Reports of Cases

JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

15 July 2015*

(Competition — Agreements, decisions and concerted practices — European market for prestressing steel — Price-fixing, market-sharing and exchange of commercially sensitive information — Decision finding an infringement of Article 101 TFEU — Single and continuous infringement — Proportionality — Principle that the penalty must fit the offence — Unlimited jurisdiction)

In Case T-422/10,

Trafilerie Meridionali SpA, formerly Emme Holding SpA, established in Pescara (Italy), represented by G. Visconti, E. Vassallo di Castiglione, M. Siragusa, M. Beretta and P. Ferrari, lawyers,

applicant,

v

European Commission, represented initially by B. Gencarelli and V. Bottka, subsequently by V. Bottka and R. Striani and last by V. Bottka and G. Conte, acting as Agents, and by P. Manzini, lawyer,

defendant,

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

THE GENERAL COURT (Sixth Chamber),

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

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 2 July 2014,

gives the following

* Language of the case: Italian.

Judgment [1] …

Procedure and forms of order sought

42 By application lodged at the Court Registry on 15 September 2010, Trame brought an action.

43 By separate document lodged at the Court Registry on 6 October 2010, Trame submitted an application for suspension of operation of the decision.

44 By decision of 29 October 2010, the Court (First Chamber) informed the applicant that it could amend its pleadings and the form of order sought to take account of the amendments made by the first amending decision.

45 Trame submitted its observations on the first amending decision in its reply, lodged on 19 April 2011.

46 By decision of 6 June 2011, the Court asked the Commission to supply it with certain documents.

47 On 22 June 2011, the Commission notified the second amending decision to Trame.

48 On 12 July 2011, the President of the General Court dismissed the application for interim measures for lack of urgency (order of 12 July 2011 in *Emme* v *Commission*, T-422/10 R, EU:T:2011:349).

49 Trame submitted its observations on the second amending decision on 1 August 2011.

50 On 20 October 2011, the Commission lodged the original of its rejoinder in the language of the case, and also its comments on the observations submitted by Trame on the second amending decision, and the written procedure was therefore closed.

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

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

53 On 17 December 2013, in the context of the measures of organisation of procedure provided for in Article 64 of the Rules of Procedure of 2 May 1991, the Court asked the parties to answer to a series of questions and asked the Commission to produce certain documents.

54 On 28 February 2014, Trame and the Commission submitted their replies to those requests. In its reply, Trame stated that on 18 November 2013 it had submitted a new request to the Commission, asking that its inability to pay owing to the company's economic and financial situation on that date be taken into account.

55 On 16 May 2014, in the context of measures of inquiry adopted pursuant to Article 65 of its Rules of Procedure of 2 May 1991, the Court asked the Commission to produce the documents which it had refused to produce in answer to the measures of organisation of procedure adopted on 17 December 2013.

56 On 28 May 2014, the Commission produced the requested documents, to which Trame was given access before the hearing.

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

57 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 2 July 2014.

58 Trame claims that the Court should:

— annul the contested decision in that it imposes a fine on the applicant, or reduce the amount of the fine imposed on it;

— order, on the basis of Article 68 of the Rules of Procedure of 2 May 1991, that a representative of Tréfileurope Italia at the time of the cartel be summoned and examined, in order to confirm certain facts set out in paragraph 98 of the application;

— order the Commission to pay the costs.

59 The Commission contends that the Court should:

— reject all of the applicant's claims;

— order the applicant to pay the costs.

Law

60 In support of its action, Trame puts forward five pleas relating to its participation in the cartel and the impact which that may have had on the determination of the amount of the fine: the first concerns the single infringement, the second the exclusion of three-wire strand from the cartel in which it participated, the third the period of its participation in the infringement, the fourth its marginal role and the absence of effects of the cartel on the market and the fifth the intentional element of the infringement. Following the second amending decision, Trame amended its pleas and also claimed breach of the principles of proportionality and equal treatment in the determination of the amount of the fine, owing to the treatment afforded to ArcelorMittal and Ori Martin by comparison with the applicant's treatment. Trame also claims, in a sixth plea, that it is unable to pay the fine.

A – *Preliminary observations*

1. *Content of the contested decision*

61 It is apparent from Article 1 of the contested decision that Trame infringed Article 101 TFEU and, from 1 January 1994, Article 53 of the EEA Agreement by participating, for the periods indicated in the contested decision, in a 'continuing agreement and/or a concerted practice in the prestressing steel sector in the internal market and, as of 1 January 1994, within the EEA' ('the cartel' or 'the single infringement', the latter also being complex and continuous according to the terminology normally used).

a) Components of the cartel and characterisation of the single infringement

62 In recital 122 to the contested decision, the cartel is described as 'a pan-European arrangement, consisting of a Zurich and a European phase, and/or, as the case may be, in national/regional arrangements'. Recitals 123 to 135 to the contested decision set out briefly those various agreements

and concerted practices, which are subsequently described in detail and assessed under Article 101 TFEU and Article 53 of the EEA Agreement. Put simply, the cartel is made up of the following arrangements:

— the Zurich Club, or the first phase of the pan-European agreement. That agreement lasted from 1 January 1984 until 9 January 1996 and concerned quota-fixing by country (Germany, Austria, Benelux, France, Italy and Spain), customer-sharing, prices and the exchange of commercially sensitive information. Its members were Tréfileurope, Nedri, WDI, DWK and Redaelli, the latter representing several Italian undertakings at least from 1993 and 1995, subsequently joined by Emesa in 1992 and Tycsa in 1993;

— Club Italia, a national arrangement that lasted from 5 December 1995 to 19 September 2002. That agreement concerned the fixing of quotas for Italy and also exports from Italy 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), SLM (on 10 February 1997), Trame (on 4 March 1997), Tycsa (on 17 December 1996), DWK (on 24 February 1997) and Austria Draht (on 15 April 1997);

— the Southern Agreement, 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 to undertake to negotiate quotas jointly with the other Northern European producers;

— Club Europe, or the second phase of the pan-European agreement. That agreement was concluded in May 1997 by Tréfileurope, Nedri, WDI, DWK, Tycsa and Emesa (known as ‘the permanent members’ or ‘the six producers’) and ended in September 2002. The agreement was intended to overcome the crisis in the Zurich Club, to share new quotas (calculated over the period from the fourth quarter of 1995 to the first quarter of 1997), to share customers and fix prices. The six producers agreed on coordination rules, including the appointment of coordinators responsible for the implementation of the arrangements in several countries and for coordination with other interested companies active in the countries concerned or in respect of the same customers. Their representatives regularly met 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;

— coordination in respect of the customer Addtek. In the context of that pan-European arrangement, the six producers, joined occasionally by the Italian producers and Fundia, also maintained bilateral (or multilateral) contacts and participated in price-fixing and customer-sharing on an ad hoc basis, if it was in their interest to do so. For example, Tréfileurope, Nedri, WDI, Tycsa, Emesa, CB and Fundia coordinated together on prices and volumes for the customer Addtek. Those projects related mainly to Finland, Sweden and Norway, but also the Netherlands, Germany, the Baltic States and Central and Eastern Europe. The coordination in respect of Addtek already took place during the Zurich Club phase of the pan-European arrangement and continued at least until the end of 2001;

— discussions between Club Europe and Club Italia. During the period between at least September 2000 and September 2002, the six producers, and also ITC, CB, Redaelli, Itas and SLM met regularly with the aim of integrating the Italian companies into Club Europe as permanent members. The Italian undertakings wished to increase the Italian quota in Europe, while Club European maintained the status quo. To that end, meetings were held within Club Italia in order to define a uniform position, meetings were held within Club Europe in order to examine that position and define its own position, and meetings were held between participants in Club Europe and Italian representatives in order to agree on the allocation of the Italian quota on a specific

market. The undertakings involved exchanged commercially sensitive information. For the purposes of redistributing the European quota with the aim of including the Italian producers, those undertakings agreed to use a new reference period (from 30 June 2000 to 30 June 2001). Those undertakings also reached an understanding on the overall volume of exports to Europe by the Italian undertakings, which the Italian undertakings shared among themselves for each country. At the same time, they discussed prices, as the members of Club Europe sought to adopt, on a European scale, the price-fixing mechanism applied within Club Italia;

— Club España. Alongside the pan-European arrangement and Club Italia, five Spanish undertakings (Trefilerías Quijano, Tycsa, Emesa, Galycas and Proderac, the latter from May 1994) and two Portuguese undertakings (Socitrel, from April 1994, and Fapricela, from December 1998) agreed, for Spain and Portugal, and for a period from at least December 1992 until September 2002, to keep their market shares stable and to fix quotas, to allocate customers, including for public works contracts, and to fix prices and payment conditions. In addition, they exchanged commercially sensitive information.

63 In the Commission's view, all of the arrangements described in paragraph 62 above present the characteristics of a single infringement of Article 101 TFEU and Article 53 of the EEA Agreement (contested decision, recitals 135 and 609 and section 12.2.2).

64 In particular, the Commission considered that the abovementioned arrangements were part of an overall scheme which laid down the lines of action of the cartel members in all the geographic areas and that '[those undertakings] restricted their individual commercial conduct in order to pursue an identical anti-competitive object and a single identical anti-competitive economic aim, namely to distort or eliminate normal competitive conditions for PS in the EEA and to establish an overall equilibrium, notably by fixing quotas and prices, allocating customers and exchanging sensitive commercial information' (contested decision, recital 610 and section 9.3).

65 The Commission stated in that regard:

'The plan, which was subscribed to by DWK, WDI, Tréfileurope, Nedri, Tycsa, Emesa, Fundia, Austria Draht, Redaelli, CB, ITC, Itas, SLM, Trame, Proderac, Fapricela, Socitrel, Galycas and Trefilerías Quijano (not all at the same time), was developed and implemented over a period that lasted at least 18 years, through a complex of collusive arrangements, specific agreements and/or concerted practices, pursuing the same common purpose of restricting competition between them and using similar mechanisms to pursue this common purpose (see section 9.3.1). Even at times when an arrangement did not work smoothly, other arrangements continued to function normally' (contested decision, recital 612).

66 In the course of its reasoning, the Commission emphasised:

— 'The Zurich Club and Club Europe phases of the pan-European arrangement are part of one single infringement, which was not interrupted by the crisis period from 9 January 1996 to 12 May 1997. … Also, like in [the Zurich Club], Club Europe participants continued to fix quotas, allocate clients and fix prices. Their … discussions and agreement concerned the same territory as in the Zurich Club, but expanded with several additional countries. …' (recital 613)

— 'The organisation of the cartel itself (and in particular the coordination system …) and its practical operation … show that the pan-European, Iberian and Italian arrangements constitute a single infringement. The major decisions, such as the fixing of the European quotas covering a reference area, which evolved over time …, based on sales volumes for a reference period … which was updated …, were taken at management level during multilateral meetings between the six Club Europe producers … The management also dealt with the allocation of certain (reference) clients (for example Betonson and Addtek, …) or the fixing of minimum prices for certain countries and

certain reference clients. Some permanent members of the pan-European arrangement were entrusted, at the salespersons' level, firstly with monitoring the implementation of the agreements achieved at European level in one or more countries, in particular on price and client coordination (including in Italy, Spain and Portugal, which are part of the reference area and the home countries of the Club Italia and Club España participants) and secondly to maintain contacts with the other interested producers operating in the respective geographical areas (including those of the Club Italia and Club España arrangements and for example Fundia as regards the coordination concerning the client Addtek).' (recital 614)

— 'Also the practical operation of the cartel shows that the pan-European and national arrangements constitute one single infringement: the Italian and Iberian arrangements were from the outset closely intertwined with the pan- European arrangement. The Club Italia quota system served as a model in setting up the Zurich Club quota system, and during the Club Zurich phase and the crisis period, Club Zurich and Club Italia participants negotiated and agreed together on quota arrangements, prices and client allocation both regarding Italy and other European markets of the reference area. Although the Italian producers were no longer permanent members in Club Europe, the coordination between the two Clubs continued to be ensured through Tréfileurope, the coordinator for Italy who was attending almost all Club Italia and Club Europe discussions and could as such also influence the negotiations and discussions in one Club, allowing all participants to take into account the plans and agreements reached in the other Club. The same is true for DWK, Tycsa and later on Nedri, pan-European producers who were also regularly attending Club Italia meetings and meeting Italian producers bilaterally. Similarly Club Zurich/Europe and Club España producers negotiated and agreed together on quotas, prices and client allocation, both within the Clubs and bilaterally. Tycsa (coordinator for Spain and Portugal) and Emesa, which were participating in both Clubs, could again influence the negotiations in one Club taking into account the aspirations and agreements reached in the other Club. Discussions in all three Clubs also regularly concerned negotiations, agreements or decisions taken in the other Clubs. From 11 September 2000 onwards, negotiations between the main PS producers moreover intensified in an effort to expand the Club Europe quota system to all important PS producers. …' (recital 615)

— For those reasons, the Commission considers that the measures agreed and taken at national or regional levels (Iberian, Italian and/or Southern) are therefore one coherent set of measures together with the arrangements at the pan-European level. From the facts described in Chapter IV, on the description of the facts, it is clear that all participants in the anti-competitive arrangements adhered and contributed, to varying degrees (that is to say, depending whether they were active in one or more of the arrangements) to a common anti-competitive plan. (recital 616)

67 As regards, more particularly, the continuity of participation in the infringement, the Commission made the following two observations:

— '[a]ll addressees of [the contested decision] participated in the cartel which lasted over 18 years and several of them simultaneously participated at different levels of this cartel. The fact that an undertaking concerned did not participate directly in all the constituent elements of the overall cartel cannot relieve it from the responsibility for the infringement of Article 101 [TFEU] and/or Article 53 of the EEA Agreement. In the present case, the fact that certain companies did not participate in all of the pan-European or national meetings in no way detracts from the assessment of their participation in the cartel, since all were in a position to be informed and take account and advantage of the information exchanged with their competitors when determining their commercial conduct on the market. As described above, for most participants the overall scheme was subscribed to and implemented over a period of several years employing similar mechanisms and pursuing the same common purpose to restrict competition. [Thus], … all addressees were also

aware of their participation in an overall scheme with different levels, even though for some this awareness could only be established at a rather late stage in the infringement.' (contested decision, recital 622)

— '[h]owever, the intensity of each undertaking's participation in the cartel is not identical, taking into account the duration of their individual participation in the cartel …, their geographic presence (production and sales area) and their respective size (big or small players). All these elements are taken into account in Chapter VIII [of the contested decision, on the elements taken into account in determining the amount of the fines] below.' (contested decision, recital 623)

b) Factors taken into account concerning Trame

68 Trame's participation in the cartel referred to in Article 1 of the contested decision (see paragraph 61 above) was found to have lasted over the period between 4 March 1997 and 19 September 2002.

69 The main factors on which that participation was established were as follows.

Club Italia (from 4 March 1997 until 19 September 2002)

70 The Commission considered that Trame had participated in Club Italia from 4 March 1997 until 19 September 2002 (contested decision, recitals 124, 385 et seq., and also 467 to 473 in section 9.2.1.8, 'Individual participation in Club Italia').

71 In particular, it is apparent from the contested decision that:

— Trame's participation in the cartel is confirmed by ample inspection documents and by statements from at least three participants in the cartel (SLM, Redaelli and Tréfileurope) (contested decision, recital 467);

— even if Trame did not join the Italian market-sharing from the start, the participants in the meeting of 18 December 1995 (Redaelli, Itas, CB and ITC) decided to inform amongst others Trame of the conclusions reached concerning the new prices to be applied in 1996. Likewise, at the meeting of 17 December 1996, a table was circulated indicating the allocation of tons per client and the appointment of lead suppliers for a number of clients on the Italian market for 1997. Although the columns relating to Trame were left blank, the fact that Trame was already considered in the table is an indication that discussions between the parties must have taken place or were at least envisaged (contested decision, recital 467);

— the first indication of direct contact between Club Italia and Trame is a document relating to the meeting of 4 March 1997. That document contains handwritten notes of the meeting showing that '[Trame] informed the members of Club Italia of [its] wish to join the Italian arrangement' ('Trame wants to participate — comes next time') (contested decision, recital 467);

— Trame participated in the Club Italia meeting of 10 March 1997 (contested decision, recital 467);

— during the administrative procedure, Trame acknowledged having participated in Club Italia meetings, first of all on six occasions, on 5 October 1998, 9 November 1998, 18 January 1999, 8 February 1999, 22 February 1999 and 15 March 1999 (it is stated in a footnote, however, that Trame denied that it had concluded any cartel arrangement and stated that it had limited itself to participating in meetings with the aim of receiving information), then between 28 February 2000 and 19 June 2000 (it is stated in a footnote that Trame admitted in particular that it had

participated in the meetings of 28 February 2000, 6 March 2000, 13 March 2000, 21 March 2000, 15 May 2000, 12 June 2000 and 19 June 2000) and, last, in the meetings of 10 April 2001 and 16 September 2002 (contested decision, recital 468);

— Trame's participation in Club Italia was never interrupted between 4 March 1997 and 19 September 2002. As regards the Club Italia meetings held between 15 March 1999 and 28 February 2000, although Trame was absent from those meetings, the other cartel participants continued to be informed about Trame's data and its case continued to be discussed. Its absence was explicitly noted at the meetings of 12 July 1999 and 17 January 2000, which implies that its presence was expected, and there is no proof that Trame distanced itself from the cartel at any time. As regards the meetings held after June 2000, Trame continued to participate in the cartel, not only in the meetings of 10 April 2001 and 16 September 2002, which it admits having attended, but also in the meetings of 9 October 2000 and 30 July 2002, and its case continued to be discussed until the end of the infringement (contested decision, recitals 469 and 470).

72 In short, the Commission found that Trame had participated directly in 18 Club Italia meetings, that it had been explicitly declared absent from four meetings of that Club, which implied that was expected to attend, and that its case was permanently discussed within that Club (contested decision, footnote accompanying recital 468).

Club Europe and the pan-European scheme (from 15 May 2000 until 19 September 2002)

73 In order to establish the single and continuous nature of the infringement imputed to Trame, and in particular Trame's 'individual awareness of participation in a larger scheme' (see the title of section 12.2.2.4 of the contested decision), the Commission stated the following:

'(651)
Trame in its reply to the [statement of objections] did not raise any questions regarding its awareness of other arrangements. In any event, the Commission has evidence that Trame was aware or should reasonably have been aware of the different levels of the cartel. For example at the meeting of 15 May 2000 in which Trame participated, Tréfileurope stated that Club Europe and Club Italia were both in crisis … Also, on 12 June 2000, Trame attended a meeting with Redaelli, ITC, Itas, Tréfileurope Italia, CB, SLM, Tycsa and DWK, at which it was mentioned that Club Europe was complaining about Tycsa, which was also a Club España member. The names of other Club España members such as Socitrel and Fapricela were also mentioned in this meeting … Moreover, on 9 October 2000, Trame attended a meeting at which the participants in Club Europe and in Club Italia started to look for a joint solution for the increasing exports by the Italian producers to Europe. In particular, at this meeting the European market was analysed and the percentages of interpenetration were discussed between the six producers (except Emesa) and the Italian producers … Therefore, the Commission concludes that at least of 15 May 2000 Trame was aware or should reasonably have been aware that tit was part of a larger pan-European scheme with several levels [the objective of which was to stabilise the PS market in order to avoid falling prices]. In any case, Trame during the entire period of the infringement did not sell outside Italy. …'

74 Thus, in parallel with Trame's participation in Club Italia from 4 March 1997 until 19 September 2002, the Commission also considered that, as of 15 May 2000, Trame 'was aware or should reasonably have been aware of the different levels of the cartel', and especially of Club Europe.

c) Calculation of the amount of the fine to be imposed on Trame

75 By way of preliminary observation, the Commission stated that in fixing the amount of the fine it must, pursuant to Article 23(3) of Regulation No 1/2003, have regard to all the relevant circumstances and particularly to both the gravity and the duration of the infringement. The Commission also made clear that for that purpose it referred to the principles laid down in the 2006 Guidelines (contested decision, recital 920).

