Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

19 July 2012*

(Appeals — Competition — Agreements, decisions and concerted practices — Spanish market for the purchase and first processing of raw tobacco — Price-fixing and market-sharing — Infringement of Article 81 EC — Attributability of unlawful conduct of subsidiaries to their parent companies — Presumption of innocence — Rights of the defence — Obligation to state the reasons on which the decision is based — Equal treatment)

In Joined Cases C-628/10 P and C-14/11 P,

Two APPEALS under Article 56 of the Statute of the Court of Justice of the European Union, brought on 28 December 2010 and 7 January 2011 respectively,

Alliance One International Inc., formerly Standard Commercial Corp., established in Danville (United States),

Standard Commercial Tobacco Co. Inc., established in Wilson (United States),

represented by M. Odriozola Alén and A. João Vide, abogados,

appellants,

the other parties to the proceedings being:

Trans-Continental Leaf Tobacco Corp. Ltd, established in Vaduz (Liechtenstein),

applicant at first instance,

European Commission, represented by F. Castillo de la Torre, E. Gippini Fournier and R. Sauer, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

and

European Commission, represented by F. Castillo de la Torre, E. Gippini Fournier and R. Sauer, acting as Agents, with an address for service in Luxembourg,

appellant,

the other parties to the proceedings being:

Alliance One International Inc.,

* Language of the case: English.

Standard Commercial Tobacco Co. Inc.,

Trans-Continental Leaf Tobacco Corp. Ltd,

represented by M. Odriozola Alén and A. João Vide, abogados,

applicants at first instance,

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, M. Safjan and A. Prechal, Presidents of Chambers, K. Schiemann, E. Juhász, G. Arestis, A. Arabadjiev (Rapporteur), D. Šváby, M. Berger and E. Jarašiūnas, Judges,

Advocate General: J. Kokott,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 16 November 2011,

after hearing the Opinion of the Advocate General at the sitting on 12 January 2012,

gives the following

Judgment

1 By their appeal (C-628/10 P) Alliance One International Inc. ('AOI'), formerly Standard Commercial Corp. ('SCC'), and Standard Commercial Tobacco Co. Inc. ('SCTC') seek to have set aside the judgment of 27 October 2010 in Case T-24/05 *Alliance One International and Others* v *Commission* [2010] ECR II-5329 ('the judgment under appeal'), whereby the General Court of the European Union dismissed their action for the annulment of Commission Decision C(2004) 4030 final of 20 October 2004 relating to a proceeding under Article 81(1) [EC] (Case COMP/C.38.238/B.2 - Raw tobacco — Spain) ('the contested decision') and, further, the annulment of that decision, in so far as it relates to them, and reduction of the fine imposed on them by that decision.

2 By its appeal (C-14/11 P) the European Commission seeks to have set aside the judgment under appeal to the extent that it annulled the contested decision in so far as it relates to Trans-Continental Leaf Tobacco Corp. Ltd ('TCLT') and, further, dismissal of the action brought by TCLT before the General Court.

I – Background to the dispute

3 The facts which gave rise to the dispute in this case, as set out in paragraphs 1 to 40 of the judgment under appeal, can be summarised as follows.

4 World Wide Tobacco España SA ('WWTE'), Agroexpansión SA ('Agroexpansión') and Tabacos Españoles SL ('Taes') are three of four undertakings engaged in the first processing of raw tobacco in Spain (the four undertakings being hereinafter referred to as 'the processors').

5 Between 1995 and 5 May 1998 two thirds of the capital of WWTE was held by TCLT, a wholly owned subsidiary of SCTC, which is itself a wholly owned subsidiary of SCC (now AOI). The remaining third was held by the chairman of WWTE and two members of his family.

6 On 5 May 1998 TCLT increased its holding in WWTE to 86.94%, the remainder of the shares being held as own shares by WWTE (9.73%) and by a natural person (3.33%). In October 1998 WWTE acquired that person's shares and SCC acquired a direct holding of 0.04% in WWTE's share capital. In May 1999 TCLT and SCC increased their holding in WWTE to 89.64% and 0.05% respectively, the remainder being held as own shares by WWTE.

7 Agroexpansión is a member of a group of companies of which Dimon Inc. is the ultimate holding company. Dimon holds, through its wholly owned subsidiary Intabex Netherlands BV ('Intabex'), all the shares in Agroexpansión.

8 All shares in Taes and in Deltafina SpA ('Deltafina'), which is an Italian company whose main activities are the first processing of raw tobacco in Italy and the marketing of processed tobacco, are held by Universal Leaf Tobacco Co. Inc. ('Universal Leaf'). The latter is itself a 100% owned subsidiary of the United States company Universal Corp. ('Universal').

9 On 3 and 4 October 2001 the Commission carried out inspections pursuant to Article 14 of Council Regulation No 17 of 6 February 1962, First regulation implementing Articles [81 EC] and [82 EC] (OJ 1962, English Special Edition, Series I, 1959-1962, p. 87) at the premises of, among others, WWTE, in order to check information that the Spanish processors and producers of raw tobacco had infringed Article 81 EC.

10 On 11 December 2003 the Commission adopted a statement of objections which it addressed to 20 undertakings or associations, including SCTC and SCC.

11 On 20 October 2004 the Commission adopted the contested decision which relates to, inter alia, a horizontal cartel entered into and implemented on the Spanish raw tobacco market by the processors and Deltafina.

12 According to the Commission's findings, the object of that cartel was to fix each year, in the period from 1996 to 2001, the average delivery price for each variety and grade of raw tobacco and to share out the quantities of each variety of raw tobacco that each of the processors could purchase from the producers. Between 1999 and 2001 the processors and Deltafina also agreed price brackets per quality grade for each raw tobacco variety as well as average minimum prices per producer and producer group.

13 In the contested decision, the Commission held that that cartel was a single and continuous infringement of Article 81(1) EC, attributed liability for the cartel to, among others, Deltafina and the processors, ordered those undertakings to bring immediately to an end that infringement, and to refrain immediately from any restrictive practice having the same or similar object or effect, and further imposed the following fines, namely EUR 108 000 on Taes, EUR 1 822 500 on WWTE, EUR 2 592 000 on Agroexpansión and EUR 11 880 000 on Deltafina.

