file after the closure of the written procedure documents the existence of which they had both asserted during the public hearing. They availed themselves of that opportunity and each submitted observations on those documents. Each party also commented on the observations of the opposing party.

337 The applicants maintain that examination of the most recent data shows that they do not have sufficient liquid assets to pay in full the fine imposed on them in the contested decision. Nor can they any longer rely on credit institutions. In those circumstances, if payment of the fine were demanded they would be forced into liquidation, in which case the Commission's claim would not be a priority.

338 The credit institutions which have already granted credit are not prepared to increase their support, as may be seen from their refusal to extend the credit facilities which the applicants had sought for three years in 2013. Thus, the banks agreed to extend the credit lines granted to the applicants only from 14 September 2014 until 30 November 2015.

339 Furthermore, the applicants did not succeed in selling the assets the proceeds of which they counted on to reduce their indebtedness. That situation confirms the low profitability of the land and installations and, accordingly, the low value of the assets of which they proposed to dispose.

340 The improvement in their accounting results is largely attributable to the reintegration of the sums earmarked for payment of the fine. Furthermore, the reduction of Pampus's indebtedness has no impact on their ability to pay. In addition, the effects of the reduction of the tax burden entailed by the amortisation of investments made five years ago are about to be exhausted.

341 The payments by instalments which they make in application of the order in *Westfälische Drahtindustrie and Others* v *Commission*, cited in paragraph 65 above (EU:T:2011:178), represent an annual financial burden of EUR 3.6 million, which prevents them from making the investments necessary to remain competitive.

342 The applicants maintain that their liquidation would entail the loss of value of their assets. In their submission, it should be considered that if a single purchaser envisaged acquiring them, the value of their assets would immediately fall by around 25%.

343 Last, the statements made by the Penta/Equinox group should be disregarded so far as the viability of their balance sheet is concerned, as such statements correspond to concerns about image and provide no guarantee of sincerity.

344 Consequently, the applicants claim that the Court should substantially reduce the amount of the fine, since the combination of a reduction with payment by instalments could only present an exceptional character. In their submission, any fine could be paid, irrespective of the amount, if payments could be spread over a sufficiently long period. In addition, the Court should place itself at the date on which the Commission appraised their ability to pay, as otherwise it would breach the principle of equal treatment, as the other undertakings' ability to pay was appraised on that date.

345 The Commission disputes those arguments.

346 It must be stated, by way of preliminary observation, that in the order in *Westfälische Drahtindustrie and Others* v *Commission*, cited in paragraph 65 above (EU:T:2011:178) the applicants were ordered to pay, on a provisional basis, the sum of EUR 2 million and monthly instalments representing an additional annual burden of EUR 3.6 million. It is common ground that the applicants have thus far complied with that obligation, so that the question whether their financial situation allows them to pay the fine now concerns a sum representing only around two thirds of the amount initially imposed on WDI. It is common ground that the amounts already paid represent more than EUR 15 million.

347 It is also common ground that between 2011 and 2013 the applicants undertook their own restructuring, following which Pampus appears to have reduced its debts to the credit institutions. The Commission claims, moreover, without being contradicted by the applicants, that it follows from the letter which they sent to the Commission on 28 May 2014 that the combined indebtedness of the Pampus group fell from EUR 350 million in 2010 to EUR 160 million in 2013, owing in particular to the renouncing of credits granted by credit institutions and to debt swaps with the investor Penta/Equinox, which at the time envisaged acquiring the company via a debt-for-equity arrangement. On that occasion Penta/Equinox issued a press release, produced by the Commission, according to which it considered that the applicants had a sustainable balance sheet.

348 The Commission also states, without being contradicted, that the applicants sold shares which they held in other companies, the proceeds of which were applied to reducing their indebtedness. It is also common ground that, since the adoption of the contested decision, the lines of credit granted to the applicants were on each occasion extended before they expired. The Commission also claims that the applicants managed to reduce their production costs, both by negotiating more favourable conditions (stocks consigned to their customers, extension of payment periods agreed by their supplier) and by concluding agreements with their employees to reduce labour costs.

349 It also follows from the annual reports relating to 2013, placed on the file by the parties, that WDI's operational prospects, as regards both order forecasts and the viability of the undertaking, were favourable.

350 Contrary to the applicants' contention, it should be considered that all of those indicia show that their financial and trading partners have confidence in their viability, whereas, as observed in paragraph 288 above, it is for the undertaking requesting a reduction of the fine to show that its financial situation is such that payment of the fine imposed on it would cause its assets to lose all their value. However, the applicants themselves claim that, in the — hypothetical — event that payment of the fine would lead to their liquidation, their assets would be expected to lose 25% of their value, which cannot constitute a total loss of value.