76 The fine of EUR 3.249 million imposed on Trame was calculated as follows.

77 First, Trame was held liable for an overall cartel on the PS market within the EEA. Accordingly, in order to determine the basic amount of the fine, the Commission stated that, in accordance with point 13 of the 2006 Guidelines, it had taken into consideration the 'value of the undertaking's sales of the goods or services to which the infringement relates in the relevant geographic area within the EEA' during the last full year of its participation in the infringement (contested decision, recital 929 et seq.).

78 In Trame's case, the value of sales taken into account was EUR 8 231 277 (first amending decision, point 5). This represented the value of PS sales in the geographic area concerned by the infringement, namely, for the period of the infringement in which Trame was found to have been involved: Germany, France, Italy, the Netherlands, Belgium, Luxembourg, Spain, Austria, Portugal, Denmark, Sweden, Finland and Norway (contested decision, recitals 931 and 932). In the present case, however, only Trame's sales in Italy were taken into account, since Trame did not make any sales outside Italy during that period (contested decision, recital 651).

79 Second, the percentage to be applied to the value of sales as thus calculated depends on the gravity of the infringement as such. In that regard, the Commission took into account, among the relevant circumstances of the case, the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and whether or not the infringement had been implemented (contested decision, recital 936 et seq.).

80 As regards the nature of the infringement, the Commission observed that the cartel as a whole involved market-sharing, customer-allocation and horizontal price-fixing (contested decision, recital 939).

81 The Commission also took into account the fact that the undertakings involved in the infringement had a combined market share of around 80% (contested decision, recital 946) and that the infringement extended to a significant part of the EEA. As regards Socitrel, Proderac, Fapricela and Fundia, undertakings which in the case of the first three participated only in Club España (covering Spain and Portugal) or, in Fundia's case, only in the coordination concerning Addtek, and whose awareness of the single infringement could be established only at a very late stage (17 May 2001 for Socitrel, Proderac and Fapricela and 14 May 2001 for Fundia), the Commission took account of the more limited geographic scope when determining the proportion of the value of sales to be taken into consideration when it assessed the degree of gravity of the infringement. The Commission considered that the situation was different for the other participants in Club España (Emesa/Galycas, Tycsa/Trefilerías Quijano), which participated simultaneously in different levels of the cartel or whose awareness of the single infringement could be established at a much earlier stage. Likewise, for the participants in Club Italia, the situation was different from that of Socitrel, Proderac and Fapricela, since the geographic scope of Club Italia overlapped significantly with that of the pan-European agreements and significantly exceeded the geographic scope of Club España (Spain and Portugal) (contested decision, recital 949).

82 As for the implementation of the arrangements, the Commission considered that, although they had not always been completely successful, they had indeed been implemented (contested decision, recital 950).

83 Having regard to the circumstances of the case and the criteria referred to above, the Commission considered that the proportion of the value of sales to be taken into consideration in the assessment of the degree of gravity of the infringement was 16% for Fundia, 18% for Socitrel, Fapricela and Proderac and 19% for all the other undertakings, including Trame (contested decision, recital 953).

84 Third, the duration of the infringement was fixed at 5 years and 6 months, or from 4 March 1997 until 19 September 2002, for Trame (contested decision, recital 956).

85 Fourth, as regards the percentage to be included in the basic amount irrespective of the duration of an undertaking's participation in the infringement, the Commission concluded that an amount of 16% for Fundia, 18% for Socitrel, Fapricela and Proderac and 19% for all the other undertakings, including Trame, was appropriate (contested decision, recital 962).

86 Fifth, the Commission examined the mitigating circumstances put forward by Trame during the administrative procedure. These were, in particular, the arguments relating to a minor or passive role (contested decision, recitals 987 and 992) and failure to apply the unlawful agreements or substantially limited participation in the infringement (contested decision, recitals 1023 and 1025), in regard whereto the Commission acknowledged that, as in the case of Proderac, Trame's role was 'substantially more limited than that of the other cartel participants and that a reduction of the fine should therefore be granted to these companies' and observed that 'Trame was a marginal player in Club Italia, creating tensions with the other … participants', which justified granting a reduction of 5% of the amount of the fine.

87 Consequently, the basic amount of EUR 10 million was reduced by the Commission to EUR 9.5 million. Since that amount exceeded the maximum amount of 10% of Trame's total turnover in 2009 (around EUR 32.5 million), the basic amount was then reduced to EUR 3.249 million (contested decision, recitals 963, 1057 and 1071).

2. *Outline of the principles*

a) Proof of the existence and duration of the infringement

88 In the first place, it should be borne in mind that it is clear from the case-law that it is for the Commission to prove not only the existence of a cartel but also its duration. In particular, as regards proof of an infringement of Article 101(1) TFEU, the Commission must prove the infringements which it has found and adduce evidence capable of demonstrating to the requisite legal standard the existence of circumstances constituting an infringement. Any doubt in the mind of the Court must operate to the advantage of the undertaking to which the decision finding the infringement was addressed. The Court cannot therefore conclude that the Commission has established the infringement at issue to the requisite legal standard if it still entertains any doubt on that point, in particular in proceedings for annulment and/or variation of a decision imposing a fine. In the latter situation, it is necessary to take account of the principle of the presumption of innocence, which is one of the fundamental rights which are protected in the European Union legal order and has been affirmed by Article 48(1) of the Charter of Fundamental Rights of the European Union. Given the nature of the infringements in question and the nature and degree of the 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 applicable to undertakings that may result in the imposition of fines or periodic penalty payments. It is accordingly necessary for the Commission to

produce sufficiently precise and consistent evidence to support the firm conviction that the alleged infringement took place (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 50 and the case-law cited).

89 Furthermore, it is normal for the activities which anti-competitive agreements entail to take place clandestinely, for meetings to be held in secret, and for the associated documentation to be reduced to a minimum. It follows that, even if the Commission discovers evidence explicitly showing unlawful contact between operators, it will normally be only fragmentary and sparse, so that it is often necessary to reconstitute certain details by deduction. Accordingly, 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 the competition rules (see judgment in *Trelleborg Industrie and Trelleborg* v *Commission*, cited in paragraph 88 above, EU:T:2013:259, paragraph 52 and the case-law cited).

90 In addition, according to the case-law, 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 (see judgment in *Trelleborg Industrie and Trelleborg* v *Commission*, cited in paragraph 88 above, EU:T:2013:259, paragraph 53 and the case-law cited).

b) Concept of a single infringement, in the sense of a complex infringement

91 In the second place, still according to settled case-law, an infringement of Article 101(1) TFEU and Article 53 of the EEA Agreement can result not only from an isolated act, but also from a series of acts or indeed 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).

92 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 it and was prepared to take the risk (judgments in *Commission* v *Anic Partecipazioni*, cited in paragraph 91 above, EU:C:1999:356, paragraphs 83, 87 and 203; in *Aalborg Portland and Others* v *Commission*, cited in paragraph 91 above, EU:C:2004:6, paragraph 83; and in *Commission* v *Verhuizingen Coppens*, cited in paragraph 91 above, EU:C:2012:778, paragraph 42).

93 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 91 above, EU:C:2012:778, paragraph 43).

94 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 91 above, EU:C:2012:778, paragraph 44).

95 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 91 above, EU:C:2012:778, paragraphs 45 and 46).

96 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 91 above, EU:C:1999:356, paragraph 90; in *Aalborg Portland and Others* v *Commission*, cited in paragraph 91 above, EU:C:2004:6, paragraph 86); and in *Commission* v *Verhuizingen Coppens*, cited in paragraph 91 above, EU:C:2012:778, paragraph 45.

c) Concept of distancing in the event of participation in a meeting

97 In the third place, it is also settled case-law that it is sufficient for the Commission to establish that the undertaking concerned participated in meetings at which anti-competitive agreements were concluded, without manifestly opposing them, in order to prove to the requisite standard that the undertaking participated in the cartel. Where participation in such meetings has been established, it is for that undertaking to put forward indicia to establish that its participation in those meetings was without any anti-competitive intention by demonstrating that it had indicated to its competitors that it was participating in those meetings in a spirit that was different from theirs (see judgment in *Aalborg Portland and Others* v *Commission*, cited in paragraph 91 above, EU:C:2004:6, paragraph 81 and the case-law cited).

d) Principles relating to the taking into account of the particular situation

98 In the fourth place, the case-law has endeavoured to establish certain principles as regards the individual liability arising from an infringement of Article 101(1) TFEU, such as a cartel (see, to that effect, judgment of 19 May 2010 in *Chalkor* v *Commission*, T-21/05, ECR, EU:T:2010:205, paragraph 90 et seq.).

99 After having established the existence of a single infringement and identified its participants, the Commission is required, in order to impose fines, to examine the relative gravity of the participation of each of them in that infringement. That is apparent both from the case-law and from the Guidelines, which provide for differential treatment in respect of the starting amount (specific starting amount) and for account to be taken of aggravating and mitigating circumstances allowing the amount of the fine to be adjusted, notably by reference to the active or passive role of the undertakings concerned in the implementation of the infringement (see, to that effect, judgment in *Commission* v *Anic Partecipazioni*, cited in paragraph 91 above, EU:C:1999:356, paragraphs 90 and 150, and, concerning the 1998 Guidelines (OJ 1998 C 9, p. 3; 'the Guidelines'), judgment in *Chalkor* v *Commission*, cited in paragraph 98 above, EU:T:2010:205, paragraph 92 and the case-law cited).

100 In any event, an undertaking can never be fined an amount which is calculated to reflect its participation in a collusion for which it is not held liable (judgment in *Chalkor* v *Commission*, cited in paragraph 98 above, EU:T:2010:205, paragraph 93 and the case-law cited).

101 Likewise, an undertaking can be penalised only for acts imputed to it individually (judgment of 13 December 2001 in *Krupp Thyssen Stainless and Acciai speciali Terni* v *Commission*, T-45/98 and T-47/98, ECR, EU:T:2001:288, paragraph 63).

102 The penalties must therefore be made to fit the offence, in that they must relate to the individual conduct and specific characteristics of the undertakings concerned (judgments of 29 June 2006 in *SGL Carbon* v *Commission*, C-308/04 P, ECR, EU:C:2006:433, paragraph 46, and of 7 June 2007 in *Britannia Alloys & Chemicals* v *Commission*, C-76/06 P, ECR, EU:C:2007:326, paragraph 44).

103 In particular, it has already been held that an undertaking whose liability is established in relation to several branches of a cartel contributes more to the effectiveness and the seriousness of the cartel than an offender involved in only one branch of it. Thus, the first undertaking commits a more serious infringement than the second (judgment in *Chalkor* v *Commission*, cited in paragraph 98 above, EU:T:2010:205, paragraph 99).

104 It is in the light of the content of the contested decision and in consideration of the principles described above that the Court must assess the arguments of the parties, which were set out in detail in the Report for the Hearing communicated by the Court.

B – *Participation in a single infringement*

1. *Arguments of the parties*

105 Trame claims that the Commission cannot accuse it of having participated for 5 years and 6 months in a single infringement consisting of agreements at European (Club Europe), regional and national (Club España, Southern Agreement, Club Italia) levels. At the material time, Trame sold only in Italy, not because of an alleged market-sharing agreement, but because it had not received the necessary approvals to sell its products abroad. The information relating to States other than Italy was of no interest whatsoever to it. Nor is there any proof that it participated at supranational level in the infringement or in a cartel other than Club Italia. Trame never participated in meetings at European level or exchanged information on that subject. Furthermore, participation in the single infringement cannot be inferred from the sale fact that, within Club Italia, competitors made sporadic or incidental references to Club Europe in Trame's presence. On that point, the Commission itself acknowledges that Trame was not aware of the European level of the cartel before 15 May 2000 (contested decision, recital 651), which it ought at least to have taken into account when determining the amount of the fine. The only reference to Club Europe emerges from a document relating to the meeting of 15 May 2000, which merely mentions that that club is in crisis. In the Commission's view, the reference is 'probably' to Club Europe, which means that it had doubts in that regard. The documents relating to

the meetings of 12 June and 9 October 2000 contain no explicit reference to Club Europe. During the infringement period imputed to it, Trame did not have, and could not have, the slightest effective awareness of Club Europe and its mechanisms.

106 At the same time, Trame observes that Socitrel, Proderac and Fapricela were penalised only for their participation in one component of the single infringement (Club España), owing in particular to their belated awareness of the pan-European level of the cartel. Thus, the Commission took issue with Fapricela for having participated in the cartel between December 1998 and September 2002, but it took into consideration only Fapricela's participation in Club España, since that undertaking never participated in the European meetings and was not aware of them until in May 2001. That situation appears to be similar to Trame's, since the Commission penalised for having participated in Club Italia between March 1997 and September 2002, and also for having been aware of the European level of the cartel as from May 2000. Those undertakings therefore played no role at European level and were not aware of that level of the cartel until after more than half of the relevant infringement period had elapsed. The arbitrary difference in treatment between those two undertakings has negative consequences for the determination of the amount of the fine imposed on Trame, which was set at an excessive level on the basis of a situation that did not apply to Trame.

107 The Commission disputes those arguments. In the contested decision, it is established that the members of Club Italia were kept constantly informed of the decisions adopted by Club Europe and that they themselves informed the members of Club Europe of their own decisions. There was close coordination between Club Europe and Club Italia. During both the Zurich Club phase and the Club Europe phase, the members of Club Italia were able to adopt their decisions in reliance on the information communicated to them by their representative at pan-European level (Redaelli during the Zurich Club phase and Tréfileurope during the Club Europe phase). It is also established that, on 15 May 2000, Trame was aware, or ought to have been aware, that it was an integral part of a larger pan-European scheme with several levels. Trame's situation is also different from that of Socitrel, Proderac and Fapricela, which were aware that they were participating in a pan-European scheme only as from 15 May 2001, well after the time when Trame became aware that it was doing so. Furthermore, it is necessary to take account of the fact that Club Italia and Club Europe overlapped so far as their geographic scope was concerned.

2. *Findings of the Court*

108 It should be observed at the outset that the Commission was wrong to impute to Trame participation in a single infringement for 5 years and 6 months, from 4 March 1997 until 19 September 2002 (see contested decision, Article 1, and paragraphs 61 and 68 above), since it is only as from 15 May 2000 that the Commission was in a position to establish that Trame 'was aware or should … have been aware' that by participating in Club Italia it was also participating in a larger pan-European scheme with several levels (see contested decision, recital 651, and paragraph 73 above).

109 In any event, Trame cannot therefore be found to have participated in Club Italia from 4 March 1997 until 19 September 2002 and to have been — within Club Italia — in a situation such that it may be considered that it was aware, or should have been aware, as from 15 May 2000, that its participation in that component of the cartel was part of a larger scheme, to which it intended to contribute through its own conduct, which would allow the Commission to consider that Trame was then participating in a single infringement in the sense defined in the case-law cited in paragraph 91 et seq. above.

110 It is in that context that it is appropriate to ascertain whether the Commission was in a position to find that, as from 15 May 2000, Trame 'was aware or should … have been aware' that Club Italia was part of a larger scheme, including, in particular, the second phase of the pan-European agreement, Club Europe, at that time concomitant with Club Italia.

a) Trame's situation compared with that of the other players in Club Italia

111 First of all, it must be pointed out that Trame is not mentioned among the undertakings that participated in the Club Italia meeting of 16 December 1997, which is considered to be one of the meetings that best illustrate the close link between the Italian and pan-European arrangements during the Club Europe phase (contested decision, recital 558). It was in fact during that meeting that Tréfileurope explained in detail to Redaelli, CB, Itas and ITC the rules of Club Europe (see column relating to the meeting of 16 December 1997 in Annex 3 to the contested decision).

112 For those five producers, the Commission is correct to consider, as it does in the first part of its argument (see paragraph 107 above), that the Club Italia members were kept informed of the decisions adopted by Club Europe and that they informed the Club Europe members of their decisions. Thus, it is apparent from the contested decision that Tréfileurope was not only a member of Club Italia but also one of the permanent members of Club Europe and that Redaelli, CB, Itas and ITC, and also, subsequently, SLM, participated in or were the essential subject of numerous discussions within Club Europe and Club Italia aimed at defining a quota for exports outside Italy by the Italian producers. The content of the relevant discussions may be summarised as follows: the European producers wished to offer the Italian producers an export quota which they find acceptable, while the Italian producers found that quota inadequate, giving rise to discussions before a possible mutually acceptable solution was found (see, in the contested decision, recital 278 et seq., in the part entitled 'Description of the main multilateral meetings', from which it is apparent that, on a quota of 47 000 tons proposed by the European producers, as against 60 000 tons proposed by the Italian producers, an agreement in principle was reached for a volume of 50 000 tons).

113 However, it must be stated that, as Trame claims in its argument (see paragraph 105 above), its situation differs from that of Tréfileurope, Redaelli, CB, Itas, ITC and, subsequently, SLM. As stated in recital 651 to the contested decision, 'Trame during the entire period of the infringement did not sell outside Italy'. In addition, as stated in the contested decision, Trame was present at 18 Club Italia meetings (contested decision, footnote accompanying recital 468). Trame submits in that regard that this amounted to 18 meetings out of a total of 234. That number is much lower than the number of meetings in which the main Club Italia players participated. Generally, and subject to the meetings expressly identified by the Commission in the contested decision, it is also apparent that Trame was not present at the principal meetings relating to discussions of interest to both Club Italia and Club Europe (see, for example, apart from the meeting of 16 December 1997, the columns relating to the meetings of 12 and 23 July 2001 in Annex 3 to the contested decision).

114 The particular nature of Trame's situation, by comparison with that of the main Club Italia players, is implicitly recognised by the Commission, since it is only as from 15 May 2000, and not from the time of its accession to Club Italia in March 1997, that, according to the Commission, Trame 'was aware or should … have been aware' that by participating in Club Italia it was also participating in a pan-European scheme. That is also apparent from a statement submitted by Trame on behalf of one of the representatives of Tréfileurope within Club Italia, where it is stated, in particular, that '[Trame] participated in a very small number of meetings in the context of Club Italia, most frequently at Federacciai's headquarters … [I]t often happened that [Trame] was introduced in the meeting only after it had started. Sometimes it was Trame that took the initiative to leave the meeting before it ended.'

115 It follows from the foregoing that, in the absence of evidence specifically relating to Trame's situation, the Commission cannot merely claim that the fact that it is established that the five main Club Italia players, and subsequently SLM, were involved in discussions between Club Europe and Club Italia concerning the quota for the Italian producers' exports outside Italy is sufficient to establish that Trame, as a member of Club Italia, was aware or should have been aware of those discussions. Contrary to the Commission's assertion, the members of Club Italia do not constitute a homogeneous category, but consist of undertakings displaying significant differences. Thus, some members of Club

Italia, such as Tréfileurope or Tycsa, were also members of other clubs. Other Club Italia members were undertakings present not only in Italy but also in other Member States, such as Redaelli, CB, Itas, ITC and, subsequently, SLM. In the present case, although Trame was a member of Club Italia, its participation is distinguished both at the factual level (no exports, belated awareness of the pan-European dimension of the cartel) and the evidential level (small number of meetings at which Trame's presence is reported) from that of the five main Club Italia players, which participated in those arrangements from the outset, as regards both their internal aspect and their external aspect.

b) Examination of the evidence relating to the meetings of May, June and October 2000

116 It follows from the contested decision and from the second part of the Commission's argument (see paragraph 107 above) that, as from 15 May 2000, it considered that it was in a position to consider that Trame participated in a single infringement since, as from that time, Trame 'was aware or should … have been aware' that it was an integral part of a larger pan-European scheme. In the Commission's contention, such a conclusion may be drawn from the evidence relating to the three meetings identified in recital 651 to the contested decision: those of 15 May, 12 June and 9 October 2000.

117 On examining that evidence, however, the Court is unable to reach the same conclusion as the Commission.

118 The first meeting cited by the Commission in order to establish that Trame was in a position to know on 15 May 2000 that Club Italia was part of a larger, overall plan, in particular because it envisaged the coordination of Club Italia with Club Europe, is the Club Italia meeting held on that date. In the column relating to that meeting in Annex 3 to the contested decision, the Commission stated that the following were represented: CB, Itas, ITC, Tréfileurope Italia, SLM, Trame and DWK, Tycsa being reported as absent.