14 The contested decision also provides that the three parent companies of WWTE are jointly and severally liable for payment of the fine imposed on WWTE, as is Dimon Inc. for payment of the fine imposed on Agroexpansión. On the other hand, Intabex was not held liable for the fine imposed on Agroexpansión, and Universal and Universal Leaf are also not identified as jointly and severally liable for the fines imposed on Taes and Deltafina.

15 As regards the persons to whom the contested decision was addressed, the Commission stated, in recitals 375 and 376 of the contested decision:

'(375) In the present case, three of the four Spanish processors of raw tobacco are controlled (to the extent of 100% or 90%) by US multinationals. There are other factual elements that confirm the presumption that the conduct of Agroexpansión and WWTE has to be ascribed to their

respective parent companies. In these cases, the two companies — the parent company and the subsidiary — must be regarded as being jointly responsible for the infringements established in this decision.

(376) [On the other hand], following the issuing of the Statement of Objections and the hearing of the parties, it has become apparent that the evidence in the file could not warrant a similar conclusion in respect of Universal['s] … and Universal Leaf [Tobacco Co. Inc.'s] shareholdings in Taes and Deltafina. In fact, apart from the corporate link between the parents and their subsidiaries, there is no indication in the file of any material involvement of Universal … and Universal Leaf in the facts which are being considered in this decision. It would therefore not be appropriate to address them a decision in this case. The same conclusion would apply, a fortiori, to Intabex … in so far as its 100% shareholding in Agroexpansión was purely financial.'

16 As regards more particularly WWTE, the Commission distinguished two periods, in the light of the circumstances set out in paragraphs 5 and 6 of this judgment. The first period is from 1995 until 4 May 1998 inclusive ('the first period') and the second from 5 May 1998 until the date of adoption of the contested decision ('the second period').

17 As regards the first period, the Commission concluded, in recitals 391 and 392 of the contested decision and on the basis of a number of factors set out in, inter alia, recitals 388 to 390 of that decision, that WWTE was jointly controlled by SCC, through SCTC and TCLT, and the chairman of WWTE and his family, that SCC and/or its subsidiaries exercised effective influence over the conduct of WWTE and that SCC had put in place certain mechanisms which, considered together, enabled it to keep track of the activities of WWTE and thus to exert effective control over the latter's commercial policy.

18 With regard to the second period, the Commission concluded, in recitals 397 and 400 of the contested decision and on the basis of a number of factors set out in, inter alia, recitals 393 to 398 of that decision that, either directly or through SCTC and TCLT, SCC had exclusive control of WWTE, that the arguments deployed by SCC in its reply to the statement of objections did not warrant any different conclusion in that respect, that SCC and/or its subsidiaries SCTC and TCLT exercised decisive influence over the commercial policy of WWTE and that they must, therefore, be held jointly responsible for the anti-competitive practices at issue.

II – The procedure before the General Court and the judgment under appeal

19 By application lodged at the Registry of the General Court on 21 January 2005, AOI, SCTC and TCLT brought an action for annulment of the contested decision, in so far as it concerned them.

20 AOI, SCTC and TCLT put forward two pleas in law in support of the action. The first plea alleged infringement of Article 81(1) EC and Article 23(2) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 [EC] and 82 [EC] (OJ 2003 L 1, p. 1) and, in the alternative, failure to state sufficient reasons for the contested decision. By their second plea the applicants alleged a breach of the principle of equal treatment.

21 Having decided to examine those two pleas together, the General Court first of all rejected as unfounded the second part of the first plea on failure to state sufficient reasons for the contested decision.

22 Next, the General Court rejected the second plea claiming an infringement of the principle of equal treatment, holding that the Commission had applied the same principles to all the parent companies concerned for the purposes of determining whether to attribute liability to them for the infringement

committed by their subsidiaries. Specifically, the General Court held that it was not apparent from the contested decision that the Commission had, in that regard, treated differently the situation of SCC and SCTC, on the one hand, from that of Universal, Universal Leaf or Intabex, on the other.

23 That finding was based on, inter alia, the following considerations, to be found in paragraphs 155 to 157 of the judgment under appeal:

> '155 ... this being the specific case where a parent company has a 100% shareholding in a subsidiary which has infringed the Community competition rules, the Commission — in the interests of caution — did not rely solely on the presumption affirmed by the case law … in order to show that the parent company in fact exercised decisive influence over the commercial policy of the subsidiary, but also took into account other factual elements tending to confirm that such influence was actually exercised. However, by proceeding in that manner, the Commission … merely raised the standard of proof required for it to be satisfied that the condition relating to the actual exercise of decisive influence is fulfilled.
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> 156 ... where, in a case concerning an infringement involving several different undertakings, the Commission adopts, within the framework laid down by the case-law, a certain method for determining whether it is appropriate to attribute liability both to the subsidiaries which materially committed that infringement and to their parent companies, it must — save in specific circumstances — rely for those purposes on the same criteria in the case of all those undertakings.
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> 157 The Commission is bound by the principle of equal treatment, which, according to settled case-law, requires that comparable situations must not be treated differently, and different situations must not be treated in the same way, unless such treatment is objectively justified …'

24 As regards the first part of the first plea in law, the General Court held, in respect of the first period, in paragraph 194 of the judgment under appeal, and in respect of the second period, in paragraph 217 thereof, that the Commission had established to the requisite legal standard that SCC and SCTC in fact exercised decisive influence over WWTE's conduct.

25 In paragraphs 195 to 197 and in paragraphs 218 and 219 of the judgment under appeal, the General Court held, in respect of the first and second periods, that, conversely, none of the material relied on by the Commission in the contested decision supported the conclusion that TCLT exercised decisive influence over the conduct of WWTE and that, consequently, the Commission was not justified in attributing WWTE's unlawful conduct to TCLT or in holding it jointly and severally liable for payment of the fine.

26 In particular, the General Court held, in paragraph 218 of the judgment under appeal, that the Commission could not rely on the mere fact that TCLT held virtually all the capital of WWTE, since TCLT would then be discriminated against by comparison with Intabex, Universal and Universal Leaf.

27 Lastly, in paragraphs 220 to 229 of the judgment under appeal, the General Court rejected the arguments adduced by the applicants in order to show that WWTE acted independently on the market during the period of the infringement. Consequently, the General Court annulled the contested decision in so far as it related to TCLT and dismissed the action as to the remainder.