351 Furthermore, the applicants' argument that they do not have the necessary liquid assets to be able to pay the fine must be rejected as inoperative, as no reduction of the fine can be granted for that reason.

352 In addition, as stated in paragraphs 347 and 348 above, the applicants succeeded, between 2011 and 2013, in reducing their indebtedness by an amount representing each year more than the initial amount of the fine, while the credit institutions always agreed to extend the facilities granted. In those circumstances, their assertion that no credit institution would any longer be prepared to support them if the outstanding amount of the fine should be demanded cannot be considered to be proven, and that is without prejudice to the possibility that the applicants could ask the Commission itself to grant them payment facilities.

353 Moreover, the fact that the applicants have been unable to find buyers for all the assets, certain of which they themselves maintain are not sufficiently profitable, cannot suffice to show that they are unable to pay the fine.

354 As for the applicants' argument that the improvement of their results is the result of the reintegration of the sums which they had earmarked for payment of the fine, it should be observed that, as the Commission claims, that reintegration corresponds to the amounts already paid on a provisional basis in application of the order in *Westfälische Drahtindustrie and Others* v *Commission*, cited in paragraph 65 above (EU:T:2011:178), and that the sums corresponding to the amounts that would be outstanding if their action should be dismissed by the Court have not been taken into consideration.

355 As regards the negative consequences that would result from payment of the fine, it should be observed that the purpose of the possibility for an undertaking to obtain a reduction because of its inability to pay is not to protect it against all the unfavourable consequences that might attach to payment of the fine, including even its liquidation, but only, in such a situation, against the total loss of value of its assets.

356 As for the argument which the applicants base on the breach of the principle of equal treatment that would ensue from the fact that the Court would appraise their ability to pay on the date on which it delivers its decision, whereas the ability to pay of the other undertakings was appraised on the date of adoption of the contested decision, it must be rejected. The applicants are not in a comparable situation to that of the other undertakings that did not bring actions challenging the Commission's appraisal of their ability to pay, since, in particular, in the present case the initiation of the present action by the applicants and the order allowing in part their application for interim relief had the effect of suspending payment of the entire fine imposed on them pending delivery of the present judgment.

357 It follows from the foregoing that the applicants are not correct to claim that they should be granted a reduction of their fine on the ground of their ability to pay, for reasons similar to those envisaged by the Commission in point 35 of the 2006 Guidelines.

358 It follows that Article 2(8) of the contested decision and the letter of 14 February 2011 must be annulled and that the applicants must be ordered to pay a fine of an amount identical to the amount of the fine imposed on them in the contested decision.

Costs

359 Under Article 134(3) of the Rules of Procedure of the General Court, where each party succeeds on some and fails on other heads, the parties are to bear their own costs. However, if it appears justified in the circumstances of the case, the Court may order that one party, in addition to bearing his own costs, pay a proportion of the costs of the other party. In the circumstances of the present case, the applicants should be ordered to bear one half of their costs and the Commission should be ordered to bear its own costs and to pay one half of the costs incurred by the applicants, including those relating to the interlocutory proceedings.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. **Declares that there is no longer any need to adjudicate in the present action in respect of the reduction of the fine granted to Westfälische Drahtindustrie GmbH and Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG in Commission Decision C(2010) 6676 final of 30 September 2010;**

2. **Annuls Article 2(8) 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 by Commission Decision C(2011) 2269 final of 4 April 2011;**

3. **Annuls the letter of 14 February 2011 of the Director-General of the Directorate-General for Competition of the Commission;**

4. **Orders Westfälische Drahtindustrie, Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. and Pampus Industriebeteiligungen GmbH & Co., to pay a fine of EUR 15 485 000, for which they are jointly and severally liable;**

5. **Orders Westfälische Drahtindustrie and Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. to pay a fine of EUR 23 370 000, for which they are jointly and severally liable;**

6. **Orders Westfälische Drahtindustrie to pay a fine of EUR 7 695 000;**

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

8. **Orders Westfälische Drahtindustrie, Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. and Pampus Industriebeteiligungen GmbH & Co. to bear one half of their own costs, including those relating to the interlocutory proceedings, and orders the Commission to bear its own costs and to pay one half of the costs incurred by Westfälische Drahtindustrie, Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. and Pampus Industriebeteiligungen GmbH & Co., including those relating to the interlocutory proceedings.**

Frimodt Nielsen Dehousse Collins

Delivered in open court in Luxembourg on 15 July 2015.

[Signatures]