119 In that column, the Commission presented the points discussed at the meeting of 15 May 2000 as follows:

— '[d]iscussion about raw material prices and the market crisis. According to [one of the representatives of Tréfileurope], Club Europe (composed of Emesa, Tycsa, Tréfileurope, Nedri, DWK and WDI) and Club Italia are [both] in crisis';

— 'Emesa leaving the EUR Club' and 'Tycsa and Emesa have taken large quantities from Fundia'; 'Fapricela and Socitrel are also mentioned';

— 'Tréfileurope confirms an Italian market meeting'.

120 That information comes from ITC, CB, SLM and Tréfileurope and was obtained either during the inspections or in the context of a leniency application. A handwritten minute of the meeting of 15 May 2000, submitted by ITC, is the basis on which the information set out in the first and second indents of paragraph 119 above can be established.

121 The second meeting in question is the Club Italia meeting of 12 June 2000. In the column relating to that meeting in Annex 3 to the contested decision, the Commission stated that the following were represented: Redaelli, CB, Itas, ITC, Tréfileurope Italia, SLM, Trame, Tycsa and DWK.

122 In that column, the Commission presented the points discussed at the meeting of 12 June 2000 as follows:

— '[d]iscussion about the market. Tycsa asks to sell at lower prices (it is indicated that it sells 4 000 tons on the Italian market, corresponding to a 4% market share). The Portuguese are under pressure from the Spanish. The names "Emesa-Tycsa, Socitrel-Fapricela" are mentioned. Reference to (probably) Club Europe which is complaining about Tycsa (Antwerp and Düsseldorf are complaining about Tycsa)';

— '[a]llocation of certain customers (listed) with deliveries to suppliers referred to as "leaders"'.

123 That information comes from Tycsa and ITC and was obtained either during the inspections or in the context of a leniency application. A handwritten minute of the meeting of 12 June 2000, submitted by ITC, is the basis on which the information set out in the first indent of paragraph 122 can be established.

124 The third meeting in question is the Club Italia meeting held on 9 October 2000. In the column relating to that meeting in Annex 3 to the contested decision, the Commission stated that the following were represented: Redaelli, CB, Itas, ITC, Tréfileurope and Tréfileurope Italy, SLM, Trame, Tycsa, DWK, Nedri and WDI.

125 In that column, the Commission presented the points discussed at the meeting of 9 October 2000 as follows:

— '[d]iscussion about quotas on the European Market (including UK, Ireland, Portugal, Switzerland, Austria, Belgium). In this context: discussion on what SLM would be prepared to accept (1 400 tons on a total volume of (Italian) sales in 2001 estimated at 50 000 tons). It was stated that SLM would be prepared to further negotiate its position within Europe';

— '[a]ccording to CB, the meeting concerned the analysis of the European market and the percentage of interpenetration. Negotiations with Italian producers to make a market-sharing agreement';

— 'Tycsa: market analysis and a request made by some producers for securing quota per country was not accepted';

— 'Nedri: the (not reached) aim was to integrate the Italian producers into a renewed quota allocation. At the meeting the Italian producers (CB, ITC, Itas, Redaelli, SLM) requested from WDI, DWK, Nedri, Tycsa and Tréfileurope a quota of 60 000 tons for their export';

— 'This meeting has been prepared by the participants of Club Europe at a meeting of 26 September 2000 in Brussels. …'

126 That information comes, in particular, from ITC, CB, Tycsa, Nedri, WDI, Tréfileurope, DWK and Redaelli.

127 On the basis of the handwritten minute of the meeting of 9 October 2000 submitted by ITC, it is by no means clear that the discussion covered everything mentioned in the first indent of paragraph 125 above. In fact, the relevant information in that minute reveals the following: first, the expression '– NO' is placed alongside 'SLM' and 'RT [Redaelli]' in the list of persons present and undertakings represented at the meeting and the reference '[3 p.m.]' is placed alongside to the reference to the name of Trame's representative (the meeting having begun at 10 a.m., according to what is stated elsewhere; examination of the name of that representative seems, moreover, to show that that name was placed over the reference '–' which was initially made alongside the reference to 'Trame'); second, the discussion of quotas for the European market, which took place at the beginning of the meeting,

according to its place in the minute, emerges from only four lines stating the following: 'UK + Ireland 40; Norway, Sweden, Denmark 40; Portugal 25; Switzerland — Austria 10' (the figures may refer to percentages or to the penetration rate of exports, but that is not clear from the minute); third, a number of indications given in relation to SLM, including a reference to '1 400 tons', to 'production 2001' of '50 000 tons' and to SLM's readiness to continue to negotiate a position in Europe, without its being clear that those indications concern the indications relating to the alleged quotas on the European market, since they are separated by a long dash drawn across the whole page and other indications relating to other factors.

128 It follows from the foregoing that all that can be established from the document on which the Commission relies in order to establish the content of what is indicated in the first indent of paragraph 125 is what is reported in the second and third sentences of that indent, and it cannot be concluded to the requisite evidential standard that that part of the discussion took place in the presence of SLM and Redaelli or at a time when Trame's representative was present, since the likely scenario is that although the meeting began at 10 a.m. Trame's representative did not arrive until 3 p.m.

129 Furthermore, it follows from the other information set out by the Commission in the account of the information in its possession concerning the meeting of 9 October 2000 that when Nedri referred to the Italian producers and the discussion of export quotas, it stated that those producers were CB, ITC, Itas, Redaelli and SLM, and did not mention Trame. It is reasonable to think that if Trame had been present at that point in the discussion, Nedri would have mentioned that undertaking.

130 Taken as a whole, the evidence relating to the three meetings referred to above shows three things with regard to Trame. First, during those meetings, there was a reference to Club Europe, no doubt an explicit reference in May 2000, since Trame was even able to understand the composition of that clue, and at least an implicit reference in June 2000 (by the reference to Antwerp and Düsseldorf, which might be understood to refer to the headquarters of undertakings that were members of Club Europe). Second, it is also apparent that the references made to Club Europe during those meetings were made in respect of an undertaking, Tycsa (present, moreover, at the meetings held in June and October 2000), which had only a marginal presence in Italy, or to other non-Italian undertakings (Socitrel, Fapricela, Emesa). It may reasonably be inferred that the PS cartel existed only in Italy or involved only producers mainly interested in Italy. Third, it is also a reasonable inference that any questions that might have been raised about the nature and activities of Club Europe at the meetings of May and June 2000 were dispelled in October 2000, since it is apparent that the participants in that meeting were not only the main players in Club Italia or producers active on the Italian market. Some doubt remains, however, as to whether Trame attended the part of that meeting that concerned SLM's intentions outside Italy.

131 In any event, however, it is apparent that, even on the assumption that Trame's representative did not arrive at the meeting of 9 October 2000 until 3 p.m., he then participated in a meeting in the presence of, among others, representatives of DWK, WDI and Nedri, which are not producers principally interested in Italy.

132 In the light of the abovementioned elements, it may therefore be considered that, at least as from the third meeting, the one held on 9 October 2000, Trame, like any undertaking that participated in the three abovementioned meetings, was in a position to understand that there existed, alongside Club Italia, another club, Club Europe, which was mentioned in May and referred to in June of that year, whose activities must not only have been similar to those of Club Italia but have been the subject of coordination with the latter club, as confirmed by the presence of non-Italian producers, like DWK, at the Club Italia meetings.

133 On the other hand, contrary to the view taken in the contested decision, it has not been shown to the requisite legal standard that, as from Trame's participation in the first of the three Club Italia meetings in question, on 15 May 2000, it was in a situation in which it was aware or should have been aware of the pan-European dimension of the cartel. The mere fact that the name 'Club Europe' was mentioned at that meeting is not sufficient to assume awareness of the arrangements concluded by the participants in that club. Such an interpretation is all the more credible given that the reference to that club is accompanied by the description 'in crisis' and the information that 'Emesa leaving the EUR Club' or again the fact that 'Tycsa and Emesa have taken large quantities from Fundia'. Those indications permit the view that, whatever it might represent, Club Europe is slowing down.

134 Likewise, as regards the second meeting, the one held on 12 June 2000, the reference relating to Tycsa (which seeks to reduce prices) concerns the Italian market, where it accounted for 4% of the market with 4 000 tons sold. Tycsa could therefore be perceived as a member of Club Italia, a disruptive member, moreover, and not as a member of Club Europe. The other information that emerges from that meeting also seems to support the idea that if there is a Club Europe (that mentioned during the first meeting), it consists of members with aggressive competitive conduct, such as the Spanish companies (Emesa and Tycsa) that put the Portuguese companies (Socitrel and Fapricela) under pressure.

135 At this stage, it cannot therefore be concluded to the requisite legal standard that Trame was aware of or could not be unaware of the pan-European dimension of the infringement as from 15 May 2000. Such a conclusion can be drawn only as from 9 October 2000.

136 Incidentally, it should be observed that, as Trame claims in its argument (see paragraph 105 above), although it may be considered that Trame was aware or should have been aware of the pan-European dimension of the infringement as from 9 October 2000, such reasoning cannot in any event lead the Commission to consider that Trame participated, as such, in Club Europe when it comes to determining the amount of the fine. Here again, Trame's situation is special in that, throughout the period of the infringement imputed to it, it is common ground that that undertaking participated only in Club Italia. Even more specifically, throughout that period, Trame participated only in the internal aspect of Club Italia, as it did not have the necessary authorisations to sell PS outside that country. The Commission acknowledges in the contested decision, moreover, that Trame did not sell outside Italy during that period, which is true for continental Europe, to which the cartel related, although Trame made certain sales in the United Kingdom, which was not affected by the single infringement. That situation is therefore different from the situation of the main players in Club Italia (like Redaelli), which operated both in Italy and in other Member States, or that of certain permanent members of Club Europe (like Tréfileurope), which operated in the rest of Europe and also in Italy.

c) Trame's situation compared with that of certain players in Club España

137 It is appropriate to focus on the last element put forward in the parties' argument (see paragraphs 106 and 107 above), that is to say, the question whether Trame's situation was comparable to that of Socitrel, Proderac and Fapricela, which ought to have led the Commission to treat it in the same way.

138 *Mutatis mutandis*, the situations are in fact comparable. Like Trame, whose situation within Club Italia may be distinguished from the situations of the five main players in that club, Redaelli, CB, Itas, ITC and Tréfileurope, the situation of Socitrel, Proderac and Fapricela, three players in Club España, may be distinguished from those of the other players in that club, including Emesa and Tycsa, which were also participating in Club Europe and even, in Tycsa's case, in Club Italia.

139 It is apparent from the contested decision that Socitrel, Proderac and Fapricela were penalised by the Commission, not globally for their participation in a single infringement throughout the period of the infringement imputed to them, but for their participation in only one component of that infringement,

namely Club España, owing in particular to their belated awareness of the pan-European dimension of the cartel (as from May 2001) (contested decision, recital 949, as regards the distinction which the Commission made in that respect at the stage of the determination of the basic amount of the fine defined by the 2006 Guidelines). That was not the case for Trame, which was penalised for having participated in a single infringement from March 1997 until 2002.

140 In order to justify the fact that it had not treated Trame in a manner comparable to that defined for the treatment of Socitrel, Proderac and Fapricela, the Commission relies on two factors: the fact that it is apparent from the contested decision that Socitrel, Proderac and Fapricela were aware that they were participating in a larger scheme as from 15 May 2001 (contested decision, recitals 658, 660 and 661), or one year later than Trame, which was aware that it was doing so on 15 May 2000; and the fact that, unlike the situation of Socitrel, Proderac and Fapricela, the 'geographic scope of Club Italia largely overlaps with that of the pan-European arrangements and is thus much larger than the geographic scope of Club España (Spain and Portugal)' (contested decision, recital 949).

141 It must be stated, however, that, in spite of the differences to which the Commission refers, the fact none the less remains that the same circumstances on which the Commission relied in the case of Socitrel, Proderac and Fapricela — namely, belated awareness of the pan-European dimension of the infringement (in October 2000 and not in May 2000), and the geographic scope of Club Italia, which could only be internal so far as Trame, which did not export outside Italy as it lacked the necessary authorisations to do so, was concerned — must be applied in a somewhat narrower form in Trame's case. It must also be noted that it is apparent from the contested decision that, although Club España was mainly concerned with Spain and Portugal, exports by the Iberian producers are also envisaged in that club (see column relating to the meeting of 6 July 2001 in Annex 4 to the contested decision).

d) Conclusion

142 In conclusion, it follows from the foregoing that the assessment set out by the Commission in the contested decision with respect to Trame's participation in a single infringement can be criticised from three aspects.

143 First, the Commission was wrong to impute to Trame participation in a single infringement, that is to say, in a 'continuing agreement and/or concerted practice in the prestressing steel sector in the internal market and, as of 1 January 1994, within the EEA' from 4 March 1997 until 19 September 2002, since it is apparent from the contested decision that Trame was aware of the pan-European dimension of the cartel only as from May 2000.

144 Second, the Commission was also wrong to consider that Trame was aware or should have been aware of the pan-European dimension of the cartel as from 15 May 2000, since it is not possible to establish to the requisite evidential standard that on that date Trame was in a position to be aware of the nature and the objectives pursued by Club Europe. In the light of the evidence relied on in that regard, such a situation can be established only as from 9 October 2000, the date on which Trame participated in a meeting of members of Club Italia and undertakings which were not members of that club, but only of Club Europe, which should have removed any doubts which it might still have had as to the meaning of the expression 'Club Europe' previously mentioned or referred to in the context of the Club Italia meetings.

145 With effect from that date, the Commission is entitled to consider that it is established that Trame intended to contribute by its own conduct to the common objectives pursued by all the participants in the cartel, even if it did not export, and that it was aware of the unlawful conduct envisaged or implemented by other undertakings in pursuit of the same objectives, or that it could reasonably have foreseen that conduct and that it was prepared to take the risk, within the meaning of the case-law.

146 Third, as regards the assessment of the nature and the scope of Trame's participation in the single infringement, the Commission did not take sufficient account of the differences between Trame's situation and that of the five main Club Italia players, or, likewise, the similarities which, *mutatis mutandis*, exist between Trame's situation and that of the three least important players in Club España.

147 It is therefore already appropriate to annul Article 1(17) of the contested decision, in that the Commission found that Trame participated in the pan-European aspect of the infringement at issue between 4 March 1997 and 9 October 2000. The other consequences of the foregoing will be assessed globally after the parties' arguments have been examined.

148 It must be observed at this point, however, that the impact that those consequences might have on the amount of the fine determined by the Commission cannot be particularly significant, since it was calculated on the basis of Trame's total PS sales in Italy. In that regard, it cannot be considered that Trame's participation in only the internal aspect of Club Italia does not, as such, present a certain degree of gravity, even though, in accordance with the case-law cited in paragraph 103 above, that participation remains inherently less serious than that of an undertaking that participated not only in the internal aspect of Club Italia but also in its external aspect, or indeed in other clubs, like Club Europe and Club España.

C – *Three-wire strand*

1. *Arguments of the parties*

149 Trame claims that the Commission erred in taking its sales of three-wire strand ('treccia') into account when determining the amount of the fine. That error is significant, since in 2001 the value of sales of three-wire strand represented more than 50% if its total sales of strand. The value of Trame's sales of seven-wire strand ('trefolo') was thus only EUR 4.05 million out of a total amount of sales, including three-wire strand, of EUR 8.2 million.

150 Trame maintains, generally, that three-wire strand was never the object of Club Italia. That product is sometimes mentioned in the evidence, but it has not been established that the members of Club Italia did in fact reach an agreement in respect of it. In order to claim that the contrary was so, the Commission bases its evidence on a table entitled '1996 agreement', which dates from December 1995 and does not refer to Trame. The assertion that the quotas shown in that table continued to be applied until 2002 is not corroborated by other documents in the file relating to the administrative procedure. In reality, the only attempt to include three-wire strand in the cartel was made, unsuccessfully, at the meetings of 28 February and 6 March 2000. Where the Commission refers to the meeting of 28 February 2000, it thus indicates that the discussions included '[a]ssessment of the possibility of including three-wire strand in the commercial agreement for the Italian market'.

151 Following the meeting of 28 February 2000, there is no proof that Club Italia actually included three-wire strand. The Commission relies in the present case on a document relating to the meeting of 6 March 2000, which includes a 'very detailed list with names of over 80 (Italian) customers to which the supply of three-wire strand is allocated among Redaelli, CB, Itas, ITC, Tréfileurope, SLM and Trame'. However, this was not an allocation of quotas or customers for the future, but, as made clear by ITC, which supplied that document, an 'examination of supplies made by producers in 1999'. A representative of ITC, who contributed to ITC's leniency statements, confirms that in a statement submitted by Trame. He also states that, 'during the reference period, discussions within Club Italia focused on seven-wire strand'. The information in question was supplied in connection with the unsuccessful attempt, made in February 2000, to include three-wire strand in the cartel. Even on the assumption (quod non) that the disclosure of such information constitutes an infringement of the competition rules, that infringement would be less serious than an agreement to allocate market

shares, and that ought to have been taken into account in the calculation of the amount of the fine. In addition, it is apparent from the later table in document 15905 of the file relating to the administrative procedure, which the Commission describes as a 'plan for the allocation of quotas for 2001 and forecasts for 2002', that the volumes stated relate exclusively to seven-wire strand, which once again proves that three-wire strand was not the object of a cartel.

152 Last, Trame relies on a statement by a representative of Tréfileurope, who confirms that three-wire strand was not covered by the cartel, in which it is stated that, 'in the context of Club Italia, no agreement was ever concluded by the competitors, or at least by Trame, as regards three-wire strand', that '[the] production, marketing and export of such a product did not fall within the scope of the discussions at the meetings held between the Italian PS manufacturers, since those undertakings were not interested in that product' and that 'it was a marginal product, specifically intended for the Italian market'. The fact that, in the context of Club Italia, there was also sporadic reference to three-wire strand, for example at the time of the abortive attempt to include it in the cartel, does not detract from the truth of those statements. Trame also observes that demand for three-wire strand in Italy came to 20 000/22 000 tons per year between 1997 and 2002 and fell after that period, while demand for seven-wire strand over the same period came to 100 000/120 000 tons per year.

153 The Commission contends that three-wire strand was the object of the cartel, including within Club Italia, well before 28 February 2000 (contested decision, recitals 409 to 411). Trame cannot therefore claim that that product was not part of the arrangements concluded within that club. As regards the meeting of 28 February 2000, the ITC handwritten minute of that meeting shows that the discussion took place in consideration of precise figures concerning the quantities and price of three-wire strand. It would have been difficult for the undertakings to discuss such information without having advance knowledge of it. In any event, that minute reveals an exchange of commercial information. Likewise, the evidence relating to the meeting of 6 March 2000 is unambiguous. In answer to Trame's assertion that the handwritten notes relating to that meeting refer to the examination of consignments sent by producers in 1999, which ITC confirms, the Commission observes that on the first page of those notes the author stated that the figures referred to 'quotas' relating to 'three-wire strand'. CB's statement of 26 November 2002 also mentions that the meetings of 13 March 2000, 10 April 2001 and 16 September 2002 had as their specific object the allocation of customers for three-wire and seven-wire strand. In addition, the statement of a representative of Tréfileurope is scarcely credible in the light of what Trame confirms was the attempt made at the meetings of 28 February and 6 March 2000 to include three-wire strand. Likewise, as regards the statement of a representative of ITC, there is nothing in the table of 6 March 2000 to indicate that the table contained 'historical data relating to consignments of three-wire strand'. Such statements cannot reduce the value of the available evidence.

2. *Findings of the Court*

154 It should be observed as a preliminary point that Trame was penalised for having participated in a cartel in the PS sector. The Commission states in that regard in the contested decision that PS refers to metal wires and strands made of wire rod. The Commission also uses the expression 'wires/strands' to refer to PS, which suggests that the two words are synonyms. In any event, the decision expressly states that 'PS strands are composed of 3 or 7 wires' (contested decision, recitals 2 and 3).