III – Procedure before the Court and the forms of order sought

28 By order of the President of the Court of 14 September 2011, Cases C-628/10 P and C-14/11 P were joined for the purposes of the oral procedure and the judgment.

29 By their appeal, AOI and SCTC claim that the Court should:

— set aside the judgment under appeal and, in so far as it relates to them, the contested decision;

— reduce the fine imposed by that decision accordingly; and

— order the Commission to pay the costs at first instance and on appeal.

30 In its response to that appeal, the Commission submits that the Court should dismiss the appeal and order the appellants to pay the costs, both at first instance and on appeal.

31 By its appeal, the Commission asks the Court to:

— set aside the judgment under appeal in so far as it annulled that part of the contested decision relating to TCLT;

— dismiss the action brought by TCLT before the General Court, and

— order TCLT to pay the costs incurred at both instances.

32 In their response to that appeal, AOI, SCTC and TCLT submit that the Court should dismiss the appeal and order the Commission to pay the costs, both at first instance and on appeal.

IV – The appeals

33 It is appropriate to consider first the appeal lodged by the Commission.

A – *The Commission's appeal*

34 In support of its appeal, the Commission raises four grounds. The first and fourth grounds are based on the claim that the principle of equal treatment was incorrectly applied. By the second ground, the Commission claims an error of law in the determination of the legal test for holding parent companies to be liable. The third ground consists of the submission that the General Court breached the Commission's right to an adversarial procedure and wrongly interpreted the duty to state reasons.

35 It is appropriate to consider the first and second grounds together.

1. The first and second grounds

a) Arguments of the parties

36 By the first ground of appeal, the Commission argues, first, that the General Court disregarded the fact that the principle of equal treatment must be reconciled with the principle of legality, and accordingly no one can rely, to his own advantage, on an unlawful act committed in favour of a third party. Consequently, when an undertaking has infringed Article 81 EC, it cannot escape being penalised on the ground that no fine was imposed on other undertakings which are in similar situations.

37 Secondly, the Commission states that it submitted those arguments before the General Court, and it considers that the judgment under appeal, since it makes no mention of them, is vitiated by a failure to state reasons.

38 Thirdly, the Commission argues that TCLT could, as a parent company holding virtually all the shares in WWTE, be presumed to have exercised decisive influence over that company and the General Court did not find that TCLT rebutted that presumption or even attempted to do so.

39 Fourthly, the Commission maintains that the General Court committed an error of law by holding that TCLT was to escape all liability because of the fact that other companies in supposedly similar situations were not held liable. In particular, the Commission considers that recital 384 of the contested decision, to which the General Court referred, means that for the principle of equal treatment to apply the companies must be in a similar situation, which is not so in the present case.

40 By its second ground of appeal, the Commission argues that the General Court committed an error of law by holding that, because the choice was made that as far some undertakings were concerned the decision whether they in fact exercised decisive influence was to be based on a 'dual basis' — and not exclusively on the presumption established in the case-law — that choice was binding on the Commission in respect of all the addressees of the contested decision. The only applicable test is the test established by the case-law, and the Commission can neither raise the standard of proof required on the matter nor bind, by such an approach, the General Court in its analysis of the law.

41 Accordingly, where the legal test established by the case-law is satisfied, it is immaterial, according to the Commission, whether or not it provided additional indicia in order to strengthen, as a precaution, the conclusion which it has reached, since those indicia are not, in any event, transformed into a binding legal test for the assessment of the actual exercise of decisive influence by a parent company on the conduct of its subsidiary.

b) Findings of the Court

42 It must be borne in mind that, in accordance with settled case-law, the concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. That concept must be understood as designating an economic unit even if in law that unit consists of several natural or legal persons. When such an economic entity infringes the competition rules, it is for that entity, according to the principle of personal responsibility, to answer for that infringement (Case C-90/09 P *General Química and Others* v *Commission* [2011] ECR I-1, paragraphs 34 to 36 and case-law cited, and Case C-521/09 P *Elf Aquitaine* v *Commission* [2011] ECR I-8947, paragraph 53).

43 Specifically, the conduct of a subsidiary may be imputed to the parent company in particular where, although having a separate legal personality, that subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company, having regard in particular to the economic, organisational and legal links between those two legal entities (Case C-97/08 P *Akzo Nobel and Others* v *Commission* [2009] ECR I-8237, paragraph 58; *Elf Aquitaine* v *Commission*, paragraph 54, and Case C-520/09 P *Arkema* v *Commission* [2011] ECR I-8901, paragraph 38).

44 In such a situation, since the parent company and its subsidiary form a single economic unit and therefore form a single undertaking for the purposes of Article 81 EC, the Commission may address a decision imposing fines on the parent company, without having to establish the personal involvement of the latter in the infringement (see *Akzo Nobel and Others* v *Commission*, paragraph 59; *General Química and Others* v *Commission*, paragraph 38, and *Elf Aquitaine* v *Commission*, paragraph 55).

45 In order to establish whether a subsidiary determines its conduct on the market independently, the Commission is, as a general rule, bound to take into consideration the economic, organisational and legal links which tie that subsidiary to the parent company, which may vary from case to case and cannot therefore be set out in an exhaustive list (see, to that effect, *Akzo Nobel and Others* v *Commission*, paragraphs 73 and 74, and *Elf Aquitaine* v *Commission*, paragraph 58).

46 The Court has made clear that, in the particular case of a parent company having a 100% shareholding in a subsidiary which has infringed the Union's rules on competition, that parent company is able to exercise decisive influence over the conduct of its subsidiary, and there is a rebuttable presumption that the parent company does in fact exercise such influence (Joined Cases C-201/09 P and C-216/09 P *ArcelorMittal Luxembourg* v *Commission* and *Commission* v *ArcelorMittal Luxembourg and Others* [2011] ECR I-2239, paragraph 97, and *Elf Aquitaine* v *Commission*, paragraph 56).

47 In those circumstances, it is sufficient for the Commission to prove that the entire capital of a subsidiary is held by its parent company in order for it to be presumed that the parent exercises decisive influence over the commercial policy of that subsidiary. The Commission will then be able to regard the parent company as jointly and severally liable for payment of the fine imposed on its subsidiary, unless the parent company, which has the burden of rebutting that presumption, adduces sufficient evidence to show that its subsidiary acts independently on the market (*Akzo Nobel and Others* v *Commission*, paragraph 61; *Elf Aquitaine* v *Commission*, paragraph 57, and *Arkema* v *Commission*, paragraph 41).