155 It is apparent from the contested decision, therefore, that the Commission actually considered that the cartel concerned both three-wire strand and seven-wire strand. None the less, there are differences between the two types of products, both in the characteristics of the products as such and as regards supply and demand.

156 It is thus clear from the replies to the measures of organisation of procedure that three-wire strand is not substitutable for seven-wire strand, even though they have the same raw material, wire rod. While the former may be used in structures having a smaller load-bearing capacity, like the poles used in vineyards, the latter is used as a structure carrying large prefabricated items.

157 In that context, Trame maintains that the Commission erred in including three-wire strand in the cartel. In its submission, only seven-wire strand was concerned by the cartel imputed to it. In consequence, the Commission ought when determining the amount of the fine to have taken into account only sales relating to seven-wire strand in 2001, which represented around one half of Trame's sales of three-wire and seven-wire strand in 2001.

a) Evidence relating to the first years of Club Italia

158 In the first place, Trame maintains that three-wire strand was never the object of Club Italia. It must be pointed out, however, that that argument contradicts the contested decision and the evidence referred to therein concerning the first years of Club Italia.

159 According to the contested decision, Club Italia was a national arrangement that lasted from 5 December 1995 until 19 September 2002. That agreement related to the fixing of quotas for Italy and on exports from Italy to the rest of Europe. Its members were Redaelli, CB, Itas and ITC, subsequently joined by Tréfileurope (on 3 April 1995), SLM (on 10 February 1997), Trame (on 4 March 1997), Tycsa (on 17 December 1996), DWK (on 24 February 1997) and Austria Draht (on 15 April 1997).

160 In that regard, as the Commission correctly asserts, it is apparent from the contested decision that on 5 December 1995 Redaelli, CB, Itas and ITC concluded an agreement on the quota allocation of wire and three-wire and seven-wire strand on the Italian market and on the internal market (contested decision, recital 409). That agreement is represented in particular in the table in recital 409 to the contested decision, which mentions a total of 85 000 tons (including 9 000 tons of wire, 13 000 tons of three-wire strand and 63 000 tons of seven-wire strand) for the Italian market and a total of 45 000 tons (including 16 300 tons of wire, 3 900 tons of three-wire strand and 24 800 tons of seven-wire strand) for the internal market.

161 As the Commission also observed in reply to the measures of organisation of procedure, it is clear from the abovementioned agreement that Redaelli, CB, Itas and ITC decided together to allocate the quantities mentioned for wire rod, three-wire strand and seven-wire strand in Italy and in the rest of the European Union and that that agreement was concluded, since it is initialled by the parties concerned.

162 At the meeting of 18 December 1995, Redaelli, ITC, Itas and CB confirmed their export quotas of PS (wire, three-wire and seven-wire) to the rest of Europe (contested decision, recital 410 and Annex 3).

163 Consequently, Trame is wrong to claim that Club Italia, of which it did not yet form part, was concerned with only seven-wire strand, since Redaelli, CB, Itas and ITC had agreed to share among themselves 100% of the quantities mentioned in the table reproduced in recital 409 to the contested decision.

164 Furthermore, the Commission maintains that that agreement was applied until 2002. In order to establish that, the Commission states, in particular, in recital 411 to the contested decision, that 'the agreement continued to be applied by Redaelli, CB, Itas and ITC (later on joined by Tréfileurope Italia, Trame, SLM and the pan-European producers Tréfileurope, Tycsa, Austria Draht and DWK) until 2002' and that, '[a]s an example, the 85 000 and 45 000 tons, as agreed under the Italian agreement … are reproduced in a table dated 3 February 1997 on the Southern Agreement'.

165 On that point, the Commission puts forward only a single piece of evidence, which applies only to Redaelli, CB, Itas and ITC, which participated in the agreement of 5 December 1995. It is therefore logical that those four members of Club Italia should refer to their agreement in the course of discussions relating to the Southern Agreement (see paragraph 62 above). However, there is nothing in the present case from which it might be inferred that that agreement was joined by Trame, which, moreover, is not envisaged in the allocation of the 85 000 and 45 000 tons to which the Commission refers and was not a party to the Southern Agreement.

166 Although the evidence on which the Commission relies is relevant so far as Redaelli, CB, Itas and ITC, which initialled the December 1995 agreement are concerned, it is scarcely probative for the purposes of establishing that, as from the time when it joined Club Italia, in March 1997, Trame was aware, or was not in a position to be unaware, that the cartel related to both seven-wire strand and three-wire strand, and indeed wire rod as well. The Commission's argument in that regard thus does not refer to the slightest evidence that could actually implicate Trame in respect of the period between 3 February 1997, the date of a table referring to the quotas decided on in December 1995, although Trame had not been involved in that discussion, and 28 February 2000, the date which according to Trame marked the first occasion on which three-wire strand was discussed.

167 When questioned in that regard in the context of the measures of organisation of procedure, the Commission was unable to refer to relevant evidence on that point, since the evidence on which it relies relates to two meetings of Club Italia, those held on 30 September 1997 and 7 October 1997, where Trame's presence is not reported (see columns relating to those meetings in Annex 3 to the contested decision).

168 At this stage, the Commission is therefore unable to establish, precisely and effectively, as it is required to do (see paragraph 88 above), that Trame was aware or should have been aware, for the period from March 1997 to February 2000, that the cartel related to three-wire strand.

b) Examination of the evidence relating to the meeting of 28 February 2000

169 In the second place, it is apparent from the column relating to the meeting of 28 February 2000 in Annex 3 to the contested decision that at that meeting, in which Redaelli, CB, Itas and ITC, and also Tréfileurope, SLM and Trame participated, the following points were addressed:

— '[d]iscussions in response to a proposal by [a representative of Trame] about the size of the three-wire strand market (25 000 tons rather than 35 000 calculated on the basis of producers' declared sales)';

— '[a]ssessment of the possibility of including three-wire strand in the commercial agreement for the Italian market';

— '[d]etailed discussion on and fixing of the price (including the surcharge) among Redaelli, CB, Itas, ITC, SLM and Trame'.

170 That account supports Trame's theory, since it is apparent from the evidence available to the Commission, namely, principally, the handwritten minute of that meeting submitted by ITC, that it was in response to a proposal by Trame that three-wire strand was discussed. It is therefore reasonable to consider that, if Trame had already been informed that Club Italia concerned that product, it would certainly not have considered that there was any point in beginning a discussion on that subject, from which it is apparent, moreover, that the perceptions of the different parties differed considerably.

171 Furthermore, the Commission refers, in Annex 1 to the defence, to CB's statement of 26 December 2002, from which it is apparent that the meeting of 28 February 2000 related to the assessment of the possibility of including three-wire strand in the commercial agreement for the Italian market (Valutazioni per l'inserimento del prodotto cd. 'trescia' nell'accordo commerciale per il mercato italiano). That evidence, which is reproduced in the second indent of paragraph 169 above, also supports Trame's argument that it has not been shown that it was aware or should have been aware that three-wire strand had already been discussed within Club Italia before it joined that club in March 1997.

172 None the less, the Commission contends that it follows from the handwritten ITC minute (Annex B.2 to the defence) that three-wire strand was already the object of that agreement, since the discussion proceeded on the basis of precise figures relating to both the volume and the price of that product which it would have been difficult for the undertakings to discuss had they not previously been aware of them.

173 In the Court's view, the interpretation of the handwritten minute prepared by ITC is not such as to dispel a doubt in the mind of the Court. It is apparent that the quantities and prices in question were revealed during the discussions prompted by Trame's proposal to assess the possibility of including three-wire strand within Club Italia, at least as regards producers other than the signatories of the agreement of December 1995. The various producers present at the meeting were therefore able to supply those figures, in particular the prices charged. It is apparent, moreover, that the quantities in question are all approximate and not really precise. They are given in thousands of units.

174 It should be observed, moreover, that Trame's argument is bolstered by the content of the two statements supplied on that point in support of its argument in consideration of that of the Commission, namely the statement of a representative of Tréfileurope (Annex 10 to the application) and that of a representative of ITC (Annex Z.1 to the reply), who are mentioned among the persons present at the meeting of 28 February 2000 (see column corresponding to that meeting in Annex 3 to the contested decision and paragraph 152 above).

175 In conclusion, it follows from the foregoing that the Commission is not in a position to establish to the requisite legal standard that Trame was aware or could not be unaware that Club Italia related to both seven-wire strand and three-wire strand before the meeting of 28 February 2000, during which Trame initiated the discussion on that matter, as reported by other parties present at the meeting, which reflects the fact that it was previously unaware of that aspect of Club Italia.

c) Examination of the evidence relating to the meeting of 6 March 2000

176 In the third place, Trame claims that, following the meeting of 28 February 2000, there is no proof that Club Italia actually included three-wire strand in the cartel. In its submission, the document relating to the meeting of 6 March 2000 (Annex 7 third party the application) cannot be relied on in that regard, since it does not relate to the a priori allocation of market shares or clients to the future, but only to historical data on 'supplies made by producers in 1999'. Trame relies in that regard on the ITC's statements to the Commission (Annex 8 to the application) and the statement by a representative of that undertaking (Annex Z.1 to the reply, which actually and expressly support that argument.

177 However, it follows from the column relating to the meeting of 6 March 2000 in Annex 3 to the contested decision that, at that meeting, which followed the meeting of 28 February 2000 and in which Redaelli, Itas, ITC, Tréfileurope, SLM and Trame participated, the following points were addressed:

— '[t]he minutes of this meeting contain a very detailed list with names of over 80 (Italian) customers to which the supply of three-wire strand is allocated among Redaelli, ITC, CB, Itas, SLM, Trame and [Tréfileurope]';

— '[a]ccording to CB, the allocation includes three-wire and seven-wire strand customers.'

178 The first piece of information comes from ITC, which communicated the handwritten minute in question, while the second comes from CB, which, in the context of its leniency application, disclosed the content of that meeting, although its presence is not recorded in the ITC minute.

179 Contrary to Trame's assertion, it cannot be considered that the content of what is recorded in the ITC handwritten minute does not permit the finding that discussions of three-wire strand took place within Club Italia.

180 As was explained by the Commission in its replies to the measures of organisation of procedure, it is clear from that minute that at the meeting of 6 March 2000, at which two representatives of Trame were present, there was detailed discussion of the supplies of three-wire strand made by eight undertakings (Redaelli, ITC, CB, Itas, SLM, Trame, Tréfileurope and Tycsa) concerning dozens of Italian customers.

181 The expression used in that regard in the minute to describe the table of deliveries is 'quotas — List of customers' (Quote — elenco clienti). In that regard, the question whether the discussions were of supplies made or supplies to be made is not decisive in itself, since it follows, at a minimum, from that minute that, even on the assumption that the information in question was supplied in consideration of the past, it may be thought that they follow up the discussions initiated on 28 February 2000 in order to envisage the possibility of concluding an agreement on three-wire strand concerning the eight undertakings referred to in paragraph 180 above within Club Italia.

182 Furthermore, the Commission is correct to observe that, according to the table of 5 December 1995 reproduced in recital 409 to the contested decision, the market for three-wire strand in Italy, or at least the quotas allocated to the producers mentioned in that table, corresponded to around 13 000 tons. In the light of the information mentioned in the minute of the meeting of 6 March 2000, the tonnage allocated between the different producers mentioned in that minute amounts to a total of around 12 000 tons. It is therefore likely that the product discussed at the meeting of 6 March 2000 was actually three-wire strand and not both three-wire strand and seven-wire strand, as CB stated. Otherwise, the number of tons to be allocated between the members of Club Italia would have been significantly higher.

183 It is thus appropriate to agree with the Commission when it asserts that, at least as from the meetings of 28 February and 6 March 2000, from which it is apparent that commercially sensitive information was discussed concerning three-wire strand, Trame and the other participants in those two meetings can be found to have expressed their joint willingness to coordinate their activities concerning that product in order knowingly to substitute practical cooperation among them for the risks of competition, which constitutes an infringement of Article 101(1) TFEU.

d) Examination of the evidence subsequent to 6 March 2000

184 In the fourth place, the parties disagree as to what may be inferred from the evidence subsequent to the meeting of 6 March 2000 as regards whether Trame was aware that Club Italia also concerned three-wire strand.

185 In Trame's submission, the attempt to introduce three-wire strand to Club Italia was unsuccessful. That is clear, in particular, from the content of the statements of the representatives of Tréfileurope and ITC and from a subsequent table, corresponding to document 15905 in the file relating to the administrative procedure (Annex 9 to the application), which the Commission described as a 'plan for

the allocation of quotas in 2001 and forecasts for 2002', from which it is apparent that the volumes indicated relate exclusively to seven-wire strand, which proves that three-wire strand was not the object of a cartel between competitors.

186 In the Commission's submission, it is clear that Club Italia concerned three-wire strand, which is apparent from CB's statement of 26 November 2002 (Annex B.1 to the defence), pp. 16942, 16945 and 16951 of the dossier relating to the administrative procedure), which shows that that product was referred to at the meetings of 13 March 2000, 10 April 2001 and 16 September 2002, at the same time as the discussions of seven-wire strand.

187 It must be observed, however, that the information supplied by CB in its statement of 26 November 2002 constitutes only assertions made in a few words, and as such containing no evidence to corroborate their content.

188 As regards the meetings of 13 March 2000, 10 April 2001 and 16 September 2002, CB thus indicated that, in the case of the first meeting, at which Trame's presence is not recorded, this was a 'commercial meeting: allocation of seven-wire strand and three-wire strand customers' (riunione commerciale: ripartizione clienti trefolo e treccia'); in the case of the second meeting, where Trame's presence is recorded, a meeting on the 'market for three-wire strand: allocation customers Italy' (mercato della treccia: ripartizione clienti trefolo Italia); and, in the case of the third meeting, where Trame's presence is recorded, a 'definitive meeting for the allocation of the market for seven-wire strand and three-wire strand' (riunione definitiva per ripartizione clienti quote del mercato prodotti trefolo et treccia).

189 By comparison, the following information is set out by the Commission in the columns relating to those meetings in Annex 3 to the contested decision, where Trame is recorded as being present on each occasion:

— meeting of 13 March 2000: '[d]iscussion about seven-wire strand customers (with indication of prices and tons) and in particular discussion of customers supplied by Tycsa and DWK' and '[t]he situation in Switzerland and the Netherlands (Svizzera — NL) is also discussed' (CB is not mentioned among the sources cited by the Commission in order to support the content of that information, which mentions only ITC and SLM);

— meeting of 10 April 2001: '[d]iscussions about sales and allocation of Italian customers and prices. Reminder of the rules. Meetings: titular every penultimate Monday of the month; sales persons ("commercial") every second and last Monday of the month. SLM notes on Tycsa data'; 'Tréfileurope and CB confirm this meeting' and 'According to CB: also client allocation for Italy';

— meeting of 16 September 2002: '[m]eeting to allocate quotas for three- and seven-wire strand and to fix prices'; there is a reference to an internal e-mail mentioning, in particular, the increase in the cost of raw materials and the arrival of a new competitor, and 'CB and Tréfileurope confirm the meeting'.

190 It is therefore only for the third of those meetings, the one held on 16 September 2002, that the Commission fully mentions the content of what had been indicated by CB, namely that there had been discussions of both seven-wire strand and three-wire strand. The absence of evidence capable of substantiating CB's statements therefore means that they cannot be considered sufficiently probative to establish that the meetings to which they refer concerned three-wire strand. It may in fact be the case that CB routinely considered that all the discussions concerned both types of products without really seeking to distinguish between them, whereas for Trame — for example — the discussions concerned only seven-wire strand so long as three-wire strand was not specifically discussed. By way of

comparison, it is stated in ITC's leniency application, concerning the meeting of 13 March 2000, that 'during the meeting, seven-wire strand customers were discussed' (durante la riunione si discute di clienti di trefolo).

191 However, it is clear on examining the evidence adduced in that regard by the Commission in response to the measures of organisation of procedure that, in the handwritten minute of the meeting of 10 April 2001, communicated to the Commission by ITC (Annexes E.25 and E.26 to the Commission's reply to the measures of organisation of procedure) reference is made to the names of several customers and, in all likelihood, to the quantities sole for January, February and March 2001. However, the name and quantities relating to at least one of those customers are the same as or similar to the corresponding data mentioned in the minute of the meeting of 6 March 2000. Likewise, the internal e-mail referred to in connection with the meeting of 16 September 2002 (Annex E.30 to the Commission's reply to the measures of organisation of procedure) refers to the entry of a new competitor on the market, who is stated to be active in the three-wire strand sector, and to the fact that the strategy to deal with that competitor was discussed.

192 Furthermore, it is apparent from the available evidence relating to the meeting of 30 July 2002 (Annexes E.31 and E.32 to the Commission's reply to the measures of organisation of procedure) between Redaelli, CB, Itas, ITC, SLM and Trame, that that meeting concerned, in particular, customers and minimum prices and '[analysis of] the three-wire strand market in Italy' (see columns relating to that meeting in Annex 3 to the contested decision). Although certain information mentioned in the handwritten minute of that meeting communicated by ITC relates to seven-wire strand, that information comes at the end of that document and is preceded by the word 'trefolo', which suggests that all the information set out before that reference, relating to certain customers, concerns three-wire strand.

193 In the light of that various evidence, the Commission is in a position to consider that, at least as from the meetings of 28 February and 6 March 2000, and until 19 September 2002, Trame participated within Club Italia in meetings the object, whether main or subsidiary, of which was to coordinate the activities of the various participants with respect to three-wire strand in Italy.

e) Conclusion

194 It follows from the foregoing that, while it is established that the four initial members of Club Italia envisaged an infringement concerning both seven-wire strand and three-wire strand, it has not been sufficiently established that Trame was aware or should have been aware that three-wire strand was also the object of the discussions held within Club Italia before that question was addressed at the meetings of 28 February and 6 March 2000.

195 It also follows from the evidence cited by the Commission, subject to the outcome of the assessment of the arguments put forward concerning Trame's participation in the cartel between 10 April 2001 and 16 September 2002, that it is apparent to the requisite legal standard that, following the meetings of 28 February and 6 March 2000, and until 16 September 2002, discussions were held within Club Italia concerning three-wire strand in the presence of or in order to take account of Trame.

196 That evidence shows that the discussions of three-wire strand concerned, at a minimum, the exchange of commercially sensitive information, the quantities sole and the prices offered between several producers meeting within Club Italia, which suggests that they had an anti-competitive object within the meaning of Article 101 TFEU.

197 In conclusion, the appraisal set out by the Commission in the contested decision as regards Trame's participation in anti-competitive arrangements concerning both seven-wire strand and three-wire strand is incorrect in part. The Commission is wrong to impute to Trame participation, within Club

Italia, from 4 March 1997 until 28 February 2000, in an infringement relating not only to seven-wire strand but also to three-wire strand, since it has not been established to the requisite evidential standard that Trame was aware or should have been aware that three-wire strand was already the subject of an agreement between the four initial members of Club Italia. However, the Commission was correct to consider that, from 6 March 2000 until 19 September 2002 (subject to the outcome of the examination of the third plea, which concerns the interruption of Trame's participation in the infringement as from 10 April 2011), Trame participated in anti-competitive arrangements concerning both seven-wire strand and, on Trame's initiative, three-wire strand.

198 It is therefore also appropriate to annul Article 1(17) of the contested decision, in that the Commission considered that Trame's participation in the infringement at issue concerned three-wire strand from 4 March 1997 until 28 February 2000. The other consequences of the foregoing will be assessed globally below after the parties' arguments have been examined.

D – *The period between 10 April 2001 and 16 September 2002*

1. *Arguments of the parties*

199 Trame denies having participated in the cartel during the period following the meeting of 10 April 2001. An ITC document relating to the meeting of 30 August 2001 thus shows that 'Trame has chosen not to be part of the cartel'. A statement by a representative of Tréfileurope shows, moreover, that 'from 2001 Trame definitively distanced itself from Club Italia, in that it expressly stated that it did not wish to accept proposals to allocate market shares for strand from the other participants' and that 'that distancing was perfectly understood by the members of Club Italia'. For one year and five months, Trame did not participate in the cartel, even though its participants met 93 times during that period.

200 In that regard, Trame claims that its participation in the meeting of 16 September 2002, at the headquarters of the Federazione imprese siderurgiche italiane (Federacciai, Federation of Italian Steel Undertakings), cannot be held against it. On that date, it was clear to all members of Club Italia that its presence was without any anti-competitive intention, as Trame refused the market shares proposed. Trame also maintains that the infringement period following the meeting of 10 April 2001 cannot be imputed to it on the basis that its situation continued to be discussed by the members of Club Italia. A number of documents cited by the Commission on that point contain no commercial information relating to Trame, although its name is sometimes mentioned. Even in the documents which refer to commercial information relating to Trame, the data in question being readily available (see pp. 16166 and 16807 of the file relating to the administrative procedure). A statement by a representative of ITC indicates in that regard that 'in 2001 Trame definitively distanced itself from Club Italia, expressly stating that it was not interested in the proposal to allocate the market for strand put forward by the other undertakings', that '[s]uch distancing was clearly heard and understood by [him]self and by the other participants in Club Italia', that '[i]t may be the case that — even after Trame had distanced itself — during the Club Italia meetings certain undertakings referred to Trame', but that '[t]hese were however marginal episodes of no relevance to the content of the cartel penalised in the decision' and that 'Trame had then interrupted its participation in Club Italia and it did not appear to [him] that, directly or indirectly, that company conveyed sensitive information of a commercial nature to the members of Club Italia'.

201 The Commission observes that it established that Trame participated in Club Italia from 4 March 1997 until 19 September 2002, including during the period after 10 April 2001 (see, in particular, contested decision, recitals 469 and 470). In particular, apart from the meetings of 10 April 2001 and 16 September 2002, in which Trame acknowledges having participated, its situation was discussed on other occasions when specific references were made to Trame and to its conduct on the market.

202 As regards one of the ITC documents relating to the meeting of 30 August 2001, it is not certain that the cartel referred to is the pan-European cartel or Club Italia. Nor is such an indicium a public act of dissociation from the cartel on Trame's part. In addition, the sentence 'our competitors are also aware of the initiative' refers to the sentence preceding the comment that 'Trame has chosen not to be part of the cartel', namely the sentence that reads 'Trame: wants to sell its three-wire strand and seven-wire strand division'. It was that information, and not the fact that Trame was not participating in the cartel, that was known to all its competitors. As regards the document on page 16166 of the file, the Commission observes that it mentions data relating to one quarter (3rd quarter) and data relating to the 'first nine months'. Those data are detailed and relate to seven undertakings (including Trame). The data concerning Trame can have come only from Trame. As regards the document on page 16807 of the file, it contains the source of certain data at the bottom of the page and it is clear that those data come from the undertakings involved in the cartel.

2. *Findings of the Court*

203 In the context of the present plea, Trame denies having participated in the single infringement throughout the entire period between 10 April 2001, the date of the penultimate Club Italia meeting in which it participated, and 16 September 2002, the date of the last Club Italia meeting in which it participated ('the period of one year and five months').

a) Evidence relied on in order to impute the infringement to Trame

204 In order to prove that Trame participated in the single infringement over the period of one year and five months, the Commission relied on the following elements in the contested decision (see also paragraph 71 above).

205 In the first place, the Commission stated in recital 470 to the contested decision that:

'… contrary to the allegation of Trame, the Commission has evidence that Trame continued to participate in the cartel, not only in the meetings of 10 April 2001 and 16 September 2002 for which Trame itself admits its attendance, but also in [the meeting of] 30 July 2002, and it continued to be discussed until the end of the infringement.'

206 As regards the evidence on which the Commission relies in order to show that '[Trame] continued to be discussed until the end of the infringement', a footnote accompanying recital 470 to the contested decision refers, in particular, to the following meetings:

'… meetings of … 10 June 2001, 12 July 2001, 30 August 2001, 1 October 2001, 23 October 2001, 11 January 2002, 22 January 2002, 1 March 2002, 10 June 2002 mentioned in Annex 3 [to the contested decision].'

207 In the second place, in response to Trame, which relied on the content of an ITC document relating to the meeting of 30 August 2001 (Annex 11 to the reply), the Commission stated the following in recital 471 to the contested decision:

'Trame also refers to the meeting of 30 August 2001 in which it claims to have declared that it "has chosen not to be part of the cartel", to support its claim that it no longer participated in the cartel at that time. The Commission however notes that it is not certain that the "cartel" referred to in that statement was the PS cartel or Club Italia. In any event, Trame continued to be present and it continued to be considered and discussed in various Club Italia meetings on prices and customer allocation after that date. This declaration can therefore not qualify as public dissociation from the cartel …'

208 In the third place, in order to corroborate Trame's participation in the cartel during the period of one year and five months, the Commission also observed:

'Furthermore, also SLM confirms Trame's participation in the meetings held by the Club Italia members and Tréfileurope confirms that Trame took part in Club Italia even when tensions arose between it and the other members of the group' (contested decision, recital 472 *in fine*).

209 The Commission therefore considered that '[Trame's] participation in Club Italia started … on 4 March 1997 and that it was a continuous participant in this Club until 19 September 2002 [the date of the inspections]' (contested decision, recital 473 *in fine*).

b) Analysis

210 In order to substantiate its finding that Trame participated in the cartel during the period of one year and five months, the Commission combined two types of evidence: the evidence that Trame participated in a number of meetings during the period of one year and five months and the evidence showing that Trame continued to participate in the infringement even thought it was not present at the Club Italia meetings.

Evidence relating to Trame's direct participation in the meetings

211 It follows from the foregoing that, for the period of one year and five months, Trame acknowledges having participated in only two meetings in which members of Club Italia participated, those held on 10 April 2001 and on 16 September 2002, at the beginning and the end of that period, while the Commission refers in the contested decision to a third meeting, the meeting of 30 July 2002.

212 In reply to the measures of organisation of procedure, the Commission stated that Trame's participation in the club Italia meeting of 30 July 2002 was apparent from the statement made by CB in its leniency application. That is the only document on which the Commission relies in that regard. That statement lists Trame among the participants in the meeting of 30 July 2002, which is defined as a 'meeting to analyse the market for three-wire strand in Italy' (Annex E.32 to the Commission's reply to the measures of organisation of procedure).

213 That assertion, however, made in a column in an analytical table of the various Club Italia meetings, is not corroborated by other evidence that would confirm its content. The handwritten minute of that meeting, submitted by ITC in connection with its leniency application and also cited by the Commission in the column corresponding to the meeting of 30 July 2002 in Annex 3 to the contested decision, contains no reference to Trame's presence at that meeting, nor does it mention any information relating to Trame (pp. 16194 to 16197 of the file relating to the administrative procedure).

214 Consequently, the only evidence capable of establishing to the requisite legal standard that Trame participated in Club Italia meetings during the period of one year and five months is the evidence referred to in the contested decision concerning the meetings held at Federacciai's headquarters on 10 April 2001 and 16 September 2002.

Evidence relating to the references to Trame in its absence

215 Apart from the evidence referred to above, the Commission considered that Trame's participation in the cartel during the period of one year and five months was also shown by the fact that, even in its absence, its situation was discussed by the other members of Club Italia at several meetings. In the

Commission's view, such discussions could not have taken place unless Trame continued to inform the other Club Italia members of its situation, which demonstrates the continuity of its participation in that component of the infringement.

– The statements made by SLM and Tréfileurope

216 As a preliminary point, it must be borne in mind that it is apparent from the contested decision that the Commission considered that the evidence available to it for the purpose of establishing that Trame participated in the cartel even though it was absent from the Club Italia meetings between 10 April 2001 and 16 September 2002 is confirmed by the statements made by SLM and Tréfileurope.

217 In reply to the measures of organisation of procedure, the Commission produced the content of SLM's letter to the Commission dated 25 October 2002 (Annex E.36 to the Commission's reply to the measures of organisation of procedure), from which it is apparent that two representatives of SLM participated in meetings with representatives of other Italian producers at the end of 1999 and during 2000, 2001 and 2002.

218 The undertakings named by SLM in that respect are: Redaelli, CB, Itas, ITC, Tréfileurope and Trame for the meetings at management level and Redaelli, CB, Itas, ITC, Tréfileurope, Trame and Tycsa for the meetings at salesperson level.

219 It is also apparent from the contested decision that, in reply to Trame's observation that that statement by SLM does not explicitly mention the dates of the meetings in which one or other of the representatives of Trame named by SLM participated, the Commission observed that the statement was 'completed by contemporaneous documents indicating the exact dates of these meetings' (contested decision, footnote accompanying recital 472).

220 As such, and as, moreover, the Commission observes, the SLM statement therefore requires other evidence if its content can be considered to be corroborated. It must be pointed out in that regard, moreover, that the Commission considered in the contested decision that the information supplied by SLM during the administrative procedure did not contribute significant added value with respect to the information which it already had. In particular, the Commission observed that the description of the meetings that took place at management and salesperson levels was vague and already clear from pre-existing evidence (contested decision, recitals 1126 to 1129).

221 As for the content of the statements made by Tréfileurope, the Commission stated, in reply to the measures of organisation of procedure, that it was not in a position to provide further detail of the tension between Trame and the Club Italia members claimed by that undertaking since the Commission was aware of that tension only through Tréfileurope's assertions. It is also apparent from the file that while SML referred to Trame for the period from 1997 until the beginning of 2001, the subsequent references to the 'Italians', in particular as regards the period after the integration of the Italian undertakings within Club Europe, do not specifically mention Trame. Nor is Trame among the undertakings which Tréfileurope's representative remembers having met during the first meetings devoted to that integration in May and October 2000 (Annex F.5 to the Commission's reply to the measures of inquiry).

222 In this instance, again, in order to be taken into consideration, the statements made by Tréfileurope in connection with its leniency application need to be corroborated by evidence showing that, in respect of the period of one year and five months, it may be considered to the requisite legal standard that Trame participated in the cartel even though the Commission is not in a position to establish its direct participation in the Club Italia meetings between 10 April 2001 and 19 September 2002. The mere reference to the fact that Trame is an Italian producer or that it participated between March 1997 and April 2001 with the 'Italians' in the internal dimension of Club Italia cannot suffice in that regard, without probative evidence showing that that participation continued until September 2002.

– The meeting of 10 June 2001

223 The first meeting cited by the Commission in order to establish that, following the meeting of 10 April 2001, Trame continued to participate in Club Italia is the meeting held two months later, on 10 June 2001. In the column relating to that meeting in Annex 3 to the contested decision, the Commission stated that the following were represented: Redaelli, Itas, ITC, Tréfileurope and SLM, and also a person working for CB and for Austria Draht.

224 In that column, the Commission presented the content of the meeting of 10 June 2001 as follows: '[t]able showing market share in tons and in percentage for [Redaelli, CB, Itas, ITC, Tréfileurope and SLM] on the one hand (= 89% [of the market] or 106 800 tons) and for Trame, TY, DWK, Austria on the other hand: 13 200 tons (11% [of the market])'.

225 That information comes from a document seized from ITC during the inspection (Annex E.37 to the Commission's reply to the measures of organisation of procedure).

226 That table distinguishes two categories of undertaking, as, moreover, the Commission observes: (i) the principal members of Club Italia, namely the four initial members (Redaelli, CB, Itas and ITC), Tréfileurope, which coordinated Club Italia and Club Europe, and also SLM, which at the time was also exporting outside Italy; and (ii) the other undertakings selling in Italy, namely Trame, Tycsa, DWK and Austria Draht.

227 Furthermore, that table consists of three columns, in addition to the names of the undertakings: the first column contains quantities and allocates 120 000 tons between the two categories referred to above; the second column identifies the share in percentage represented by those quantities within those two categories (or, in total, 89% for the producers in the first category and 11% for the operators in the second category; the third column contains two types of values, recalculated percentages for producers in the first category (these percentages resulting from the allocation within the producers in the first category of only the quantities sold by those six producers, and not by all producers) and new rounded quantities for producers in the second category (those quantities being increased from 13 200 to 14 000 tons).

228 As regards Trame, the following data are recorded in that table: 4 920 tons (1st column), 4.10% (2nd column) and 5 500 tons (3rd column). By way of comparison, the data relating to ITC are 22 500 tons (1st column), 18.75% (2nd column, or ITC's share of the total of 120 000 tons) and 21.07% (3rd column, or ITC's share when only sales by the six producers in the first category are taken into consideration).

229 As thus reported, the content of that meeting is not sufficient to establish to the requisite legal standard that the abovementioned information came from Trame.

230 In fact, the discussion in question was between representatives of the six producers in the first category, and it is reasonable to think that those producers estimated the quantities sold on the Italian market by the operators in the second category. Such estimates may have been precise, as in the case of the data in the first column, but that may be explained by knowledge of the market and the market players. In an attempt to determine market shares, it cannot be surprising that the first six producers, which together account for almost 90% of the quantities sold, should be capable of assessing the quantities sold by the other four producers present on that market. Such an explanation is at least as coherent and plausible as that put forward by the Commission, which considers that only Trame can be at the origin of the data relating to it set out in the table discussed at a meeting of the six main Italian producers.

– The meeting of 12 July 2001

231 The second meeting cited by the Commission is the meeting of 12 July 2001. In the column relating to that meeting in Annex 3 to the contested decision, the Commission indicated that the following were represented: Redaelli, CB, Itas, ITC, Tréfileurope and SLM, and also DWK, WDI and Nedri.

232 In that column, the Commission stated, in particular, that the meeting of 12 July 2001 had concerned the European market and, in particular, the Italian producers' request for 60 000 tons. The Commission expressly noted that it followed from the handwritten note relating to that meeting submitted by ITC that the participants, '[discussed] more specifically … the exports of Itas, CB, ITC and SLM (excluding those of Trame and Redaelli) for the period June 2000 [to] June 2001'. According to the notes, 'the total export figure of seven-wire strand of these four companies was 30 872 tons, exported to 14 countries and divided up as follows: "Itas: 2 889 [tons]; CB: 12 427 [tons]; ITC: 12 861 [tons]; SLM: 2 685 [tons]; AFT: -; Redaelli: 17 000 tons (+ 4 000 [tons of three-wire strand] + 5 000 [tons of wire]); Trame 1 000 [tons] (same as ITC)"'. The notes further mention '30 862 MT agreement + 10% supplement (divided over all Italians)' It is also stated that the Nedri and SLM notes mention that the main export countries are given for CB, Itas, ITC and SLM.

233 That information comes from preparatory notes and from a handwritten minute of the meaning prepared by Nedri, from documents seized from ITC, SLM and Itas, from information submitted by CB, SLM and Tréfileurope in the context of their cooperation with the Commission and from a handwritten minute of the meeting prepared by ITC (Annex E.38 to the Commission's reply to the measures of organisation of procedure). In that regard, it must be observed that the Commission has ample evidence to establish the content of the meeting of 12 July 2001. That is all the more noteworthy because that evidence comes from members of both clubs present at that meeting, Club Europe and Club Italia.

234 As thus documented, the content of the meeting of 12 July 2001 is not, as such, capable of establishing that, in spite of being absent from that meeting, Trame continued to participate in Club Italia.

235 A number of documents actually mention a quantity of 1 000 tons corresponding to 'consignments abroad from Italy' by Trame. However, such information appears only incidentally in the discussions. Furthermore, those sales in all likelihood correspond to sales made by Trame in the United Kingdom, which according to the contested decision was not among the Member States affected by the cartel. In a discussion between the members of Club Italia and the members of Club Europe concerning the European market, including the United Kingdom and Ireland, the more likely view is that the information relating to Trame was supplied by an undertaking present at the meeting, on its own initiative and not, as the Commission suggests, at the request of Trame, with the aim of obtaining a share of the export quota granted to the Italians by Club Europe with respect to the territories concerned by that Club. It is also apparent from the documents submitted concerning that meeting that the discussions focused mainly on exports by CB, Itas, ITC and SLM, for which precise figures are mentioned, whereas that was not the case for Redaelli and Trame.

236 A number of documents are particularly probative in that regard. These are, first of all, a document submitted to the Commission by SLM on 25 October 2002 (page 16807 of the file relating to the administrative procedure), concerning the meeting of 12 July 2001. In a 'statement of consignments abroad from Italy', that document actually mentions 'consignments Trame 1 000 tons'. In that statement, however, that document also refers to two other items, 'group consignments 30 872 tons' and 'consignments Redaelli 17 000 tons (+ 4 000 tons of three-wire strand and 5 000 tons of wire)'. It is also apparent from a different part of that document that the group consignments are broken down as follows: 'Itas: 2 889; CB: 12 427 tons; ITC: 12 861 tons; SLM: 2 685 tons; AFT: -; total 30 872' and that the 'important countries for the Italians' are 'Itas: Germany; CB: Germany and France. ITC: France; SLM: Germany and France'. That document therefore clearly distinguishes between the 'group' and Trame, which is not mentioned as a member of the group.

237 Therefore, the reference '30 862 MT agreement + 10% supplement (divided over all Italians)' found in a Nedri document (page 30850 of the file relating to the administrative procedure) or in an ITC document (page 5022 of the file relating to the administrative procedure) does not include Trame 'without the slightest doubt', as the Commission suggests, since it is apparent from the documents referred to above, explicitly as regards the SLM and Nedri documents and implicitly as regards ITC, that the expression 'Italians' refers to 'Itas, CB, ITC and SLM' and not to Trame.

– The e-mail of 13 July 2001 from SLM to ITC

238 In its replies to the measures of organisation of procedure, the Commission observed that, by means of an e-mail seized during the inspection, SLM sent to ITC, on 13 July 2001 (page 5272 of the file relating to the administrative procedure), a table entitled 'seven-wire strand 2001' containing figures relating to the quantities sold by 10 undertakings, namely Redaelli, CB, Itas, ITC, Tréfileurope, SLM, Trame, Tycsa, DWK and Austria Draht, in 2001, for numerous customers (see the column relating to that document in Annex 3 to the contested decision, that table being referenced in an attached document under the name 'trefolo pulito'). It is the same table, moreover, as the one attached to an e-mail sent to ITC by SLM on 4 February 2002 (page 5281 of the file relating to the administrative procedure), which this time was referenced under the name 'ipotesis mercato trefolo 2002'.

239 In the Commission's submission, it follows from those data, and in particular from the fact that the table contains the precise number of tons per customer and the percentage of supplementary quotas for each undertaking, that such information does not in any event constitute general data readily obtainable from customers or other producers, as Trame claims.

240 Upon examination, it appears in fact that, for 400 Italian customers, precise data (generally rounded to 10 or 5 units) are supplied concerning the quantities sold by the 10 undertakings referred to above. Contrary to the Commission's assertion, however, and as Trame maintains, it must be observed that the table once again distinguishes two categories of operators. It is apparent from the final summary, which distributes among the 10 undertakings the quantities of seven-wire strand sold on the Italian market (119 200 tons in 2001), that a distinction is drawn between, on the one hand, Redaelli, CB, Itas, ITC, Tréfileurope and SLM, for which data relating to sales made and provisional sales ('percentuali spettanti' / 'percentuali provvis.' / 'quote spettenti'/ 'quote provvisorie' / 'differenze') are also given, and, on the other hand, the other operators, Trame, Tycsa, DWK and Austria Draht, for which only the data relating to quantities sold in 2001, and what that represents as a percentage, are given (that is to say, for Trame, the following data: '6 960 tons', i.e. '5.84%' of the 119 200 tons sold in 2001; Trame is also mentioned as a supplier in the case of 20 customers listed in the table).

241 Therefore, in the light of that distinction, it is impossible to preclude outright, as the Commission suggests, the possibility that the information presented in that table concerning Trame, Tycsa, DWK and Austria Draht (the latter undertaking being in a special situation, since its commercial agent in Italy also worked for CB) consists of estimates by Redaelli, CB, Itas, ITC, Tréfileurope and SLM on the basis of the data which those undertakings together held or the contacts which they may have had with their customers.

242 It should also be noted that certain references in the table sent to ITC by SLM by e-mail on 13 July 2001 are hypotheses, as is apparent, for example, from the references '???', '??? TM' or '??? TYS' in a column headed 'notes' alongside the data relating to the 10 producers.