48 First, it must be emphasised that the presumption established in the case-law cited in paragraphs 46 and 47 of this judgment is rebuttable.

49 Further, that case-law does not imply that the Commission is bound to rely exclusively on that presumption. There is nothing to prevent the Commission from establishing that a parent company actually exercises decisive influence over its subsidiary by means of other evidence or by a combination of such evidence and that presumption.

50 In this case, as found by the General Court in paragraphs 134 to 147 of the judgment under appeal, it is clear from the contested decision and was confirmed by the Commission, in the procedure at first instance, that the Commission had decided, in order to assess whether the parent companies actually exercised decisive influence over the subsidiaries, to hold the parent companies liable only where there was evidence to support the presumption of actual exercise by the parent companies of decisive influence which arises from the control by the parent companies of the entire share capital of the subsidiaries (the 'dual basis' method) and, accordingly, had waived reliance on the application solely of the presumption of decisive influence.

51 Further, it is common ground that the reason for that approach was the fact that, when the contested decision was adopted, the Commission had doubts, in the light of the case-law as it stood at that time, as to whether control by a parent company of the entire share capital of its subsidiary could alone bring into play the presumption, even where it had not been rebutted, and whether that control was thereby sufficient to demonstrate the actual exercise of decisive influence by a parent company over its subsidiary.

52 Consequently, first, the Commission was justified in choosing to adopt, in order to determine the liability of the parent companies concerned, one of the methods open to it, in the light of what is stated in paragraph 49 of this judgment, as a legal basis for the assessment of whether such decisive influence existed.

53 Secondly, the General Court was correct to find, in paragraph 155 of the judgment under appeal, that, in choosing that method, the Commission imposed upon itself, in respect of the assessment of whether liability for the cartel at issue could be attributed to the parent companies, a standard of proof of the actual exercise of decisive influence which was more onerous than that which, as a general rule, would have been regarded as sufficient, in the light of the case-law cited in paragraphs 46 and 47 of this judgment.

54 However, in paragraphs 195 to 197 and 218 and 219 of the judgment under appeal, the General Court found that none of the evidence in the contested decision was capable of supporting the presumption that TCLT actually exercised decisive influence over WWTE and that the lack of such evidence had led the Commission, in accordance with its chosen method, not to attribute liability to the parent companies Intabex, Universal and Universal Leaf.

55 On the basis of those findings, the General Court held that the Commission could not hold TCLT to be jointly and severally liable for payment of the fine concerned without discriminating against it as compared with Intabex and as compared with Universal and Universal Leaf.

56 It must be stated that, in its appeal, the Commission does not challenge those findings. Consequently, the Commission does not challenge the fact that it applied the chosen method, namely the 'dual basis' method, to all the parent companies whose subsidiaries took part in the cartel at issue, with the exception of TCLT, in respect of whom the criteria on which that method is based were not met in the contested decision. It follows that the Commission attributed liability to that company solely on the basis of the presumption concerned.

57 However, in paragraphs 156 and 157 of the judgment under appeal, the General Court held that the principle of equal treatment requires that, where the Commission adopts a method such as that in the present case in order to determine whether liability should be attributed to parent companies whose subsidiaries have taken part in the same cartel, the Commission must, save in specific circumstances, rely on the same criteria in the case of all those parent companies.

58 In that regard, in accordance with the Court's settled case-law, when the amount of the fine is determined, there cannot, by the application of different methods of calculation, be any discrimination between the undertakings which have participated in an agreement or a concerted practice contrary to Article 81(1) EC (see, to that effect, Case C-280/98 P *Weig* v *Commission* [2000] ECR I-9757, paragraphs 63 to 68, and Case C-291/98 P *Sarrió* v *Commission* [2000] ECR I-9991, paragraphs 97 to 100).

59 Since the attribution of responsibility to a parent company for an infringement committed by a subsidiary may have, according to the method of calculation adopted by the Commission, a significant effect on the amount of the fine which may be jointly and severally imposed on those companies, the General Court was correct to hold, in paragraph 156 of the judgment under appeal, that the same logic applies where the Commission adopts, in respect of one cartel and within the framework set by the case-law, one specific method for the determination of the responsibility of the parent companies concerned for the infringements of their subsidiaries.

60 As regards the specifics of the present case, it is clear that, contrary to what is claimed by the Commission, the General Court's finding is based not on the similarity of the factual situations of TCLT, on the one hand, and Intabex, Universal and Universal Leaf, on the other, but on the comparability of the situations of those companies in the light both of the standard of proof which the Commission considered had to be required, for the cartel at issue, in order to establish that the parent companies actually exercised decisive influence over their subsidiaries, and of the evidence in the contested decision.

61 It follows that the General Court was correct to find that there was a difference in treatment which led it partially to annul the contested decision.

62 That finding is not called into question by the requirements of the principle of legality, contrary to what is claimed by the Commission.

63 That is because, as observed by the Advocate General in point 64 of her Opinion, since the Commission adopted a method which was consistent with the Court's case-law in relation to decisive influence, no illegality could have been committed by the Commission, and accordingly the principle of legality could not in the present case relieve the Commission of the obligation to respect the principle of equal treatment.

64 Lastly, as regards the alleged failure to state sufficient reasons in the judgment under appeal, it must be recalled that, in accordance with the Court's settled case-law, the duty incumbent upon the General Court under Article 36 and the first paragraph of Article 53 of the Statute of the Court of Justice of the European Union to state reasons for its judgments does not require the General Court to provide an account that follows exhaustively and one by one all the arguments articulated by the parties to the case. The reasoning may therefore be implicit, on condition that it enables the persons concerned to know the grounds on which the judgment under appeal is based and provides the Court of Justice with sufficient material for it to exercise its powers of review on appeal (Case C-480/09 P *AceaElectrabel Produzione* v *Commission* [2010] ECR I-13355, paragraph 77 and case-law cited).

65 In the present case, first, it is clear from paragraph 113 of the judgment under appeal that the General Court set out the arguments submitted by the Commission at first instance. Secondly, it follows from paragraphs 156 and 157 and paragraphs 218 and 219 of that judgment that the General Court implicitly rejected those arguments. That is because it held that, since the Commission had adopted a method consistent with the case-law in relation to decisive influence, no illegality had been committed by the Commission, and accordingly the principle of legality could not in the present case relieve the Commission of the obligation to respect the principle of equal treatment.