243 In addition, it must be pointed out that there is nothing original about the table, as it forms part of a continuous effort made within Club Italia since 1995 to identify customers and volumes supplied for seven-wire strand (contested decision, recital 441 et seq.). A significant amount of relevant evidence was seized by the Commission during the inspections or submitted in connection with leniency applications, and shows that on many occasions lists of customers were drawn up in order to identify and estimate the quantities sold by members of Club Italia and other producers present in Italy. By

way of example, there is thus a table entitled 'mercato italiano trefolo CAP anno 98' that lists 383 customers with references for Redaelli, CB, Itas, ITC and Tréfileurope and blank columns for SLM, Trame, DWK and Austria Draht (see column for 1998 in Annex 3 to the contested decision) (pp. 29639 to 29646 of the file relating to the administrative procedure). Other tables mention the 'ripartizione spedizione trefolo italia anno 1998 in ton', with a comparison for 1999, or the 'ripartizione spedizione trefolo italia anno 1999 in ton' for a large number of customers for Redaelli, CB, Itas, ITC and Tréfileurope (pp. 29655 to 29670 of the file relating to the administrative procedure). There are other tables with data relating to Trame, SLM, Austria Draht, DWK and Tycsa in addition to references to Redaelli, CB, Itas, ITC and Tréfileurope (pp. 5640 to 5643 and 29671 to 29689 of the file relating to the administrative procedure).

– The meeting of 30 August 2001

244 The third meeting cited by the Commission is the one held on 30 August 2001. In the column relating to that meeting in Annex 3 to the contested decision, the Commission states, in particular, that at that meeting between Itas, ITC and SLM there had been discussion of a '[d]etailed client allocation, including for SLM, Redaelli, CB, Trame, and [a person working for CB and for Austria Draht]' and that 'Trame wants to sell its plants' and 'has chosen not to be part of the cartel'.

245 That information comes from two documents relating to the meeting of 30 August 2001, one a handwritten ITC minute submitted in the context of the leniency application ('the first document', page 16158 of the file relating to the administrative procedure) and the other a typewritten minute seized from ITC during the inspection ('the second document', page 4989 of the file relating to the administrative procedure) (Annex E.39 to the Commission's reply to the measures of organisation of procedure).

246 As the Commission states, it is apparent from the first document that it contains precise information, entitled 'Richieste Trame' (requests Trame), concerning 23 customers, which it relates to Trame.

247 Other information about customers is also supplied, in a less precise form, concerning SLM, Redaelli and CB. In fact, it is clear from the first document that, for each of the 23 customers mentioned in connection with Trame, there is a reference to a tonnage. In addition, for 15 of those customers, there is an 'x', for 'OK', in the margin, whereas for the other nine there is an '-' for 'no'. There is also a question mark alongside three customers, and the reference 'exl', which in all likelihood means exclusive customer, alongside four other customers. In total, the quantities given for the 23 customers of Trame come to 6 520 tons. Although those quantities sometimes overlap with those given in the e-mail of 13 July 2001, that is not always the case.

248 In the present case, the reference to the word 'request', the degree of precision of the abovementioned information and the way in which it was treated by Itas, ITC and SLM suggest, as the Commission submits, that Trame is in all likelihood at the origin of the 'requests' concerning its customers discussed at the meeting of 30 August 2001. It can thus be established on the basis of that information that there were contacts between the members of Club Italia and Trame concerning '[d]etailed client allocation', as stated in the contested decision.

249 Furthermore, in the second document, ITC refers to Trame's the fact that Trame had made known that it had chosen not to be part of the cartel (page 4989 of the file relating to the administrative procedure). That document is worded as follows:

'5. Trame: insists on selling its three-wire strand and seven-wire strand business. It currently produces 6 000 tons of seven-wire strand and 9 000 tons of three-wire strand; its plant is obsolete. It is voluntarily not part of the cartel. Our competitors are also aware of the initiative.'

250 As thus reported, the content of the second document certainly does not permit the inference that Trame participated in Club Italia. Contrary to the Commission's contention, that assertion cannot reasonably be interpreted as referring to Club Europe, since the quantities given with respect to Trame concern Italy.

251 However, examination of the content of the second document as a whole reveals that it is unlikely that that document concerns the same meeting as the one in which Itas, ITC and SLM participated on 30 August 2001. Although the second document is entitled 'minute' and mentions the date, 30 August 2001, it sets out the content of the points discussed on that date by a 'supervisory board'. That minute mentions, in particular, in paragraph 1, a proposal to collaborate with an Italian university, which is not mentioned as one of the items discussed at the Club Italia meeting.

252 It is therefore likely that the discussion relating to paragraph 5 of the second document, reproduced in paragraph 249 above, took place only within ITC's supervisory board and not within Club Italia.

253 In those circumstances, the second document and the reference which it makes to Trame's non-participation in the cartel does not, as such, preclude the inference that can be drawn from the content of the first document, namely that on 30 August 2001 three members of Club Italia discussed 'requests' concerning 23 customers of Trame, which gave rise to negative or positive decisions on the part of Itas, ITC and SLM.

254 Even though ITC and probably other operators were aware of Trame's desire to leave the PS sector, just as they were aware that Trame should not be regarded as one of the principal members of Club Italia, that does not preclude the possibility that Trame sought to benefit from certain aspects of Club Italia, especially as regards its internal aspect, as is clear from the first document.

– The meeting of 1 October 2001

255 The fourth meeting cited by the Commission is the one held on 1 October 2001. In the column relating to that meeting in Annex 3 to the contested decision, the Commission stated that the following were represented: Redaelli, CB, Itas, ITC, Tréfileurope and SLM.

256 In that column, the Commission presented the content of the meeting of 1 October 2001 as follows: 'ITC: [d]iscussion on customer allocation and on imports … "Spain: does not respect the agreements, … has already surpassed 4 000 and are already at 6 000". Trame-Emesa — proposal to cede all or part (only "CAP"). It is revealed that Trame wants a quota of 8.7' and 'Redaelli notes: sharing of the external quota'.

257 That information comes from documents seized from ITC and Redaelli during the inspection and from ITC's leniency application (Annex E.40 to the Commission's reply to the measures of organisation of procedure).

258 Upon examining the evidence submitted in that regard by the Commission, it is apparent from the minute relating to the meeting of 1 October 2001 prepared by ITC that the following reference is made: 'Trame — three-wire strand 23/25 000 [total size of the market] wants 8.7 — seven-wire strand 6 000'.

259 When questioned on this point in the context of the measures of organisation of procedure, Trame stated that the quota of 8.7 corresponded to the value which it had been offered in order to reach an agreement on three-wire strand as well, that that attempt to extend the agreement to three-wire strand had not succeeded and, 'purely in the interest of completeness', recalled that it had not participated in that meeting.

260 It must be stated, however, that, while it is not disputed that Trame did not participate in that meeting, it is none the less apparent from the minute prepared by ITC at the material time that a desire, attributed to Trame by the undertakings present, to obtain a specific quantity of three-wire strand was discussed at the meeting of 1 October 2001. In the light of the content of that document, given the degree of precision of the quantities requested (8 700 tons) and the fact that another document relating to a subsequent meeting corroborates that point, the more likely scenario is, as the Commission suggests, that Trame is the author of such a request, rather than that, as Trame claims, it was the members of Club Italia that offered it that quantity.

– The meeting of 23 October 2001

261 The fifth meeting cited by the Commission is the one held on 23 October 2001. In the column relating to that meeting in Annex 3 to the contested decision, the Commission indicated that the following, in particular, were represented: Redaelli, CB, Itas, ITC, Tréfileurope and SLM.

262 In that column, the Commission presented the content of the meeting of 23 October 2001 as follows: '[s]ales quotas set for Italian producers [and c]omparison with actual sales on 30 September 2001 (74 814 tons)'. The Commission also noted that there was a question mark over 'Trame, [Spagna], Austria and DWK'.

263 That information comes from a document seized from ITC during the inspection (Annex E.41 to the Commission's reply to the measures of organisation of procedure).

264 It follows from that document, which compares, as at 30 September 2001, sales made by comparison with planned sales, that the reference to Trame is immediately followed by the comment '?!', as is also the case for Spagna, Austria and DWK. Likewise, examination of that document shows once again (see paragraphs 226 et 240 above) that the data relating to the comparison of sales are provided only for Redaelli, CB, Itas, ITC, Tréfileurope and SLM, for which the respective shares of 100% of the quantities which they have sold are given, without any reference in this instance to the four other producers that sold in Italy.

265 That document cannot therefore be relied on in order to establish that Trame was participating at that time, in its absence, in the Club Italia meetings concerning seven-wire strand.

– The meeting of 11 January 2002

266 The sixth meeting cited by the Commission is the one held on 11 January 2002. In the column relating to that meeting in Annex 3 to the contested decision, the Commission indicated that the following, in particular, were represented: Redaelli, CB, Itas, ITC Tréfileurope and SLM.

267 In that column, the Commission presented the content of the meeting of 11 January 2002 as follows:

— '[d]iscussions about customers';

— '[e]xchange of detailed information about quantities sold by producers (Italian producers: [Redaelli, CB, Itas, ITC, Tréfileurope and SLM] and foreigners: Austria, DKW [and] Tycsa) in Italy in 2001';

— '[d]iscussion about Trame';

— 'r]egarding producers, planned and actual volumes and differences between the two for [Redaelli, CB, Itas, ITC, Tréfileurope and SLM]';

— '[n]ext meeting on 22 January, concrete proposals: reducing as much as possible the number of joint customers'.

268 That information comes from the handwritten minutes relating to that meeting submitted by ITC and SLM during the administrative procedure (Annex E.42 to the Commission's reply to the measures of organisation of procedure).

269 Examination of those documents reveals that the discussion about customers does not mention information relating to Trame. Trame's name is mentioned in ITC's minute with two lines of text the meaning of which was not supplied and which is not readily apparent. It probably relates to the part described as '[d]iscussion about Trame' mentioned in the contested decision.

270 For the remainder, it must also be stated that, when the volumes sold by the 10 producers named in the two minutes are mentioned, Trame's name, with the comment '7 000' out of a total volume of 112 524 or 112 742 tons, depending on the minute in question, is immediately followed by a question mark, which is not the case of the precise figures given in respect of Redaelli, CB, Itas, ITC, Tréfileurope and SLM. The figures relating to Trame, Tycsa, Austria Draht and DKW also appear to have been the subject of discussions, in that there are numerous deletions on the ITC minute in that respect. The discussion for Trame varies between 7 000 and 6 000 tons, the estimate of 7 000 being the one that remains whereas the initial estimate for Tycsa was subsequently accompanied by the comment 'OK' and then moved and placed after the figures relating to the main producers.

271 Likewise, as regards the discussion of planned and actual volumes for 2001 and the data relating to 1999, 2000 and 2001, only the following producers are mentioned: Redaelli, CB, Itas, ITC, Tréfileurope and SLM. Trame does not appear in that part of the discussions.

272 Those documents cannot therefore be relied on to establish that Trame was participating at that time, in its absence, in the Club Italia meetings concerning seven-wire strand.

– The meeting of 22 January 2002

273 The seventh meeting cited by the Commission is the one held on 22 January 2002. In the column relating to that meeting in Annex 3 to the contested decision, the Commission indicated that the following, in particular, were represented: Redaelli, CB, Itas, ITC, Tréfileurope and SLM.

274 In that column, the Commission presented the content of the meeting of 22 January 2002 as follows:

— '[d]iscussions about customers, exchange of information about prices';

— 'Trame wants 8 700 [tons]' and 'Proposal to Trame regarding 2002 (especially list of probable customers) and agreement for the future: first contact [between a representative of Tréfileurope and a representative of Trame], then discussion and confirmation by all';

— '[t]he notes also mention recuperation of own customers and, if appropriate, exchange'.

275 That information comes from handwritten minutes relating to that meeting submitted by ITC and SLM during the administrative procedure (Annex E.43 to the Commission's reply to the measures of organisation of procedure).

276 Examination of those documents confirms that the meeting dealt with Trame's situation. That, moreover, was the first of the three points set out in the minutes prepared by ITC and SLM. It is also apparent from ITC's minute that the participants in that meeting were aware that out of the

27 000 tons represented by the market for three-wire strand in 2001, 'Trame [wanted] 8 700 [tons]'. The two minutes also mention an agreement between the participants in the meeting to make a proposal to Trame; ITC's minute states that this was a proposal for 2002.

277 The foregoing data clearly follow on from what emerges from the ITC minute relating to the meeting of 1 October 2001 (see paragraph 255 et seq. above). Taken together, those data illustrate Trame's persistent efforts made to arrive at an agreement among the members of Club Italia concerning three-wire strand.

278 In that context, it may be thought that, as from 1 October 2001, Trame manifested its desire to rejoin Club Italia, setting out the conditions on which it would return, which were known to the members of Club Italia. Such a demonstration of intent on the part of Trame, known to the members of Club Italia from that date, led them to adopt a position on 22 January 2002. This involved the proposal mentioned in connection with that meeting, which, in order to be ratified, still had to go through two stages: first of all, contact between a representative of Club Italia (who was to be Tréfileurope's representative) and a representative of Trame, then discussion and confirmation by all the members of that club.

279 In any event, it is apparent from the abovementioned documents that the expressions 'proposal' and 'list of probable customers' show that on 22 January 2002 Trame was still not perceived as a full member of Club Italia.

– The meeting of 1 March 2002

280 The eighth meeting cited by the Commission is the one held on 1 March 2002. In the column relating to that meeting in Annex 3 to the contested decision, the Commission stated that the following were represented: Redaelli, CB, Itas, ITC, Tréfileurope and SLM.

281 In that column, the Commission indicated that there were discussions about sales to Italian customers. It is also stated that a representative of Tréfileurope met a representative of Trame, as is to be seen from the ITC minute relating to that meeting seized during the inspection (Annex E.44 to the Commission's reply to the measures of organisation of procedure).

282 That meeting therefore forms part of the context of what was described at the meeting of 22 January 2002, since it shows that the planned contact took place.

– The meeting of 10 June 2002

283 The ninth meeting cited by the Commission is the meeting held on 10 June 2002. In the column relating to that meeting in Annex 3 to the contested decision, the Commission stated that the following were represented: CB, Itas, ITC, Tréfileurope and SLM.

284 In that column, the Commission stated that there had been discussions about sales quotas in Italy and customer allocation for 2002. It is also stated that 'Trame [is] very interested by customer agreement', as is apparent from the ITC minute relating to that meeting submitted in the context of the leniency application (Annex E.45 to the Commission's reply to the measures of organisation of procedure).

285 It is apparent, in fact, that in that minute (page 16191 of the file relating to the administrative procedure) ITC makes a number of references to Trame. First, it is stated that Trame has an agreement with a customer. Second, in the context of an evaluation of the market for three-wire strand in Italy (24 375 tons in all), Trame's market share is evaluated at 7 700 tons (31.59%). Third, concerning one customer, it is stated: 'leave everything to Trame', and that is in the context of a discussion about several customers where the decisions are taken 'to satisfy everyone'. Fourth, the comment: 'Trame: very interested in the agreement on three-wire strand' appears in the minute.

286 In this instance, as the Commission claims, it must be considered that it is established to the requisite legal standard that, even if Trame was absent from the meeting, its situation was taken into consideration by the members of Club Italia, who adapted their conduct in accordance with Trame's attempts. Just as such a conclusion may be reached, as regards the meeting of 30 August 2001, from, particular, the presence of the words 'requests Trame' in a minute of that meeting, the reference to the decision to 'leave everything to Trame' in the context of a discussion designed to 'satisfy everyone', when it is made clear that Trame is very interested in an agreement on three-wire strand, shows that contacts still took place between the members of Club Italia and Trame and that in all likelihood the former acted in consideration in accordance with the requests made by the latter.

– The meeting of 16 September 2002

287 Last, it should be observed that Trame's reintegration within Club Italia is demonstrated by the fact that Trame was present at the Club Italia meeting of 16 September 2002, with Redaelli, CB, Itas, Tréfileurope and SLM, during which there were discussions aimed at allocating quotas for three-wire and seven-wire strand and at fixing prices.

c) Conclusion

288 It follows from the foregoing that the Commission is able, to the requisite legal standard, to consider that, following the Club Italia meeting held on 10 April 2001, at which Trame was present, the latter's situation was discussed and taken into account by the members of Club Italia at the Club Italia meeting held on 30 August 2001 (see paragraph 244 et seq. above).

289 Subsequently, it is apparent that, for a certain period, the Commission is no longer in a position to establish to the requisite legal standard that, even though Trame was absent from the Club Italia meetings, it may still be considered that that undertaking was participating in the arrangements concluded within that club.

290 Examination of the evidence submitted in that regard shows, however, that, as from the Club Italia meeting held on 1 October 2001, when Trame's desire to rejoin Club Italia if it is allocated a quota of 8 700 tons of three-wire strand is first mentioned (see paragraph 255 et seq. above), a process was initiated in order to allow Trame to be reintegrated within Club Italia.

291 Trame's return was again planned by the members of Club Italia on 22 January 2002 (see paragraph 273 et seq. above) and materialised for the first time on 10 June 2002 (see paragraph 283 et seq. above), when it may be considered that the members of Club Italia again adapted their conduct to take account of Trame's situation and decided to allow it have a customer in order to 'satisfy everyone'.

292 It should be observed, moreover, that on 16 September 2002 Trame's return is all the more effective because one of its representatives is again participating in the meetings of Club Italia (see paragraph 287 et seq. above).

293 In conclusion, the Court considers it necessary to take into account that there is no evidence that Trame participated in anti-competitive practices imputable to the members of Club Italia only in respect of the period from 30 August 2001 until 10 June 2002, or around nine months.

294 During that nine-month period, there is thus nothing in the file to show that Trame participated in the anti-competitive arrangements concluded within Club Italia or even it was perceived by the members as participating in those arrangements, since, for example, those members were unable to assess the quantities sold by Trame on the Italian market (see paragraph 261 et seq. above).

295 In that regard, it is appropriate to bear in mind that the case-law on distancing from participation where the undertaking concerned participates in a meeting (see paragraph 97 above) assumes, in order to apply, that the Commission shows that the undertaking concerned participated in meetings at which anti-competitive agreements were concluded, without manifestly opposing them, in order to prove to the requisite standard that the undertaking participated in the cartel.

296 In the present case, however, it has not been shown to the requisite legal standard that Trame participated, whether directly or indirectly, in a meeting of Club Italia between 30 August 2001 and 10 June 2002. There is also ample evidence that during that period the other members of Club Italia had no firm idea about Trame's conduct on the market. They were reduced to making estimates, to seeking to ascertain what its conduct was likely to be or to declaring their lack of knowledge by using a question mark in the minutes of the meetings in question.

297 Accordingly, it is also appropriate to annul Article 1(17) of the contested decision, in that the Commission found that Trame had participated in the anti-competitive practices during the period between 30 August 2001 and 10 June 2002. The other consequences of the foregoing will be assessed globally below after the parties' arguments have been examined.

E – *The marginal role within the cartel*

1. *Arguments of the parties*

298 Trame maintains that it played only a marginal role in the cartel. It was persuaded to participate by vertically integrated undertakings which, as suppliers of raw material, were able to put pressure on it. Trame thus participated in only a limited and occasional number of meetings (18 out of 234 between 1997 and 2002). Its marginal role may be seen, in particular, from the statements made in the context of the leniency applications. Redaelli mentions Trame in only one passage, where it emphasises that Trame participated only occasionally in the meetings between competitors. The statements by ITC and DWK contain no assertion that incriminates Trame. In Tréfileurope's statement Trame is not mentioned more than two or three times, in passing, and no reference is made to the role played in the cartel. Likewise, in his statement, a representative of ITC states that 'at the rare meetings in which Trame participated, its representatives always played a marginal and entirely passive role', that 'the other Italian PS producers present at the Club Italia meetings regarded Trame as an independent operator, acting autonomously on the market, whose production and commercial choices were unpredictable' or that 'frequently Trame did not supply the information which the other members of Club Italia asked it to provide'. It should also be taken into account that Trame did not export its production, whereas part of the discussions within Club Italia concerned exports, and the essential part of its turnover was obtained from sales of three-wire strand and wire rod.

299 Nor did Trame ever apply the alleged agreements and it always sought to refuse the requests for information. The ITC minute of the meeting of 20 July 1999, according to which 'Trame is present everywhere' (page 16056 of the file relating to the administrative procedure), and Tréfileurope's statement, according to which Trame often created tension with the other members of Club Italia (page 34619 of the file relating to the administrative procedure), confirm that commercial independence. Likewise, the volumes of Trame's sales always increased, its production of seven-wire strand rising from 1 700 tons to 7 410 tons between 1997 and 2002. Its market share increased to the detriment of its competitors. Such results are not compatible with any plans to allocate the market. Even when such plans were actually drawn up, Trame did not put them into practice and its commercial conduct severely compromised their effectiveness.

300 In conclusion, the particular characteristics of Trame's participation in the cartel ought to have led the Commission to apply to it a more significant reduction of the fine than 5%, which is incorrect, disproportionate and unreasonable.

301 The Commission disputes those arguments. It observes that Trame's participation in the cartel is confirmed by numerous documents and statements. It is also incorrect to assert that Trame's participation in Club Italia was limited and occasional, since Trame's situation was brought up even in its absence. Trame does not show that it did not become involved in the activities forming the objective of Club Italia or that it did not take into account the commercial information exchanged with its competitors. As for the alleged failure to apply the agreements, occasional cheating regarding fixed prices or allocated customers does not in itself prove that the undertaking concerned has not implemented the cartel (see contested decision, recital 1018). In the present case, the reduction of 5% of the basic amount of the fine granted to Trame under the 2006 Guidelines correctly takes into account the both the fact that the infringement in which Trame participated is among the most serious infringements of competition law and the fact that Trame's participation in the infringement was limited.

2. *Findings of the Court*

302 In the context of the present plea, Trame relies on its marginal participation in the infringement and also on the fact that its participation had no effects. More broadly, Trame also claims that the Commission did not properly take the particular characteristics of its participation in the cartel into consideration when it decided to grant Trame a reduction of 5% of its fine to take account of its reduced or limited role in the single infringement.

a) Evidence put forward to characterise a mitigating circumstance

303 In that regard, it should be borne in mind that the complaints which Trame puts forward in the context of this plea were examined from two aspects in the contested decision, first of all in the examination of the arguments seeking to characterise a mitigating circumstance linked with the 'minor and/or passive role' (contested decision, section 19.2.2.3) and then in the examination of the arguments seeking to characterise a mitigating circumstance linked with 'non-implementation/substantially limited role' (contested decision, section 19.2.2.5) (see paragraph 86 above).

304 First, as regards the minor or passive role, the Commission observed that, although the 1998 Guidelines recognise that the amount of the fine could be reduced if the undertaking played an 'exclusively passive or "follow-my-leader" role in the infringement', the 2006 Guidelines, applicable in this case, no longer include that concept as a mitigating circumstance. In the Commission's view, even if an undertaking adopts only a passive or 'follow-my-leader' role, it still participates in the cartel by deriving a commercial benefit from its participation and encouraging the other participants to implement the agreements. A passive or 'follow-my-leader' role therefore does not constitute a mitigating circumstance. The 2006 Guidelines do, however, reward a 'substantially limited' involvement in the infringement if the undertaking concerned 'actually avoided applying [the agreements] by adopting competitive conduct in the market'. However, none of the addressees of the decision could sufficiently prove this (contested decision, recital 983).

305 In passing, the Commission none the less considered in the contested decision whether the 1998 Guidelines might be applied to an infringement that ended on 19 September 2002. Generally, the Commission stated that '[i]n any case, even under the 1998 Guidelines on fines, none of the parties would have merited a reduction of the fine due to a passive role'. An undertaking must adopt 'a low profile, that is to say [it must] not actively participate in the creation of any anti-competitive agreements', or indeed an 'exclusively passive role' or 'total passivity' (contested decision, recital 984). However, it is also stated in the contested decision that, '[t]o the contrary [of the situation of Socitrel, Companhia Previdente, Fapricela, Redaelli, SLM and Itas], the Commission acknowledges that the role

of Proderac and Trame was substantially more limited than that of the other cartel participants and that a reduction of the fine should therefore be granted to these companies' (contested decision, recital 992).

306 Second, as regards the allegations that Trame did not give effect to the agreements, that it also disrupted the cartel and adopted competitive conduct on the market, the Commission observed that, in accordance with the third indent of point 29 of the 2006 Guidelines, entitlement to a reduction of the fine for non-implementation of the cartel requires that the circumstances show that, during the period in which an undertaking was party to the offending agreements, it actually avoided implementing them by adopting competitive conduct on the market or, at the very least, that it clearly and substantially breached the obligations relating to the implementation of the cartel to the point of disrupting its very operation. In that regard, the Commission observed that Trame, like all the other addressees of the present decision, had participated regularly in meetings at which prices, quotas and customers were discussed and monitored. The Commission also stated that, by its very nature, the implementation of the cartel in question led to a significant distortion of competition. In any event, the Commission considered that the actual impact of the cartel was impossible to measure in this case and was not therefore relied on in the calculation of the basic amount. Furthermore, in the Commission's view, no undertaking had proved that it had actually avoided implementing the offending agreements by adopting competitive conduct on the market or that at least it had clearly and substantially breached the obligations relating to the implementation of the cartel to the point of having disrupted its very operation. It followed that no mitigating circumstance could be applied on the ground of non-implementation or a substantially limited role. (contested decision, recitals 1013 to 1026)

307 None the less, the Commission granted Trame (and Proderac) a reduction of 5% of the basic amount. Its reasoning was as follows:

'(1023)
The Commission is however prepared to accept that Proderac and Trame had a limited participation in the infringement. This is due to the fact that these participants operated on the periphery of the cartel, entered into a more limited number of contacts with other cartel participants and participated only to a limited extent in the infringement.'

'(1025)
Also Trame attended only around 18 cartel meetings between 4 March 1997 and 19 September 2002, while its case was discussed in its absence on several other occasions … As confirmed by Tréfileurope, Trame was a marginal player in Club Italia, creating tensions with the other Club Italia participants. This is confirmed in several contemporaneous documents; for example in minutes of the meeting of 20 July 1999 it was noted that Trame was going in all directions, on 4 September 2000 a discussion was held on the "Trame" problem, on 30 August 2001, it was stated that Trame had chosen not to be part of the cartel and also on 11 January 2002, there was a discussion on "Trame"'.

b) Analysis

308 In the third indent of point 29 of the 2006 Guidelines, the Commission stated that, on account of mitigating circumstances, it may reduce the basic amount of the fine 'where the undertaking concerned provides evidence that its involvement in the infringement is substantially limited and thus demonstrates that, during the period in which it was party to the offending agreement, it actually avoided applying it by adopting competitive conduct in the market; the mere fact that an undertaking participated in an infringement for a shorter duration than others will not be regarded as a mitigating circumstance since this will already be reflected in the basic amount'.

309 In the present case, the Commission granted Trame (and Proderac) a reduction of the fine that ought to have been imposed on it for its participation in the infringement following its reasoning as set out in a part of the contested decision devoted to that mitigating circumstance. Somewhat ambiguously, the Commission concluded in that regard that the mitigating circumstance referred to in the third indent of point 29 of the 2006 Guidelines was not satisfied in the present case and also that Trame's participation in the single infringement had none the less been limited, which justified granting a reduction of 5% of the amount of the fine that would otherwise have been imposed (contested decision, recitals 1022, 1023 and 1026).

310 In its reply to the measures of organisation of procedure, the Commission stated that it considered that there is a difference between the 'substantially limited' role, referred to in the 2006 Guidelines, and the 'limited' role that Trame was acknowledged in the contested decision to have played.

311 The Commission also stated that, where the criterion which it defined in the 2006 Guidelines is not satisfied, as was the case here, since Trame had failed to adduce the necessary proof to be able to claim the benefit of such a mitigating circumstance, it none the less considers that it is fair to mark a difference in the degree of the undertakings' participation.

312 The Commission concluded by pointing out that the reduction of 5% was therefore not based on the mitigating circumstance referred to in the third indent of point 29 of the 2006 Guidelines, but was granted in the exercise of its discretion, in order to reflect the role played by Trame by granting it a reduction commensurate with its degree of participation in the cartel.

313 It should be observed that, as the Commission claims in its reply to the measures of organisation of procedure, the list of mitigating circumstances in point 29 of the 2006 Guidelines is not exhaustive, as is clear from the fact that that list is introduced by the expression 'such as' (see, to that effect, judgment of 25 October 2011 in *Aragonesas Industrias y Energía* v *Commission*, T-348/08, ECR, EU:T:2011:621, paragraphs 279 and 280).

314 In addition, it also follows from the case-law (see paragraphs 96 and 98 to 103 above) that the Commission is required, when it determines the amount of the fine to be imposed on an undertaking to penalise its participation in a single infringement, to make the penalty fit in the light of the particular characteristics of that undertaking's participation in the infringement. It is even more necessary to make the penalty fit the offence where, as in the present case, there has been a complex infringement bringing together different clubs with conflicting commercial interests over a very long period and where the participation in the cartel of the undertaking concerned has numerous special characteristics by comparison with those of the main players brought together within the cartel.

315 Consequently, while the Commission is free to choose the stage of the determination of the amount of the fine at which it deems it appropriate to make the penalty fit the infringement in the light of the generally methodology set out in the 2006 Guidelines — it did so, for example, at the stage of the 'determination of the basic amount' for Proderac, Socitrel and Fapricela; at the 'mitigating circumstances' stage Proderac and Trame; or after the 'final' stage for ArcelorMittal, whose fine was reduced from EUR 276.5 million to EUR 45.7 millions following the two amending decisions — the fact none the less remains that, if the fine has not been made to fit the offence in the light of all the relevant circumstances, it will then be for the Court, as it is requested to do, to determine the appropriate amount to penalise the conduct of the undertaking concerned.

316 In the present case, in order to recognise and to fix at 5% the amount of the reduction granted to Trame to take account of its limited role in the single infringement, the Commission took the following factors into account.

317 Generally, the Commission stated that Trame operated on the periphery of the cartel, that it entered into a limited number of contacts with the other cartel members and that it participated only to a limited extent in the infringement. The Commission also observed that Trame 'attended only around 18 cartel meetings between 4 March 1997 and 19 September 2002', while pointing out that 'it was discussed in its absence on several other occasions'. It also acknowledged that, as confirmed by Tréfileurope and three documents cited by way of example, concerning the meetings of 20 July 1999, 4 September 2000 and 11 January 2002 respectively, Trame 'was a marginal player in Club Italia, creating tensions with the other Club Italia participants' (contested decision, recitals 1023 and 1025).

318 In the light of the circumstances referred to by the Commission, Trame's participation in the cartel has certain particular characteristics which must be taken into account when determining the amount of the fine. Although such circumstances already establish the limited role played by Trame within the cartel, as, moreover, the Commission acknowledges, it follows, however, that the level of reduction granted (5%) was not fixed at an appropriate level in view of the nature and all the relevant circumstances that characterise Trame's participation in the cartel.

319 First, as regards the fact that Trame operated on the periphery of the cartel, such a circumstance is not insignificant. Thus, it is apparent from the file that, out of all the arrangements going to make up the single infringement, Trame participated only in Club Italia. Trame cannot therefore be treated as an undertaking involved in the entire single infringement established by the Commission during the period from 1997 to 2002.

320 Likewise, Trame's participation in the cartel, already limited as such, was also limited within Club Italia, where Trame did not participate in the external aspect. The Commission acknowledges that Trame did not export to continental Europe between 1997 and 2002 (contested decision, recital 651), but does not take that into account when assessing Trame's limited role. As it made no exports, Trame was unable to participate in the practices that did not concern Italy. Admittedly, even in the absence of sales outside Italy, Trame's participation in Club Italia none the less enabled it to protect its positions on its home market and thus to avoid normal competition. The fact none the less remains that Trame's role vis-à-vis the external markets was non-existent or very small.

321 In addition, Trame's participation in the agreements relating to seven-wire strand was not of the same nature as the participation of the main players in that club, as is apparent from ample evidence that distinguishes two categories of operators within Club Italia. Trame was also for a long time unaware of both the pan-European dimension of the infringement and the fact that the infringement also related to three-wire strand within Club Italia.

322 There are thus significant differences that distinguish Trame's participation in the single infringement from that of an undertaking which, like Tréfileurope, participated in all the aspects of the cartel.

323 Second, while the Commission recognises that Trame participated in a limited number of meetings, it also observes that on other occasions its situation was also brought up in its absence. It is apparent from the file, however, that the occasions on which its situation was actually taken into account for anti-competitive purposes by the members of Club Italia are less numerous than those which the Commission mentions in the contested decision (see, as regards the meeting of 30 August 2001, paragraph 244 et seq. above and, as regards the meeting of 10 June 2002, paragraph 283 et seq. above). Certain elements indicate, moreover, that Trame was often admitted after the initial stage or that it left at the end of meetings organised within the institutional framework of a trade association (see the statement by a representative of Tréfileurope submitted by Trame or, as regards the meeting of 9 October 2000, paragraph 124 et seq. above).

324 Third, it is clearly established by the Commission itself that the participants in the infringement were aware of Trame's special situation. Thus, it is apparent from the documents and statements to which Trame refers on this point, some of which, moreover, are reproduced in the contested decision, that Trame was perceived as a marginal and unreliable participant in Club Italia.

325 None the less, Trame's assertion that it 'never' applied the 'alleged' agreements in which it participated cannot be accepted. However limited its participation in the cartel may have been, it is none the less apparent from the file that Trame's participation was established by the Commission in the contested decision.

326 Such a conclusion does not mean that the information provided by Trame about its commercial conduct is irrelevant. Such information suggests that Trame did not participate fully in the cartel. In the light of the data communicated on that point by Trame, which the Commission regards in the contested decision as mere 'cheating', may also be regarded as aggressive commercial conduct concerning seven-wire strand in Italy. Trame had thus invested in machinery to modernise its production and its turnover (up from EUR 5.6 million in 1997 to more than EUR 9 million in 2002 for seven-wire strand) and quantities produced (up from 1 700 tons of seven-wire strand in 1997 to 7 410 tons in 2002), which were constantly increasing.

327 Those results can explain the distrust towards Trame expressed on several occasions by members of the cartel. Having arrived more recently than the other on the market for seven-wire strand, and with a constantly increasing market share, whereas one of the essential objectives of the cartel was to stabilise market shares by allocating customers among themselves, Trame distinguished itself by its commercial conduct from that of the other operators in Club Italia, which preferred to seek outlets outside Italy and not to compete in Italy.

c) Conclusion

328 While the Court agrees with the Commission that Trame's participation in the cartel was actually limited, which justifies taking such participation into account as a mitigating circumstance when determining the amount of the fine, it should also be considered that the level of the reduction of the fine applied on that basis, which was only 5%, does not take the particular features of Trame's situation within the cartel sufficiently into account.

329 In that context, it is for the Court itself, in the context of its unlimited jurisdiction, which it asked to exercise in the present case, to envisage how the limited role played by Trame within the cartel may be taken into consideration when it comes to determining the amount of the fine.

F – *No element of intent in the impugned conduct*

1. *Arguments of the parties*

330 Trame submits that it is a small undertaking whose sales of PS are made in Italy. Between 1997 and 2002 its market share in the global market for seven-wire strand and three-wire strand varied between 6.5% and 10%. As regards seven-wire strand alone, Trame's market share in Italy varied between 1.7% and 5.1%. The applicant does not have an in-house legal department and has never had to deal with questions of competition law. Its participation in Club Italia was episodic, it took place essentially within the framework of a trade association and the applicant maintained competitive conduct on the market. Trame had no specific interest in taking part in the cartel meetings and, in any event, did not have the slightest intention of adopting conduct that might constitute an infringement of the competition rules, just as it did not imagine that a role as marginal as the one it played could have anti-competitive effects. In other words, the infringement imputed to it could not be regarded as

intentional, as it was the result of mere negligence, which is one of the mitigating circumstances referred to in the 2006 Guidelines. The amount of the fine imposed should therefore be reduced to take account of the complete lack of intent in the applicant's conduct.

331 The Commission disputes those arguments.

2. *Findings of the Court*

332 In essence, Trame claims that the Commission ought to have taken into account the fact that the infringement imputed to it was not committed deliberately or intentionally, but by mere negligence.

333 Generally, there is no infringement of Article 101 TFEU unless it is shown that the undertakings in question intended to participate in an anti-competitive practice. Thus, the 'agreements' or 'concerted practices' prohibited by Article 101 TFEU require, in one form or another, a manifestation of the intention of the undertakings to reach agreement on the object or the effect of the cartel, namely the 'prevention, restriction or distortion of competition within the internal market'. That manifestation of intention may be the result of a positive action, such as the signature of an agreement or participation in a concerted practice, but it may also be the result of imprudence or mere negligence.

334 In that regard, it should be noted that, pursuant to Article 23(2) of Regulation No 1/2003, '[t]he Commission may, by decision, impose fines on undertakings where, either intentionally or negligently, they infringe Article [101 TFEU]'.

335 In the second indent of point 29 of the 2006 Guidelines, the Commission stated that it may reduce the basic amount of the fine to take account of a mitigating circumstance 'where the undertaking provides evidence that the infringement has been committed as a result of negligence'.

336 In the present case, however, it must be held that Trame's argument that a mitigating circumstance should be recognised, in that it committed the infringement as a result of negligence, is factually incorrect. It is apparent from the file, as the Commission claims, that Trame's participation in Club Italia cannot be the outcome of negligence, but is the result of a deliberate act on its part, as confirmed, for example, by the information provided by the other members of Club Italia, at the meeting of 4 March 1997, to the effect that Trame wished to join them, which it did a few days later at the meeting of 10 March 1997 and on several subsequent occasions until the meeting of 19 September 2002.

337 None of the reasons put forward by Trame to establish that it acted negligently, namely the fact that it is a small family undertaking, which sells only in Italy and does not export, the small size of its market share, at below 10% (three-wire strand and seven-wire strand) or indeed 5% (seven-wire strand), the fact that it does not have an in-house legal department or its alleged ignorance of the principles governing competition law, or again the particular features of its participation, is capable of showing that it was not acting deliberately when it joined, then left, then re-joined Club Italia during the period between March 1997 and September 2002.

338 It follows from the foregoing that the fifth plea must be rejected as unfounded.

G – *The additional pleas, relating to breach of the principle of proportionality and of the principle of equal treatment*

1. *Arguments of the parties*

339 Following the second amending decision, Trame amended its pleas and claimed that there had been a breach of the principles of proportionality and equal treatment in the determination of the amount of the fine owing to the treatment afforded to ArcelorMittal and Ori Martin by comparison with the treatment from which Trame was able to benefit. It observes that, because of the second amending decision, the Commission considered that the fine imposed on ArcelorMittal, equivalent to 0.5% of that undertaking's turnover, was excessive, and therefore reduced it to 0.1% of its turnover. The same applies to the reduction granted to Ori Martin and to SLM. By way of comparison, the Commission fixed the amount of Trame's fine at the maximum permitted level, or 10% of its turnover, thus placing it in danger of insolvency. That amounts to a breach of the principle of proportionality and of the principle of equal treatment.

340 The Commission disputes those arguments.

2. *Findings of the Court*

341 The situations which the Commission took into account when reducing the amounts of the fines imposed on ArcelorMittal and its subsidiaries and also on Ori Martin and its subsidiary SLM are clearly different from Trame's situation.

342 As regards Trame, its participation in the infringement is directly imputable to it, whereas in the case of ArcelorMittal and Ori Martin their participation in the infringement is based on the presumption that, owing to the size of the shareholding held in the subsidiary or subsidiaries of those companies that participated directly in the infringement, the Commission is able to require those companies to be jointly and severally liable for payment of the fines incurred.

343 Accordingly, neither the principle of proportionality nor the principle of equal treatment has been breached in the present case when the fine imposed on Trame is assessed in the light of the treatment received by the undertakings to which the second amending decision was addressed.