66 Further, since those paragraphs of the judgment under appeal enable the persons concerned to know the grounds on which it is based and the Court to have sufficient material to exercise its powers of review within this appeal, that judgment is not vitiated by any failure to state reasons, contrary to what is claimed by the Commission.

67 In those circumstances, the first and second grounds relied on by the Commission in support of its appeal must be rejected.

2. The Commission's third ground of appeal: breach of the right to an adversarial procedure and incorrect interpretation of the duty to state reasons

a) Arguments of the parties

68 The Commission claims that the General Court erred in law by holding, in paragraph 196 of the judgment under appeal, that the Commission was not entitled to rely on the factual differences between the situation of TCLT, on the one hand, and Intabex and Universal, on the other, because they were not mentioned in the contested decision. The Commission considers that it explained those differences in the defence which it submitted to the General Court.

69 The Commission takes the view that the duty to state reasons does not require reasons to be stated for the fact that the measure at issue was not addressed to certain third parties, and therefore considers that it was not obliged to explain, in the contested decision, why it decided not to address that decision to Intabex and Universal or to justify, in that decision, why the treatment of those companies was allegedly different.

70 The Commission states that TCLT neither relied on a breach of the principle of equal treatment during the administrative procedure nor claimed, during that procedure, that its interest in WWTE was purely financial. Accordingly, the Commission claims that the argument of alleged discrimination could be rebutted by it, for the first time, only in the Commission's defence before the General Court.

71 In those circumstances, the approach followed by the General Court prevented the Commission from defending itself against an allegation of discrimination. The Commission considers that it is entitled to rely on any element which it deems necessary for its defence whenever an argument is raised for the first time before the General Court. In particular, according to the case-law, the Commission is not obliged to set out in its decisions all the arguments which it might later use to oppose submissions that its measures are unlawful.

b) Findings of the Court

72 It must be recalled that the statement of reasons required by Article 296 TFEU must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the court having jurisdiction to exercise its power of review (*Elf Aquitaine* v *Commission*, paragraph 147).

73 In the context of individual decisions, according to the Court's settled case-law, the purpose of the obligation to state reasons for an individual decision is both to enable the Court to review the legality of the decision and to provide the person concerned with sufficient information to make it possible to ascertain whether the decision may be vitiated by a defect which may permit its legality to be contested (*Elf Aquitaine* v *Commission*, paragraph 148).

74 The statement of reasons must, therefore, in principle be notified to the person concerned at the same time as the decision adversely affecting him. A failure to state the reasons cannot be remedied by the fact that the person concerned learns the reasons for the decision during the proceedings before the European Union courts (*Elf Aquitaine* v *Commission*, paragraph 149 and case-law cited).

75 In particular, where a decision concerning the application of the competition rules of European Union law affects several addressees and relates to whether liability for the infringement can be attributed, the decision must contain an adequate statement of reasons with respect to each of the addressees, in particularly those of them who, according to that decision, must bear the liability for that infringement. Accordingly, with regard to a parent company held to be responsible for the unlawful conduct of its subsidiary, such a decision must, as a general rule, contain a statement of reasons capable of justifying the attribution of liability for that infringement to the parent company.

76 In the present case, it must be borne in mind that the General Court found that (i) the Commission had decided, as is clear from the contested decision, that it would attribute responsibility to each of the parent companies concerned only if there were sufficient evidence to support, in each individual case, the presumption of actual exercise of decisive influence arising from ownership of the entire share capital of their respective subsidiaries, (ii), as regards TCLT, that decision makes no mention of any evidence in support of that presumption and (iii) the lack of such evidence led the Commission not to attribute responsibility to the parent companies Intabex, Universal and Universal Leaf.

77 Accordingly, by ruling in paragraph 196 of the judgment under appeal that a fact relied on by the Commission for the first time in its defence before the General Court cannot be taken into account, the General Court did not err in law.

78 Moreover, by that application of the relevant case-law, the General Court did not impose on the Commission any obligation to state reasons for the fact that the contested decision was not addressed to certain third parties or to set out every relevant argument that could possibly be used. The General Court did no more, in essence, than find, in paragraph 195 of the judgment under appeal, that the statement of reasons in the contested decision was inadequate in the light of the criteria which the Commission had imposed on itself and, in paragraph 196 of that judgment, that it was not possible for the Commission to remedy such an inadequacy in the proceedings before it.

79 Accordingly, the General Court was correct to rule that the Commission's rights of defence do not extend to the possibility that the Commission may defend the lawfulness of the contested decision against claims of discrimination by producing, during the proceedings, evidence which serves to establish the responsibility of a parent company but which is not mentioned in that decision.

80 It follows that the third ground relied on by the Commission in support of its appeal must be rejected.

3. The Commission's fourth ground of appeal: misapplication of the principle of equal treatment

a) Arguments of the parties

81 The Commission considers that, contrary to what was held by the General Court, the factual situations of Universal and Intabex, on the one hand, and TCLT, on the other, are not identical, so that no breach of the principle of equal treatment could be found.

82 First, the Commission states that, unlike Intabex, TCLT was not a purely financial intermediary company, but the main customer of WWTE. That fact justified both the use of the presumption of actual exercise of decisive influence and the finding that that presumption was not rebutted by TCLT.

83 Secondly, the Commission claims that the reasons which led the General Court to hold that Universal was in the same situation as that of TCLT are not set out in the judgment under appeal. Since the General Court did not respond to the explanations put forward by the Commission to differentiate the situation of TCLT and that of Universal, the judgment under appeal is vitiated by a failure to state sufficient reasons.

b) Findings of the Court

84 It follows from Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice that the General Court has exclusive jurisdiction, first, to find the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and, second, to assess those facts. When the General Court has found or assessed the facts, the Court of Justice has jurisdiction under Article 256 TFEU to review the legal characterisation of those facts by the General Court and the legal conclusions it has drawn from them (Case C-551/03 P *General Motors* v *Commission* [2006] ECR I-3173, paragraph 51, and Case C-352/09 P *ThyssenKrupp Nirosta* v *Commission* [2011] ECR I-2359, paragraph 179).

85 The Court has also stated that the appraisal of the facts by the General Court does not constitute, save where the clear sense of the evidence produced before it is distorted, a question of law which is subject, as such, to review by the Court of Justice (Case C-397/03 P *Archer Daniels Midland and Archer Daniels Midland Ingredients* v *Commission* [2006] ECR I-4429, paragraph 85, and *ThyssenKrupp Nirosta* v *Commission*, paragraph 180).

86 In the present case, it is clear that, by its arguments concerning the fact that the factual situations of Universal and Intabex, on the one hand, and TCLT, on the other, are not the same, the Commission asks the Court to check findings of fact made by the General Court.

87 Further, as stated in paragraph 60 of this judgment, the findings made by the General Court are based not on a comparison of the factual situations of those companies, but on the comparability of their situation with regard to the standard of proof which the Commission considered should be required and the evidence mentioned in the contested decision.

88 Moreover, as observed by the Advocate General in point 134 of her Opinion, the complaint of an alleged failure to state sufficient reasons as regards the comparability of the respective situations of TCLT and Universal is ineffective, since the judgment under appeal sets out to the requisite legal standard the reasons which led the General Court to hold that TCLT and Intabex were in a similar situation. Where the General Court ruled that the Commission had without any justification treated TCLT and Intabex differently, the General Court previously established, to the requisite legal standard, the existence of the unequal treatment which it had identified.

89 In those circumstances, the fourth ground relied on by the Commission in support of its appeal cannot be accepted and, as a result, the Commission's appeal must be dismissed in its entirety.

B – *The appeal by AOI and SCTC*

90 In support of their appeal, AOI and SCTC rely on three grounds, claiming respectively an infringement of Article 81(1) EC and Article 23(2) of Regulation No 1/2003, infringement of Article 48(2) of the Rules of Procedure of the General Court and of the rights of the defence and, lastly, infringement of Article 20 of the Charter of Fundamental Rights of the European Union ('the Charter'), which states the principle of equal treatment. In the event of annulment, AOI and SCTC seek a reduction of the fine imposed on them.

1. The first ground of appeal: infringement of Article 81(1) EC and Article 23(2) of Regulation No 1/2003

91 The first ground contains two parts based on, first, the claim that the parent companies of WWTE were not, during the first period, that is before 5 May 1998, in a position to exercise decisive influence over their subsidiary and, second, the claim that the judgment under appeal deprives AOI and SCTC of some of their fundamental rights.

a) The first part of the first ground of appeal: no decisive influence by SCC and SCTC over WWTE

i) Arguments of the parties

92 First, AOI and SCTC claim that the General Court erred in having found that, during the first period, they were in a position to exercise decisive influence over the conduct of WWTE. During that period, SCC owned, through TCLT, only 66% of WWTE's share capital. However, decisions of the general meeting of WWTE could be adopted only with a majority representing 75% of the share capital.

93 AOI and SCTC consider that, if 'decisive influence' for the purposes of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ 2004 L 24, p. 1) is a negative concept which is therefore demonstrated where a shareholder has a power to block actions, such a concept is inadequate to establish liability under Article 81(1) EC, a provision which implies that liability can be attributed only as a consequence of positive actions carried out by the parent company in respect of its subsidiaries.

94 Further, AOI and SCTC claim that the General Court erred in declaring that, if they in fact exercised decisive influence over the conduct of WWTE, that necessarily implied that they were in a position to exercise such influence. That is because those two criteria, namely the ability to exercise decisive influence, on the one hand, and the actual exercise of such influence, on the other, are independent of each other.

95 AOI and SCTC state that the evidence provided by the Commission demonstrated not that SCC gave instructions to WWTE, but solely that SCC was informed of the practices at issue. However, that information alone was not evidence that SCC exercised or was able to exercise decisive influence over the conduct of WWTE.

96 AOI and SCTC consider that, in the absence of a finding that TCLT was jointly and severally liable, the indirect and negative control exercised over WWTE by SCC was not sufficient ground to attribute to SCC liability for the conduct of WWTE.

97 Secondly, AOI and SCTC claim that the General Court wrongly applied the concept of a single undertaking. In their opinion, if economic, organisational and legal links formed WWTE, SCC and the minority shareholder into a unit, the single undertaking ought to include all those parties. Since SCC was not able, during the first period, to exercise by itself decisive influence over WWTE, WWTE and SCC alone could not be deemed to be a single economic unit.

98 AOI and SCTC state that the Commission made no mention of the influence which the minority shareholder was or was not able to exercise and that the General Court did not determine whether that minority shareholder was in a position to influence WWTE. Accordingly, there was no reason to attribute responsibility for the conduct of WWTE solely to SCC.

99 The Commission contends that the first part of the first ground should be rejected. In particular, the Commission argues that the argument put forward by AOI and SCTC that, in cases of joint control, liability for the subsidiary's infringement must be attributed to both shareholders who jointly exercise that control was not made at first instance and, consequently, the Commission considers that that argument is inadmissible.

ii) Findings of the Court

100 First, the Commission's claim of inadmissibility in respect of the argument made by AOI and SCTC concerning the erroneous application of the concept of a single undertaking must be rejected, since that argument can be regarded as a development of the argument previously presented before the General Court and narrated in paragraphs 56 and 57 of the judgment under appeal.

101 As regards the substance, the Court has previously ruled that the exercise of joint control, by two parent companies who are independent of each other, of their subsidiary does not, in principle, preclude a finding by the Commission of the existence of an economic unit comprising one of those parent companies and the subsidiary concerned, and that this applies even if the proportion of the subsidiary's share capital owned by that parent company is smaller than that owned by the other parent company (see, to that effect, *AceaElectrabel Produzione* v *Commission*, paragraph 64). That

being the case, a fortiori a parent company and its subsidiary, which is itself a parent company of the company which has committed an infringement, can both be deemed to be members of an economic unit which includes the latter company.

102 Moreover, as stated in paragraphs 42 to 44 of this judgment, the Commission may address a decision imposing fines to the parent company of a subsidiary which has participated in an infringement of Article 81 EC without being required to establish that parent company's personal involvement in the infringement, provided that the parent company in fact exercises decisive influence over the commercial policy of that subsidiary.

103 It follows that the mere fact that SCC and SCTC exercised, during the period at issue, only joint control over WWTE does not preclude a finding that those companies formed an economic unit, provided that it is established that SCC and SCTC in fact exercised decisive influence over the commercial policy of WWTE.