344 It follows from the foregoing that the additional pleas must be rejected as unfounded.

H – *Inability to pay*

1. *Content of the contested decision*

345 Twenty three legal entities claimed before the Commission during the administrative procedure that they were unable to pay, including Trame (contested decision, recital 1133).

346 When examining those claims, first, the Commission stated that when an undertaking alleges that the estimated fine would have a negative impact on its financial situation, without adducing credible evidence demonstrating its inability to pay the expected fine, the Commission is not required to take such a situation into account when determining the amount of the fine, since recognition of such an obligation would be tantamount to giving unjustified competitive advantages to undertakings least well adapted to the conditions of the market (contested decision, recital 1134).

347 Second, the Commission stated that it had carried out its examination in the light of the situation prevailing at the time when the contested decision was adopted. In the light of the data supplied by the undertakings concerned, the Commission examined the undertakings' individual financial situations, their financial statements for the years 2004 to 2009 and their projections for 2010 to 2012. The Commission also took into account the impact of the global economic and financial crisis on the steel sector and the expected consequences for the undertakings concerned in terms of falling demand and falling prices or access to finance. In particular, owing to the economic crisis, the undertakings in the sector are experiencing difficulties in maintaining their credit lines with banks and obtaining sufficient funding (contested decision, recitals 1135 to 1137).

348 Third, the Commission emphasised that the fact that an undertaking goes into liquidation does not necessarily mean that there will always be a total loss of asset value, and that, consequently, such liquidation does not in itself justify a reduction of the amount of the fine which would otherwise have been imposed. Liquidations sometimes take place in an organised, voluntary manner, as part of a restructuring plan in which new owners or management continue to develop the undertaking and its assets. Thus, each legal entity which claimed inability to pay had to demonstrate that good and viable alternative solutions were not available. If there was no credible indication of alternative solutions being available within a reasonably short period of time which would enable the undertaking to be maintained, the Commission considered that there was a sufficiently high risk that the undertaking's assets would lose a significant part of their value where the undertakings were forced into liquidation following the imposition of a fine (contested decision, recital 1138).

349 Where the conditions laid down in point 35 of the 2006 Guidelines were met, the Commission defined the reduction of the amount of the fine imposed on each of the undertakings concerned on the basis of the undertaking's ability to pay the final amount of the fine imposed and the likely effect that such payment would have on its viability (contested decision, recital 1139).

350 The Commission therefore rejected Trame's claim, pointing out that the available cash balances and available funds at the end of 2009 were approximately twice the amount of the fine, while the expected cash balances and available funds in 2010 and 2011 were more than 2.5 times the amount of the fine. Those two elements sufficed to reject the 'inability to pay' claim. Two other elements confirmed that rejection: a considerable outflow of liquidity in March 2009, when Trame lent EUR 1.46 million to Sunset SpA, a real estate company owned by the same shareholders as Trame, and a mortgage provided by Trame for its long-term debt, the amount of which was much higher than the current outstanding amount of the loan guaranteed; that large difference could facilitate the grant of additional credit (contested decision, recitals 1162 and 1163).

2. *Arguments of the parties*

351 Trame disputes the reasons put forward in the contested decision for rejecting its claim that its inability to pay should be taken into consideration. First, it is clear from the data communicated to the Commission on 25 May 2010 that payment of a fine of EUR 3.2 million would have a significant effect on what was already a precarious financial position. Without a cash balance, Trame would have to increase its debt to pay the fine and the financial institutions might then cancel the credits granted. Second, the loan granted to Sunset is a loan properly granted to a real estate company owned by the same shareholders and was properly entered in the accounts. That loan does not alter the effects that payment of the fine would have for Trame. Third, as regards the mortgage, Trame observes that the difference between the sum lent and the amount guaranteed by the mortgage does not prove that it would be possible to obtain an additional bank loan, but merely shows the insolvency of Trame, which was required to provide a mortgage security of a value higher than any claims that the lender might have. Additional finance could thus be guaranteed only by a second mortgage.

352 Furthermore, Trame claims that the conditions laid down in point 35 of the 2006 Guidelines are met. Given its high debts, a fine that made the net financial position of the group, which was already in deficit, 50% worse would irretrievably jeopardise its economic viability and cause its assets to lose all their value.

353 In addition, Trame claims that there has been a breach of the principle of equal treatment, comparing the way in which its situation was treated with the treatment given to CB and Itas, which played a more important role in the cartel. In fact, Trame, an undertaking of modest size, whose limited participation in the cartel was proved, is ordered to pay a higher fine (EUR 3.2 million) than CB (EUR 2.5 million) and Itas (EUR 0.8 million).

354 The Commission disputes those arguments and refers in essence to the content of the contested decision.

3. *Findings of the Court*

a) Preliminary considerations

Point 35 of the 2006 Guidelines

355 Point 35 of the 2006 Guidelines envisages 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. That point is worded 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.'

356 According to a consistent line of decisions, in adopting rules of conduct such as the Guidelines 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 of 28 June 2005 in *Dansk Rørindustri and Others* v *Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, ECR, EU:C:2005:408, 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).

357 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 jeopardise 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.

358 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 356 above, EU:C:2005:408, paragraph 327, and in *Ecka Granulate and non ferrum Metallpulver* v *Commission*, cited in paragraph 356 above, EU:T:2012:675, paragraph 94).

359 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 suffice to substantiate a request that the Commission should take account of its inability to pay in order to grant a reduction of the fine.

360 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 (see, to that effect, 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 356 above, EU:T:2012:675, paragraph 50).

361 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 356 above, EU:T:2012:675, paragraph 51).

362 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 356 above, EU:T:2012:675, paragraph 97).

363 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 paragraph 362 above 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 356 above, EU:T:2012:675, paragraph 98).

364 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 in *SGL Carbon* v *Commission*, cited in paragraph 102 above, EU:C:2006:433, paragraph 106, and in *Ecka Granulate and non ferrum Metallpulver* v *Commission*, cited in paragraph 356 above, EU:T:2012:675, paragraph 99).

365 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 356 above, EU:T:2012:675, paragraph 100).

366 Last, 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.

367 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 Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('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).

368 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 vary 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 367 above, EU:C:2013:522, paragraph 35; see ECtHR, *A. Menarini Diagnostics v. Italy*, no. 43509/08, § 59, 27 September 2011, and *Segame SA v. France*, no. 4837/06, § 55, 7 June 2012, ECHR 2012 (extracts), and the case-law cited).

369 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 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 367 above, EU:C:2011:815, paragraphs 51 and 66).

370 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 367 above, EU:C:2011:815, paragraph 62).

371 Last, 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; of 5 October 2011 in *Romana Tabacchi* v *Commission*, T-11/06, ECR, EU:T:2011:560, paragraphs 282 to 285; and of 27 February 2014 in *InnoLux* v *Commission*, T-91/11, ECR, EU:T:2014:92, paragraph 157).

372 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.

Principles of proportionality and equal treatment

373 As regards the principle of proportionality, it should be borne in mind that that principle requires that the acts of the institutions do not exceed the limits of what is appropriate and necessary to attain the legitimate objectives pursued by the legislation in question; when there is a choice between several appropriate measures recourse must be had to the least onerous and the disadvantages caused must not be disproportionate to the aims pursued (judgments of 13 November 1990 in *Fedesa and Others*, C-331/88, ECR, EU:C:1990:391, paragraph 13; of 5 May 1998 in *United Kingdom* v *Commission*, C-180/96, ECR, EU:C:1998:192, paragraph 96; and in *Romana Tabacchi* v *Commission*, cited in paragraph 371 above, EU:T:2011:560, paragraph 104).

374 In the procedures initiated by the Commission in order to penalise infringements of the competition rules, the application of that principle requires that fines must not be disproportionate to the objectives pursued, that is to say, by reference to compliance with those rules, and that the amount of the fine imposed on an undertaking for an infringement in competition matters must be proportionate to the infringement, seen as a whole, having regard, in particular, to the gravity thereof. In particular, the principle of proportionality requires the Commission to set the fine proportionately to the factors taken into account to assess the gravity of the infringement and also to apply those factors in a way which is consistent and objectively justified (judgment in *Romana Tabacchi* v *Commission*, cited in paragraph 371 above, EU:T:2011:560, paragraph 105).

375 Furthermore, it has consistently been held that there is a breach of the principle of equal treatment where comparable situations are treated differently or different situations are treated in the same way, unless such difference of treatment is objectively justified (judgment in *Romana Tabacchi* v *Commission*, cited in paragraph 371 above, EU:T:2011:560, paragraph 102).

376 Those principles are applicable to the question whether the Commission correctly assessed the arguments put forward in support of a request that inability to pay the fine be taken into account in the determination of the amount of the fine. In the present case, their implementation is facilitated by the fact that the circumstances taken into account when assessing inability to pay are the same from one undertaking to another, even though their financial situations differ (see paragraphs 345 to 350 above). The same applies to the factors relating to the solvency and liquidity of an undertaking, the structure of its balance sheet and the nature of its shareholding.

b) Analysis

377 In recitals 1162 and 1163 to the contested decision (see paragraph 350 above), the Commission rejected Trame's request that its inability to pay should be taken into account for the purpose of reducing the fine, observing that Trame had sufficient funds to pay a fine of EUR 3.2 million, in view in particular of the resources available within the undertaking or the possibility of being granted additional credit by the banks.

378 Likewise, by order of 12 July 2011 in *Emme* v *Commission* (T-422/10 R, EU:T:2011:349), the President of the Court dismissed the application to suspend the operation of the contested decision. That decision was based on the lack of urgency of the application for interim measures (see paragraphs 43 and 48 above).

379 Furthermore, in its reply to the measures of organisation of procedure adopted by the Court, Trame stated, without providing further details, that on 18 November 2013 it had submitted a fresh request to the Commission that its inability to pay owing to its economic and financial situation be taken into account. That request was supplemented on 20 and 24 January 2014.

380 At the hearing, the parties stated that that request had eventually been rejected, without providing details of the undertaking's current financial position. The Commission stated, in that regard, that its response confirmed the assessment previously set out in the contested decision.

381 In the light of the assessment set out in the contested decision and having regard to the various arguments and evidence put forward by the parties before the Court, it must be held that Trame has not established that it is in a situation in which it proves that it is unable to pay a fine of EUR 3.2 million because of its inability to pay.

382 As the Commission indicates in the contested decision on the basis of the information communicated to it by Trame, at the time when the Commission determined the amount of the fine Trame was in a situation where it was able to pay the amount of the fine.

383 In the first place, and by way of subsidiary point, it should be observed that even if Trame's argument that its net financial position was in deficit as a result of the commercial debts and short-term financial debts should be taken into account, it is none the less true that the cash balances and available funds within that undertaking were positive. That shows that Trame was still able to generate revenue through its operational activity.

384 In the second place, and by way of main point, the Commission was correct to consider that Trame could reasonably obtain additional resources from its banks or from another company.

385 Thus, as regards the mortgage loan agreement of 11 October 2007 with two Italian banks, for which those banks held a charge for an amount of EUR 17.6 million, Trame does not dispute that part of the initial loan, in an initial amount of EUR 8.8 million, had already been repaid.

386 In its replies to the measures of organisation of procedure, the Commission states in that regard that on 31 January 2011 Trame had repaid a sum of EUR 2.5 million under that 15-year mortgage loan, the purpose of which was to maintain the liquidity of the undertaking.

387 In that context, the Commission was entitled to consider that, owing to that business relationship between Trame and its banks, and in view of the fact that Trame was still generating revenue, even in a situation of crisis, and since the banks had a security representing twice the amount of the loan, one or other of those banks would agree to supply Trame with all or part of the resources necessary to pay the amount of the fine.

388 When the parties were questioned about the effectiveness of such a hypothetical reserve of available finance, the Commission stated that such a hypothesis was confirmed by the facts, since on 31 January 2011 Trame was able to obtain an unsecured credit of EUR 2.5 million from one of the two banks which had granted it the mortgage loan. Trame did not submit any argument capable of undermining the merits of such a hypothesis.

389 Likewise, even on the assumption that the available liquid resources did not allow Trame to pay the fine, the Commission was also correct to observe in the contested decision that Trame could find additional resources by demanding repayment of the sum of EUR 1.46 million lent in March 2009 to a real estate company owned by the same shareholders as Trame.

390 The observations put forward by Trame in that respect do not allow any possibility of its recovering that sum or using it to obtain finance necessary to be able to pay the fine to be precluded. The Commission's decision in that respect is therefore not disproportionate, but, on the contrary, is consistent with the facts of the case.

391 Finally, as regards the complaint alleging breach of the principle of equal treatment by comparison with the treatment given to CB and Itas, it must be pointed out that the financial situation of each of those undertakings is different and that it was on the basis of those differences, and not in the light of the ways in which those undertakings participated in the infringement, that the Commission considered it appropriate to reduce in part the amount of the fine in question, calculated to take the ability to pay of each of those undertakings into account.

392 It follows from the foregoing that the Commission was entitled to consider, as it did in the contested decision, that it could reject Trame's request that its alleged inability to pay should be taken into account and the fine reduced.

c) Conclusion

393 Consequently, the plea alleging inability to pay must be rejected as unfounded.

I – *The claims for annulment of the contested decision in that it imposes a fine, or for a reduction of the amount of that fine, the exercise by the Court of its unlimited jurisdiction and the determination of the amount of the fine*

394 The unlimited jurisdiction conferred on the Court, in application of Article 261 TFEU, by Article 31 of Regulation No 1/2003 empowers it, in addition to carrying out a mere review of the lawfulness of the penalty, which enables it only to dismiss the action for annulment or to annul the contested measure, to substitute its own appraisal for the Commission's and, consequently, to vary the contested measure, even without annulling it, taking into account all of the factual circumstances, by amending, in particular, the fine imposed where the question of the amount of the fine is before it (see, to that effect, judgments of 8 February 2007 in *Groupe Danone* v *Commission*, C-3/06 P, ECR, EU:C:2007:88, paragraphs 61 and 62, and of 3 September 2009 in *Prym and Prym Consumer* v *Commission*, C-534/07 P, ECR, EU:C:2009:505, paragraph 86 and the case-law cited).

395 In the form of order sought, Trame asks the Court to annul the contested decision in that it imposes a fine on Trame or to reduce the amount of that fine.

396 It is already apparent from the foregoing that Article 1(17) of the contested decision must be annulled in that the Commission found that Trame participated in the pan-European aspect of the infringement at issue between 4 March 1997 and 9 October 2000, considered that its participation related to three-wire strand from 4 March 1997 until 28 February 2000, and found that it participated in the anti-competitive practices during the period from 30 August 2001 until 10 June 2002. Consequently, the Court must also annul Article 2(17) of the contested decision in that it imposes a disproportionate fine on Trame to penalise its participation in the single infringement between 4 March 1997 and 19 September 2002, as that fine was defined on the basis of Trame's participation in the infringement referred to in Article 1 of the contested decision.

397 It is therefore for the Court to determine the amount of the fine that should be imposed on Trame in the light of its participation in the single infringement.

398 In that regard, it should be observed that, by its nature, the fixing of a fine by the Court is not an arithmetically precise exercise. Furthermore, the Court is not bound by the Commission's calculations or by its Guidelines when it adjudicates in the exercise of its unlimited jurisdiction, but must make its own appraisal, taking account of all the circumstances of the case (see judgment of 5 October 2011 in *Romana Tabacchi* v *Commission*, T-11/06, ECR, EU:T:2011:560, paragraph 266 and the case-law cited).

399 In this case, in order to determine the amount of the fine intended to penalise Trame's participation in the single infringement, it follows from Article 23(3) of Regulation No 1/2003 that regard is to be had both to the gravity and to the duration of the infringement, and it follows from the principle that penalties must fit the offence that the penalty must take account of the situation of each offender with respect to the infringement. That is particularly so in the case of a complex infringement of long duration of the type defined by the Commission in the contested decision, which is characterised by the heterogeneity of the participants.

400 In the present case, the Court considers it appropriate to take the following circumstances into account.

401 In the first place, it is apparent to the requisite evidential standard from the file that Trame participated in several Club Italia meetings, which concerned quota-allocation and price-fixing on the Italian market. Such arrangements are by their nature among the most serious restrictions of competition. Trame's participation in Club Italia from 4 March 1997 until 19 September 2002 is an essential element in the assessment of the penalty. In that regard, account must none the less be taken of the fact that, for a period of around nine months, from 30 August 2001 until 10 June 2002, the Commission was unable to establish to the requisite legal standard that Trame actually participated in the anti-competitive practices of Club Italia (see paragraphs 288 to 296 above).

402 In the second place, it may be considered that, as from 28 February 2000, Trame participated within Club Italia in anti-competitive practices concerning not only seven-wire strand but also, at a minimum, the exchange of commercially sensitive information relating to three-wire strand. However, it is not sufficiently established that before that date Trame was aware or should have been aware that three-wire strand was also the subject of discussions within Club Italia (see paragraphs 194 to 197 above).

403 In the third place, it may be considered that, as from 9 October 2000, Trame was aware or should have been aware that, by participating in Club Italia, it was taking part in a larger scheme, at different levels, the objective of which was to stabilise the PS market at pan-European level in order to avoid a fall in prices (see paragraphs 144 and 145 above). It was therefore only at a late stage, or at any rate at a later stage than in the case of other undertakings, that Trame was aware of the single infringement imputed to it by the Commission.

404 At the same time, it must be pointed out that the Commission has not established that Trame had participated in the Southern Agreement, Club España or the Addtek coordination, which are essential aspects of the single infringement, or in the external aspect of Club Italia, in which Trame was unable to participate as it did not export outside Italy to the territory of one or more of the Member States concerned by the single infringement.

405 In the fourth place, it is apparent from the circumstances of the present case that Trame's participation in the cartel has certain particular characteristics that distinguish its participation from that of other undertakings, like the main players in Club Italia, or the operators in Club Europe, which operated at all levels and in all territories. The Court must therefore have particular regard to the fact that Trame operated on the periphery of the cartel and that its participation was limited as such, both within Club Italia and outside Italy, something of which the other participants in the cartel were aware (see paragraphs 318 to 324 above).

406 Having taken those circumstances into account, the Court considers that a fine of an amount of EUR 5 million permits effective punishment for Trame's unlawful conduct in a manner which is not insignificant and remains sufficiently deterrent. Any fine higher than that amount would be disproportionate to the infringement imputed to it, assessed in the light of all the circumstances that characterise Trame's participation in the single infringement.

407 Because of the legal limit of 10% of total turnover provided for in Article 23(2) of Regulation No 1/2003, the final amount of the fine imposed on Trame in the preceding paragraph cannot exceed EUR 3.249 million.

408 The amount of the fine imposed on Trame should therefore be set at EUR 3.249 million.

409 Nor is there any need for the Court to summon and examine a representative of Tréfileurope at the time of the cartel, as that measure does not appear necessary for the outcome of the dispute in the light of the statement submitted in that regard by Trame before the Court, the observations of the parties and the evidence in the file.

410 The action is dismissed as to the remainder.

Costs

411 Under Article 134(3) of the Rules of Procedure, 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.

412 In the light of the circumstances of the present case, the Court decides that each party is to bear its own costs in Case T-422/10. In addition to bearing its own costs, Trame must be ordered to pay the Commission's costs in Case T-422/10 R.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. **Annuls Article 1(17) 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 in so far as the Commission found that Trafilerie Meridionali SpA, formerly Emme Holding SpA, participated in the pan-European aspect of the infringement at issue between 4 March 1997 and 9 October 2000, considered that such participation related to three-wire strand between 4 March 1997 and 28 February 2000, and found that such participation in the anti-competitive practices existed the period 30 August 2001 to 10 June 2002;**

2. **Annuls Article 2(17) of Decision C(2010) 4387 final, as amended by Decision C(2010) 6676 final and by Decision C(2011) 2269 final;**

3. **Sets the amount of the fine imposed on Trame at EUR 3.249 million;**

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

5. **Orders the parties to bear their own costs in Case T-422/10;**

6. **Orders Trafilerie Meridionali, in addition to bearing its own costs, to pay those incurred by the Commission in connection with T-422/10 R.**

Frimodt Nielsen Dehousse Collins

Delivered in open court in Luxembourg on 15 July 2015.

[Signatures]