104 In that regard, it must be recalled that the General Court examined in detail, in paragraphs 172 to 193 of the judgment under appeal, the evidence relied on by the Commission before concluding, in paragraph 194 of that judgment, that that evidence established to the requisite legal standard that such decisive influence was in fact exercised.

105 Having regard, in particular, to the factors examined in paragraphs 182 to 186 of the judgment under appeal, which concern the influence exercised by SCTC over WWTE, the considerations mentioned in paragraphs 172 to 194 of the judgment under appeal are not vitiated by any error of law and, further, could constitute a valid basis, contrary to what is claimed by AOI and SCTC, for the General Court's finding that such decisive influence was in fact exercised.

106 In the light of the foregoing, the first part of the first ground of appeal put forward by AOI and SCTC must be rejected.

b) The second part of the first ground of appeal: breach of fundamental rights

i) Arguments of the parties

107 AOI and SCTC consider that the judgment under appeal is in breach of some of their fundamental rights, namely the right to the presumption of innocence and the principles of legality and individual liability for criminal offences and penalties in Articles 48 and 49 of the Charter. In their opinion, the entry into force of the Charter has a direct impact on this case, since those principles now have the same value as primary law.

108 AOI and SCTC maintain that, in accordance with those fundamental rights, a presumption of guilt is in principle forbidden and should be permitted only in exceptional circumstances. However, the General Court applied the presumption of the actual exercise of decisive influence arising from 100% ownership of the shares of a subsidiary although there were, in this case, no exceptional circumstances. Further, the fines imposed on them were substantial and not minimal.

109 The Commission considers that the second part of the first ground put forward in support of the appeal is inadmissible, and argues, inter alia, that it is based on new arguments.

ii) Findings of the Court

110 As correctly stated by the Commission, AOI and SCTC did not raise in their application at first instance the arguments relied on in the second part of their first ground of appeal.

111 In accordance with settled case-law, to allow a party to put forward for the first time before the Court of Justice a plea in law which it has not raised before the General Court would in effect allow that party to bring before the Court a wider case than that heard by the General Court. In an appeal, the Court's jurisdiction is, as a general rule, confined to a review of the assessment by the General Court of the pleas argued before it (*AceaElectrabel Produzione* v *Commission*, paragraph 113 and case-law cited).

112 Consequently, the second part of the first ground of appeal must be rejected as being inadmissible.

113 In any event, the argument summarised in paragraph 108 of this judgment is wholly unfounded, in the light of the case-law cited in paragraphs 46 and 47 of this judgment.

114 The first ground of appeal must therefore be dismissed in its entirety.

2. The second ground of appeal raised by AOI and SCTC: infringement of the rights of the defence and Article 48(2) of the Rules of Procedure of the General Court

a) Arguments of the parties

115 First, AOI and SCTC claim that the General Court infringed the rights of the defence by adopting as its own, contrary to Article 48(2) of its Rules of Procedure, a new argument submitted by the Commission in its reply to a written question of the General Court.

116 In that reply, the appellants claim that the Commission backtracked on its earlier statements that Universal and Universal Leaf had succeeded, during the administrative procedure, in rebutting the presumption of the actual exercise of decisive influence arising from 100% ownership of the shares of Deltafina and asserted, for the first time, that it had chosen not to rely exclusively on that presumption, but to establish responsibility on a dual basis, by also taking into account additional evidence which it claimed was lacking as regards the parent companies Universal and Universal Leaf. AOI and SCTC had no opportunity, in their written pleadings, to respond to that argument claiming such a dual basis.

117 Secondly, AOI and SCTC state that the Commission is obliged, in accordance with settled case-law, to follow the reasoning to be found in the contested decision and cannot justify that decision *a posteriori* before the European Union courts. That requirement applies a fortiori to the General Court.

118 AOI and SCTC state that recitals 371 to 373 of the contested decision contain no reference to the dual basis test adopted by the General Court. The way in which the General Court therefore determined the method allegedly applied by the Commission was by inferring it, *a posteriori*, from the context of that decision. The reasons which might have led the Commission to express itself ambiguously in that decision do not permit, in any event, the General Court to remedy the flaws in the Commission's reasoning or to engage in *a posteriori* reasoning.

119 The Commission considers that the second ground of appeal is inadmissible, because an argument based on a procedural irregularity before the General Court is admissible on appeal only if that irregularity harmed the interests of the appellant. AOI and SCTC have not established that their interests have been harmed. Further, the Commission maintains that this ground of appeal is ineffective.

b) Findings of the Court

120 First of all, the argument whereby the Commission claims that this ground is inadmissible must be rejected. As stated by the Advocate General in points 187 and 188 of her Opinion, the arguments relied on by AOI and SCTC are based on an infringement of the rights of the defence. Such an infringement, were it to be established, is capable of having the consequence that the judgment under appeal should be set aside.

121 However, as regards the substance, it must be stated at the outset that, contrary to what is claimed by AOI and SCTC, the General Court based its findings not on a new argument submitted by the Commission in the course of the proceedings, but on its own interpretation of the contested decision, considered as a whole, as is clear from paragraph 141 et seq. of the judgment under appeal. In particular, it is clear from paragraph 147 of that judgment that the statements made by the Commission in the course of the proceedings were taken into account by the General Court only to confirm its own interpretation of that decision.

122 Consequently, the argument relied on by AOI and SCTC that the General Court did not examine the reasoning to be found in the contested decision, but adopted as its own a new argument submitted by the Commission in the course of the proceedings must be rejected.

123 Further, the argument of AOI and SCTC claiming an infringement of Article 48(2) of the Rules of Procedure of the General Court is, as correctly stated by the Commission, ineffective. In any event, contrary to what is claimed by them, that provision cannot be interpreted as being intended to restrict the discretion of the General Court in such a way that the General Court would be prevented from adopting a given interpretation of a decision on the ground that the same interpretation was proposed at a late stage by one of the parties to the proceedings. Moreover, AOI and SCTC had the opportunity, at the hearing at first instance, to express a view on the Commission's statements.

124 It follows that the second ground relied on in support of the appeal must be rejected.

3. The third ground of appeal of AOI and SCTC: breach of the principle of equal treatment

a) Arguments of the parties

125 In the first place, AOI and SCTC claim that the dual basis test, adopted by the General Court in order to establish actual exercise of decisive influence and thereby to attribute to parent companies responsibility for the conduct of their 100% owned subsidiaries, contains three errors of law.

126 First, that method gives rise to discrimination between companies according to the strength of their case on appeal. By adopting a method which, as a precaution, screens cases of rebuttal of the presumption concerned according to the availability of additional evidence, the Commission acted speculatively and in such a way as to discriminate against companies affected by the contested decision as compared with those companies not affected by it.

127 Secondly, AOI and SCTC consider that the General Court erred in law by holding that the Commission had raised the standard of proof required, since the General Court did not state that the Commission had made the application of the presumption concerned subject to additional indicia. The Commission could therefore have applied that presumption without resorting to another basis to establish the actual exercise of decisive influence.

128 Thirdly, AOI and SCTC observe that, in recital 376 of the contested decision, the Commission excluded Universal and Universal Leaf from liability, because there was no indication in the file of any material involvement by those companies in the infringement. However, since the Commission never

asserted that SCC or SCTC had been materially involved in the infringement committed by WWTE but none the less attributed liability to them, the Commission applied to them different criteria and, consequently, was in breach of the principle of equal treatment.

129 In the second place, AOI and SCTC claim an infringement of principle of equal treatment in the application of the method for attributing liability for the infringement.

130 First, the General Court failed to examine whether a single economic unit existed between Deltafina, Universal and Universal Leaf. Consequently, according to AOI and SCTC, the General Court could not determine whether they were discriminated against by comparison with Deltafina, Universal and Universal Leaf. Further, it was clear from the file that Universal had informed the Commission that it supported the decision to cooperate of Taes, which is its subsidiary, and that two subsidiaries took part in the practices, which could indicate the exercise of decisive influence over those subsidiaries.

131 Second, AOI and SCTC maintain that the situation of SCC and SCTC was absolutely analogous to that of Universal and Universal Leaf, since all those companies were 100% owners of the shares of their respective subsidiaries. Since the General Court partially annulled the contested decision in so far as it concerned TCLT, it ought also to have annulled the attribution of liability to SCC and SCTC in order to ensure that there was no discrimination by comparison with Universal and Universal Leaf.

b) Findings of the Court

132 First, as regards the dual basis test adopted, according to the findings of the General Court, by the Commission in order to determine the liability of parent companies whose subsidiaries took part in the cartel which was the subject of the contested decision, it must be recalled that the General Court inferred that approach to be that of the Commission from a detailed analysis of that decision and that that analysis is not vitiated by any error of law, as stated in paragraph 121 of this judgment.

133 In particular, the General Court was correct to interpret the decision in such a way as to refute the reading of recital 376 of the contested decision proposed by AOI and SCTC, that it was because of the absence of factors indicating the material involvement of Universal Leaf and Universal in the infringement that the Commission did not attribute liability to those companies, since such a reading was inconsistent with a reading of that decision as a whole, and in particular with recitals 18, 376, 384, 391, 392, 397, 399 and 400 thereof, examined indeed by the General Court in paragraph 133 et seq. of the judgment under appeal.

134 Further, it has been stated in paragraphs 51 to 53 of this judgment that, in light of the doubts entertained by the Commission as to the legality of a decision based solely on the unrebutted presumption of decisive influence, the General Court could hold that, in the present case, it was open to the Commission to impose on itself a more onerous standard of proof than would, as a general rule, have been considered to be sufficient, having regard to the case-law cited in paragraphs 46 and 47 of this judgment.

135 It should be made clear that the dual basis test used by the General Court is an objective test, since it does no more than require that there is evidence to support the presumption of the exercise of decisive influence by the parent company concerned over its subsidiary arising from its ownership of the subsidiary's entire share capital. Accordingly, contrary to what is claimed by AOI and SCTC, that test is not based on the strength of the respective arguments presented by the companies affected by the contested decision.

136 Secondly, as regards the application in the present case of the dual basis test, it must be observed that the argument of AOI and SCTC consists, in essence, of the claim that the General Court ought to have determined whether Deltafina, Universal and Universal Leaf formed an economic unit and that, if that

had been found to be the case, the General Court ought to have annulled the contested decision in so far as it concerns SCC and SCTC, because they were discriminated against by comparison with Universal and Universal Leaf.

137 Suffice it to observe, in that regard, that the General Court correctly stated, in paragraphs 141 to 147 of the judgment under appeal, that the Commission applied the same legal test to all the parent companies and that, except in the case of TCLT, the Commission attributed or did not attribute liability to those companies according to whether there was evidence to support the presumption of exercise of decisive influence by those parent companies arising from their ownership of the entire share capital of their respective subsidiaries.

138 In those circumstance, since no infringement of the principle of equal treatment has been established by AOI and SCTC, the third ground relied on in support of their appeal must be rejected.

4. The requested reduction of the fine

139 AOI and SCTC consider that, if the contested decision is annulled, the fine imposed on AOI and SCTC should be reduced.

140 Given that, in the light of all the foregoing, the contested decision should not be annulled, the request for a reduction of the fine imposed on AOI and SCTC, which, it should be added, was not submitted before the General Court, must in any event be rejected.

141 Since none of the grounds relied on by AOI and SCTC in support of their appeal can be accepted, the appeal must be dismissed.

V – Costs

142 Under Article 69(2) of the Rules of Procedure of the Court of Justice, which applies to appeal proceedings by virtue of Article 118 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

143 Since AOI and SCTC have been unsuccessful with their appeal in Case C-628/10 P, they must be ordered to pay the costs of that appeal, in accordance with the form of order sought by the Commission.

144 Since the Commission has been unsuccessful with its appeal in Case C-14/11 P, it must be ordered to pay the costs of that appeal, in accordance with the form of order sought by AOI and SCTC.

On those grounds, the Court (Grand Chamber) hereby:

1. **Dismisses the appeals;**

2. **Orders Alliance One International Inc. and Standard Commercial Tobacco Co. Inc. to bear their own costs and to pay those incurred by the European Commission in relation to the appeal in Case C-628/10 P;**

3. **Orders the European Commission to bear its own costs and to pay those incurred by Alliance One International Inc., Standard Commercial Tobacco Co. Inc. and Trans-Continental Leaf Tobacco Corp. Ltd in relation to the appeal in Case C-14/11 P.**

[Signatures]